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HIGHLIGHTS OF THIS ISSUE

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

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How To Find U.S. Statutes and United States Code Citations

[Second Revised Edition—1971]

This useful guide is designed to enable the user to obtain—quickly and easily—up-to-date and accurate citations to the United States Statutes at Large and the United States Code.

It contains typical legal references which require further citing. The official published volumes in which the citations may be found are shown alongside each reference—with suggestions as to the logical sequence to follow in using them. Additional finding aids, some especially useful in citing current legislation, also have been included. Examples are furnished at pertinent points and a list of references, with descriptions, is carried at the end.

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Title 7—AGRICULTURE

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

PART 932—OLIVES GROWN IN CALIFORNIA

Establishment of Sizes

Notice is hereby given of the approval of amendment, as hereinafter set forth, of the rules and regulations (Subpart—Rules and Regulations; 7 CFR 932.108–932.161) currently effective pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), regulating the handling of olives grown in California, hereinafter referred to collectively as the "order." This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The amendment of said rules and regulations was unanimously recommended by the Olive Administrative Committee, established under said marketing agreement and order as the agency to administer the terms and provisions thereof.

The provisions of paragraph § 932.52 (a)(2) and (a)(3) of the order specify, in terms of minimum weights for individual olives according to variety, the minimum sizes of processed olives that may be used in the production of whole or pitted styles of canned ripe olives. Paragraph § 932.52(a)(3) also provides that processed olives smaller than the sizes so prescribed, as recommended annually by the committee and approved by the Secretary, may be authorized for limited use (production of halved, quartered, sliced, or chopped or minced styles of canned ripe olives) but any such limited use size olives so used shall be not smaller than the applicable size specified in the paragraph except for the tolerances recommended to, and approved by the Secretary. Pursuant thereto this amendment establishes, for olives from the 1972–73 crop utilized for limited use, the minimum sizes specified in said § 932.52(a)(3) and includes a size tolerance of 15 percent for undersize Variety Group 1 olives and 10 percent for undersize Variety Group 2 olives.

This liberalization reflects the committee's appraisal of the 1972–73 olive crop (including the anticipated smaller sizes of the olives) and marketing conditions and are its recommendations for the minimum sizes of olives that will provide consumers with good quality fruit of the styles specified herein and for improving returns to producers pursuant to the declared policy of the act.

It is hereby found that amendment of said rules and regulations, as hereinafter set forth, is in accordance with the provisions of the marketing agreement and order, and will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended.

The provisions of § 932.153 are amended to read as follows:

§ 932.153 Establishment of sizes of processed 1972–73 olives for use in the production of halved, quartered, sliced, or chopped or minced styles of canned ripe olives.

(a) On and after September 1, 1972, any handler may use processed olives of the respective variety groups in the production of halved, quartered, sliced, or chopped or minced styles of canned ripe olives if such olives were processed during the period September 1, 1972, through August 31, 1973, and meet the grade requirements specified in § 932.52(a)(1), as modified by § 932.149, and the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives processed before September 1, 1972, or after August 31, 1973;

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh 1/90 pound: *Provided,* That not to exceed 15 percent of the olives in any lot or sublot may be smaller than 1/90 pound;

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 15 percent of the olives in any lot or sublot may be smaller than 1/140 pound;

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh 1/180 pound: *Provided,* That not to exceed 10 percent of the olives in any lot or sublot may be smaller than 1/180 pound;

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 10 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

It is hereby further found that it is impracticable, unnecesary, and contrary to the public interest to give preliminary notice, engage in public rule making procedure and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 533), and good cause exists for making the provisions hereof effective at the time hereinafter set forth, in that (1) the time intervening between the date when the information upon which this amendment is based became available and the time such amendment must become effective in order to effectuate the declared policy of the act is insufficient; (2) the handling of the 1972 crop of olives is expected to begin on or about September 1, 1972—the beginning of the crop year—and amendment of the rules and regulations should be in effect by that time so as to apply to the handling of the entire crop to effectuate the declared policy of the act; (3) unless modified by this amendment, the more restrictive requirements of the order provisions would then apply to the handling of the crop; (4) compliance with the amended rules and regulations will require of handlers no special preparation therefor which cannot be completed by the effective time hereof; (5) in order to facilitate the handling of the 1972 crop the industry should have knowledge of the revised requirements, contained in this amendment, as soon as possible; and (6) this amendment was unanimously recommended by members of the Olive Administrative Committee at an open meeting on August 10, 1972, at which all interested persons were afforded an opportunity to submit their views.

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

Dated: August 23, 1972, to become effective September 1, 1972.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-14637 Filed 8-28-72;8:48 am]

Chapter XVIII—Farmers Home Administration, Department of Agriculture

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FHA Instruction 442.10]

PART 1824—GUIDELINES FOR PREPARING ENVIRONMENTAL IMPACT STATEMENTS FOR COMMUNITY SERVICES PROGRAMS

On Thursday, May 11, 1972, notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 9485) to amend 7 CFR, Subchapter B—Loans and Grants Primarily for Real Estate Purposes, by the addition of part 1824, "Guidelines for Preparing Environmental Impact Statements Required by section 102(2)(C) of the National Environmental Policy Act of 1969." This part has been amended so that it applies only to Community Services programs including the renumbering of the FHA instruction from 440.8 to 442.10, and provides guidelines for determining the need for and preparation of draft and

final environmental impact statements. The State Director is responsible for determining the need for such statements. Proposed major FHA actions which will affect the environment either positively or adversely will require the preparation of environmental impact statements. All statements will be made available for review by the general public and Federal agencies. Regulations for other Farmers Home Administration programs will be issued in the future.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulations. Comments received within the 30-day period were given consideration when this proposed regulation was finalized. The proposed regulation as amended to apply only to Community Services programs, and with other editorial changes is hereby adopted effective on the date of its publication in the FEDERAL REGISTER (8–29–72).

As adopted, the new Part 1824 will read as follows:

AUTHORITY: The provisions of this Part 1824 issued under sec. 339, 75 Stat. 318, 7 U.S.C. 1989; sec. 301, 80 Stat. 379, 5 U.S.C. 301; Order of Act. Secretary of Agriculture, 36 F.R. 21529; Order of Assistant Secretary of Agriculture for Rural Development and Conservation, 36 F.R. 21529.

§ 1824.1 Purposes.

This part provides guidelines for preparing Environmental Impact Statements (EIS) required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 42 U.S.C. 4321; et seq., as supplemented by the Council on Environmental Quality (CEQ) Guidelines issued on April 23, 1971; U.S. Department of Agriculture (USDA) Guidelines issued by Secretary's Memorandum 1695, Supplement 4, and related issuances. It is applicable to the following community programs: Community Water and Waste Disposal System loans and grants, Comprehensive Water and Sewer Planning grants, loans for Grazing and other shift-in-land use projects, Community Recreation Facility loans, Community Irrigation and Drainage loans, Watershed loans and advances, Resource Conservation and Development loans, loans to Indian Tribes and Tribal Corporations, and loans to Timber Development Organizations.

§ 1824.2 Environmental statements.

A determination must be made as to whether each proposed major Farmers Home Administration (FHA) action will significantly affect the environment and thus whether an environmental statement is needed. All significant effects including beneficial and adverse actions either directly or indirectly affecting the environment must be assessed. Significant adverse effects include those that degrade the quality of the environment, curtail the range of beneficial uses of the environment, or serve short-term to the disadvantage of long-term enivronmental goals. Two stages of the development of environmental statements are required. The first or draft environmental statement comes into being when it is sent to CEQ and made available to the public. The second or final environmental statement comes into being when it is sent to CEQ and made available to the public. The final statement is based upon comments received from agencies and interested parties who have reviewed the draft environmental statement. The final statement is therefore a modification or expansion of the draft statement based on comments and other information obtained subsequent to the draft statement.

§ 1824.3 Responsibilities.

The State Director is responsible for determining the need for an environmental statement by making an environmental assessment on each major FHA action, preparing needed environmental statements, consulting with other Federal departments or agencies with jurisdiction by law or special expertise with respect to any environmental impact involved, providing for review by State and local agencies authorized to develop and enforce environmental standards, and making environmental statements available to the public.

§ 1824.4 Need for EIS.

(a) Alternative actions to minimize adverse environmental conditions must be considered even though FHA assistance would not be required for such alternatives. Long-range and short-range implications should be evaluated. Undesirable consequences for the environment should be prevented if possible. EIS's should respond to all elements listed in Exhibit C below. Reference should be made to the impact of the action on economic development including employment and income opportunities and summary of costs and benefits expected from the action when available. Reference to consultations with Federal, State, and local agencies in the preparation and review of both draft and final environmental statements along with significant determinations made should be included in such statements.

(b) An EIS will be prepared when:
(1) The environment may be significantly affected by the proposed major FHA action, even though such action may be localized in its impact.

(2) It is reasonable to assume a cumulatively significant impact on the environment from successive implementation of several similar actions.

(3) A decision involving a limited expenditure is a precedent for action in much larger cases.

(4) The environmental impact of a proposed action is likely to be highly controversial.

(5) The project would have a significant adverse effect on fish, wildlife, their habitats and other natural areas.

(6) The project would cause the diversion of water from one basin to another which would have a significant adverse effect on the quality or quantity of water in either basin.

(7) The project would contribute to a significant depletion or degradation of the ground or surface water.

(8) The project would have significant adverse impacts on public parks or other areas of recognized scenic or recreational value.

(9) The project would have significant adverse effects on areas of recognized archeological value or properties listed on or being considered for nomination to the National Register of Historical Places.

(10) The project would include or induce development of facilities which would significantly contribute to degradation of local ambient air quality.

(11) The project would include or induce development of facilities which would significantly contribute to degradation of local ambient noise levels.

(12) The project would significantly change industrial, commercial, or residential concentrations or distributions.

§ 1824.5 Environmental impact assessment.

(a) When an applicant files SF–101, "Preliminary Application for Requesting Federal Assistance for Public Works and Facility-Type Projects," or other appropriate application, the FHA official who receives the application, usually the County Supervisor, will prepare an assessment using Form FHA 440–46, "Environmental Impact Assessment."

(b) Form FHA 440–46 will be submitted to the State Director along with a copy of the SF–101 or other application.

(c) The State Director is responsible for determining the need for EIS's on major FHA actions developed in rural areas with loans and grants from the FHA. In making this determination, he will take the following actions:

(1) Review the assessment to determine whether a statement is needed; or

(2) If other Federal agencies are involved, contact such agencies to help determine if a statement is needed. If so, determine which agency will be responsible as the lead agency for preparation of the statement. The lead agency will discuss the development of statements with other agencies involved who will review working drafts and submit comments and suggestions as appropriate. Statements will reflect agencies involved and the concurrence of each.

(3) When the State Director has determined that an environmental statement is not needed, he will notify the clearinghouse(s) that based upon an environmental assessment of the proposed major FHA action, it will have no significant impact on the environment. Therefore, an EIS will not be prepared

unless additional information substantiates the need for one.

(4) When the State Director has determined that a statement is needed and that FHA is responsible for its preparation, he will notify the clearinghouse(s) that based upon an environmental assessment of the proposal, the significance of its impact on the environment is such that an EIS will be prepared by FHA in accordance with section 102(2)(C) of the NEPA.

(5) Notify the County Supervisor that a statement will be prepared by FHA and request him to provide information needed for the preparation of the statement.

(6) When the State Director and officials of other interested agencies determine that an environmental statement is needed and will be prepared by an agency other than FHA, he will notify the County Supervisor that a statement is needed and indicate the agency that will prepare it.

(d) When the County Supervisor receives notice from the State Director that a statement is needed and that another agency will prepare it, he will notify the applicant in writing that:

(1) An EIS will be prepared and indicate the agency that will prepare it.

(2) Final action will not be taken on the application until 90 days after a draft statement has been submitted to CEQ and to the public, nor until 30 days after a final statement based upon comments received on the draft statement has been submitted to CEQ and the public.

§ 1824.6 Preparation of EIS.

When a determination is made that the statement is to be prepared by FHA, the State Director will prepare the draft and final statements in accordance with Exhibits A, B, and C below, taking into consideration the results of his discussion with other interested agencies and other available information.

(a) Draft statements: (1) The State Director will send a copy of the draft statement to the National Office for review and distribution.

(2) When a determination has been made in the National Office that the draft statement meets the requirements of CEO guidelines, the following items will be submitted to the Office of the Coordinator, Environmental Quality Activities, USDA (Coordinator):

(i) Eleven copies of the draft statement. The Coordinator will forward 10 copies to CEQ.

(ii) An accession notice card, Form—NTIS–79, to provide for public availability of the EIS through the National Technical Information Service (NTIS), U.S. Department of Commerce.

(iii) Two copies of the summary sheet to be forwarded to the Office of Management and Budget (OMB).

(3) A notice of the availability of the draft environmental statement will be published in the FEDERAL REGISTER. This will include location of offices where copies can be obtained and the NTIS accession number.

(4) Copies of the statement showing the date of transmittal to CEQ will be made in the National Office and distributed as follows:

(i) Ten copies to the State Director for distribution at State level.

(ii) Copies to appropriate Federal agencies at the National level.

(5) When the State Director receives copies of the draft statement from the National Office, he will send a copy to the appropriate clearinghouse(s) and to appropriate agencies at local, State, and regional levels who do not receive copies through the clearinghouse(s) process.

(6) Copies will be available for review in the National Office and in the appropriate State and County Offices.

(7) Copies may be obtained by interested parties from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

(b) Final statement: (1) The State Director will prepare the final statement taking into consideration comments received on the draft statement and any other pertinent information or developments since the draft statement was prepared. One copy will be submitted to the National Office for review and distribution.

(2) The following items will be submitted by the National Office to the Office of the Coordinator, Environmental Quality Activities, USDA:

(i) Eleven copies of the final statement. The Coordinator will forward 10 copies to CEQ.

(ii) An Accession Notice card, Form—NTIS–79.

(iii) Two copies of the summary sheet for OMB.

(3) A notice of completion and availability of the final environmental statements will be published in the FEDERAL REGISTER.

(4) Additional copies of the statement showing the date of transmittal to CEQ will be reproduced in the National Office and distributed as follows:

(i) Ten copies to the State Director for distribution at State level.

(ii) Copies to appropriate Federal agencies at the National level.

(5) When the State Director receives copies of the final statement from the National Office, he will send copies to the clearinghouse(s) and to interested agencies at local, State, and regional levels, including those from whom comments on the draft statement were received.

(6) Copies will be made available in the State and local offices for review by interested parties.

(7) Copies may be obtained by interested parties from NTIS.

(8) The final statement will request that comments be sent to the State Director within 30 days.

(c) When a determination is made that another agency is responsible for preparation of the EIS, the State Director will:

(1) Notify the National Office of the agency preparing the statement.

(2) Cooperate with the responsible agency in preparing and processing the statement.

(3) Send the National Office a copy of the draft statement prepared by the agency.

(4) Keep the National Office informed of comments received by that agency.

(5) Send the National Office a copy of the final statement.

(6) Notify the National Office when the requirements for the environmental statement have been met.

§ 1824.7 Action subsequent to required EIS.

No loan or grant will be closed for a major FHA action that requires an EIS before 90 days after the date the draft statement and 30 days after the date the final statement is submitted to CEQ. If the final statement is submitted within 90 days after the date the draft statement was submitted, the 30-day period and the 90-day period may run concurrently to the extent they overlap. Any comments received on the final statement that warrant further consideration before loan closing should be referred to the National Office for instructions on action to be taken.

§ 1824.8 Emergency circumstances.

When emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these guidelines concerning minimum periods for agency review and advance availability of environmental statements, the State Director will submit complete documentations of the emergency circumstances along with his recommendations to the National Office.

EXHIBIT A—COVER PAGE FORMAT FOR ENVIRONMENTAL IMPACT STATEMENTS

Each environmental statement will include a cover page as shown below. The cover page should not include the descriptive titles shown on the left margin, but only information like that on the right side of this page.

COVER PAGE

Report number	USDA–FHA–EIS–ADM–ALA–72–1.[1]
Title	Beaver Creek Community, Ford, Ala., Water and Sewer System.
Subtitle	(Draft) or (Final) Environmental Statement.
Responsible Official.	Name and Address of State Director.
Performing organization name and address.	Beaver Creek Community, Ford, Ala. 36104.
Date	February 29, 1972.
Sponsoring Agency.	Prepared by USDA—Farmers Home Administration: U.S. Department of Agriculture, Farmers Home Administration, 474 South Court Street, Montgomery, AL 36104.

[1] USDA, FHA, Environmental Impact Statement (Administrative), State, fiscal year 1972, sequential No. 1 within the year. Draft and final statements for the same project should be assigned identical report numbers even though the final statement may be prepared in a subsequent fiscal year.

EXHIBIT B—SUMMARY SHEET FORMAT FOR ENVIRONMENTAL IMPACT STATEMENTS

Each environmental impact statement will include a separate sheet at the beginning of the statement which will provide information in the following format:

SUMMARY SHEET

Environmental impact statement, U.S. Department of Agriculture, Farmers Home Administration, prepared in accordance with section 102(2)(C) of Public Law 91-190:

1. Title of statement—(name of project).
2. Type of statement—draft or final.
3. Date statement prepared.
4. Type of action—administrative.
5. Brief description of action—indicate State(s) and county(ies) particularly affected.
6. Summary of environmental impact and adverse environmental effects.
7. List of alternatives considered.
8. For draft statements list all Federal, State, and local agencies and other sources from which written comments have been requested. For final statements list all Federal, State, and local agencies and other sources from which written comments have been received.
9. Dates draft statement and final statement made available to CEQ.

(These dates will be obtained from the Coordinator by the National Office.)

10. Copies of this statement may be purchased from the U.S. Department of Commerce, National Technical Information Service, Springfield, Va. 22151.

EXHIBIT C—ENVIRONMENTAL IMPACT STATEMENT FORMAT

Each environmental impact statement will follow the identifying headings and outline below and will include each of the subject headings and subheadings listed. Headings or subheadings may be followed by "not applicable" or "none" where appropriate.

ENVIRONMENTAL IMPACT STATEMENT

U.S. DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

Title of statement.
Type of statement. Draft ( ) Final ( )
Date statement prepared.
Type of action: administrative
Statement.

1. *Description.* A description of the proposed action including information and technical data adequate to permit a careful assessment of environmental impact by commenting agencies. Where relevant, maps or other graphic material should be provided. The draft statement will indicate any underlying studies, reports, and other information obtained and considered by the agency in preparing the statement.

2. *Environmental impact.* The probable impact of the proposed action on the environment, including impact on ecological systems such as wildlife, fish, and marine life. Both primary and secondary significant consequences for the environment should be included in the analysis. For example, the implications, if any, of the action for population distribution or concentration should be estimated and an assessment made of the effect of any possible change in population patterns upon the resource base, including land use, water, and public services, of the area in question. Include also economic impacts on employment unemployment, and other economic factors.

3. *Favorable environmental effects.* Any probable beneficial effects that result from the proposed action such as improved air and water quality, improved land use patterns, improved life systems, improved social and economic conditions, and other beneficial environmental effects as set out in section 101(b) of the Act.

4. *Adverse environmental effects which cannot be avoided.* Any probable adverse environmental effects which cannot be avoided, such as water or air pollution, undesirable land use patterns, damage to life systems, urban congestion, threats to health or other consequences adverse to the environmental goals set out in section 101(b) of the Act. In such cases justification of unavoidable adverse effects should be included.

5. *Alternatives.* Section 102(2)(D) of the Act requires the responsible agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." A rigorous exploration and objective evaluation of alternative actions that might avoid some or all of the adverse environmental effects is essential. Sufficient analysis of such alternatives and their cost and impact on the environment should accompany the proposed action through the agency review process in order not to foreclose prematurely options which might have less adverse effects.

6. *Relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.* This, in essence, requires the agency to assess the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations.

7. *Irreversible and irretrievable commitment of resources.* This requires the agency to identify the extent to which the action curtails the range of beneficial uses of the environment.

8. *Consultation with appropriate Federal agencies and review by State and local agencies developing and enforcing environmental standards.* A discussion of all problems, objections, and major points of view raised by other Federal, State, and local agencies and by private organizations and individuals in the review process of the draft statement and the disposition of the issues involved should be reflected.

9. *Comments.* All comments should be submitted in writing to (*name of State Director*), (*address of State Office*), within (90 days for draft statements) and (30 days for final statements). Comments on the draft statement (will be) (were) considered in the development of the final statement.

10. *Loan and grant closing.* No loans or grants from the Farmers Home Administration will be closed prior to 90 days from the date of the draft statement and 30 days from the date the final statement is made available to the Council on Environmental Quality, Washington, D.C.

11. The draft environmental statement was sent to CEQ on (date). The final environmental statement was sent to CEQ on (date).

12. Copies of statements may be reviewed in the National Office of the Farmers Home Administration, Washington, D.C., in the State Office located at (name and address), and in the County Office(s) at (name and address). Copies may be obtained from the U.S. Department of Commerce, National Technical Information Service, Springfield, Va. 22151.

Dated: August 17, 1972.

JAMES V. SMITH,
Administrator,
Farmers Home Administration.

[FR Doc.72-14639 Filed 8-28-72;8:48 am]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

MISCELLANEOUS AMENDMENTS TO CHAPTER

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

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

In § 103.1, paragraph (h) is amended to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(h) *Special inquiry officers.* Following selection by the Commissioners, the exercise of the powers and duties in this chapter regarding the conduct of exclusion and expulsion hearings, proceedings for withdrawal of school approval, proceedings for rescission of adjustment of status, and such other proceedings which the Commissioner may assign them to conduct.

* * * * *

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

The listing of transportation lines in paragraph (b) *Signatory lines* of § 238.3 *Aliens in immediate and continuous transit* is amended by adding the following transportation line in alphabetical sequence: "Condor Flugdienst GmbH."

PART 299—IMMIGRATION FORMS

The listing of forms in § 299.1 is amended to reflect a change of form No. "I-256" to "I-256A" and to reflect the current edition date of the following forms:

§ 299.1 Prescribed forms.

* * * * *

I-92 (5-1-72) Aircraft/Vessel Report.
I-94 (9-1-71) Arrival-Departure Record.

* * * * *

I-129B (3-1-72) Petition to Classify Nonimmigrant as Temporary Worker or Trainee.

* * * * *

I-130 (10-1-71) Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa.

* * * * *

I-180 (9-1-71) Notice of Voidance of Form I-186.
I-181 (10-1-71) Memorandum of Creation of Record of Lawful Permanent Residence.

* * * * *

I-191 (5-1-72) Application for Advance Permission to Return to Unrelinquished Domicile.
I-192 (2-10-72) Application for Advance Permission to Enter as Nonimmigrant.
* * * * *
I-196 (4-10-72) Application for U.S. Citizen Identification Card.
* * * * *
I-212 (3-18-72) Application for Permission to Reapply for Admission into the United States after Deportation or Removal.
* * * * *
I-246 (4-10-72) Application for Stay of Deportation.
I-256A (9-1-69) Application for Suspension of Deportation.
* * * * *
I-287 (4-10-72) Special Care and Attention for Alien.
* * * * *
I-290B (2-11-72) Notice of Appeal (to Regional Commissioner).
* * * * *
I-296 (2-1-72) Notice to Alien Ordered Excluded by Special Inquiry Officer.
* * * * *
I-352 (3-15-72) Immigration Bond.
* * * * *
I-485 (2-1-72) Application for Status as Permanent Resident.
* * * * *
I-506 (11-1-71) Application for Change of Nonimmigrant Status.
* * * * *
I-550 (5-1-72) Application for Verification of Last Entry of an Alien.
* * * * *
I-600 (3-15-72) Petition to Classify Orphan as an Immediate Relative.
I-601 (9-1-71) Application for Waiver of Grounds of Excludability under Section 212(g), (h), or (i) of the Immigration and Nationality Act.
I-612 (2-1-72) Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as amended.
* * * * *
N-585 (9-1-71) Application for Information from or Copies of Immigration and Naturalization Records.
* * * * *

PART 499—NATIONALITY FORMS

The listing of Forms in § 499.1 is amended to reflect the current edition date of the following forms:

§ 499.1 **Prescribed forms.**

* * * * *
N-300 (7-1-71) Application to File Declaration of Intention.
* * * * *
N-585 (9-1-71) Application for Information from or Copies of Immigration and Naturalization Records.
* * * * *

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

This order shall be effective on the date of its publication in the FEDERAL REGISTER (8-29-72). Compliance with the provisions of section 553 of title 5 of the United States Code (80 Stat. 383), as to notice of proposed rule making and delayed effective date, is unnecessary in this instance and would serve no useful purpose because the amendment to § 103.1(h) relates to agency management; the amendment to § 238.3(b) adds a transportation line to the listing; and the amendments to §§ 299.1 and 499.1 are editorial in nature.

Dated: August 23, 1972.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[FR Doc.72-14632 Filed 8-28-72;8:48 am]

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

PART 214—NONIMMIGRANT CLASSES

Withdrawal of School Approval

Reference is made to the notice of proposed rule making which was published in the FEDERAL REGISTER on June 30, 1972 (37 F.R. 12964), pursuant to section 553 of Title 5 of the United States Code (80 Stat. 383) and in which there were set forth proposed amendments pertaining to the withdrawal of approval by the Service of a petition by a school or school system for the attendance of nonimmigrant students.

The representations which were received concerning the proposed rules of June 30, 1972, have been considered. Those proposed rules have been amended in the following respects: In proposed § 214.4, paragraph (a) has been amended by deleting item (4), "failure to maintain a sound financial condition," as a basis for withdrawal of school approval, and by redesignating items (5) and (6) as items (4) and (5), respectively.

The proposed rules, as modified, are hereby adopted:

In § 103.1, paragraph (e) is amended by adding a new subparagraph (10a) to read as follows:

§ 103.1 **Delegations of authority.**

* * * * *

(e) *Regional commissioners.*

(10a) Decisions by special inquiry officers in proceedings to withdraw the approval of petitions by schools, as provided in § 214.4(j);

* * * * *

Part 214 is amended by revising § 214.3 and adding a new § 214.4, as follows:

§ 214.3 **[Amended]**

1. In § 214.3 *Petitions for approval of schools,* the last sentence of paragraph (h) *Review of school approvals* is amended to read as follows: "If upon completion of the review the district director finds that the approval should be continued, he shall so notify the school when Form I-17 was submitted as a petition for continuation of approval; otherwise, he shall institute proceedings to withdraw its approval in accordance with § 214.4(b).

2. In § 214.3, paragraph (j) *Withdrawal of approval* is revoked.

3. A new § 214.4 is added to read as follows:

§ 214.4 **Withdrawal of school approval.**

(a) *General.* The approval by the Service, pursuant to section 101(a)(15)(F) of the Act and this part, of a petition by a school or school system for the attendance of nonimmigrant students shall be withdrawn if the school or school system is no longer entitled to such approval for any reason including, but not limited to, the following: (1) Failure to submit reports required by § 214.3(g); (2) issuance of Certificates of Eligibility, Forms I-20, to students lacking scholastic, financial, or language requirements; (3) failure to operate as a bona fide institution of learning; (4) failure to employ qualified professional personnel, or (5) failure to maintain proper facilities for instruction.

(b) *Notice.* Whenever a district director has reason to believe that an approved school or school system in his district is no longer entitled to approval, a proceeding shall be commenced by service upon its authorized representative of notice of intention to withdraw the approval. The notice shall inform the authorized representative of the school or school system of the grounds upon which it is intended to withdraw its approval. In such a proceeding the authorized representative of the school or school system shall be known as the respondent. The notice shall also inform the respondent that he may, within 30 days of the date of service of the notice, submit written representations under oath supported by documentary evidence setting forth reasons why the approval should not be withdrawn, and that he may, within such period, request a hearing before a special inquiry officer in support of, or in lieu of his written answer. The respondent shall further be informed that he may have the assistance of or be represented by counsel or representative of his choice qualified under Part 292 of this chapter, without expense to the Government, in the preparation of his answer or in connection with his hearing, and that he may present such evidence in his behalf as may be relevant to the withdrawal.

(c) *Allegations admitted; no answer filed; no hearing requested.* If the answer admits all the allegations in the notice, or if no answer is filed within the 30-day period, or if no hearing is requested within such period, the district director shall withdraw the approval previously granted and shall notify the respondent of the decision. No appeal shall lie from the district director's decision.

(d) *Allegations contested or denied; hearing requested.* If, within the prescribed time following service of the notice pursuant to paragraph (b) of this section, the respondent has filed an answer which contests or denies any allegation in the notice, or a hearing is requested, a hearing pursuant to paragraph (f) of this section shall be conducted by a special inquiry officer and the procedures specified in §§ 242.10, 242.13, 242.14 (c), (d), and (e), and 242.15 of this chapter shall apply.

(e) *Special inquiry officer's authority; withdrawal and substitution.* In any proceeding conducted under this section, the special inquiry officer shall have authority to interrogate, examine, and cross-examine the respondent and other witnesses, to receive evidence, to determine whether approval shall be withdrawn, to make decisions thereon, including an appropriate order, and to take any other action consistent with applicable provisions of law and regulations as may be appropriate to the disposition of the case. The special inquiry officer may, in his discretion, consider any information and views furnished by the Office of Education of the United States, which shall be made part of the record of proceeding and may be rebutted by the respondent. Nothing contained in this section shall be construed to diminish the authority conferred on special inquiry officers by the Act. The special inquiry officer assigned to conduct a hearing shall, at any time, withdraw if he deems himself disqualified. If a hearing has begun but no evidence has been adduced other than the notice and answer, if any, pursuant to paragraphs (b) and (d) of this section, or if a special inquiry officer becomes unavailable to complete his duties within a reasonable time, or if at any time the respondent consents to a substitution, another special inquiry officer may be assigned to complete the case. The new special inquiry officer shall familiarize himself with the record in the case and shall state for the record that he has done so.

(f) *Hearing*—(1) *Trial attorney.* The Government shall be represented at the hearing by a trial attorney who shall have authority to present evidence, and to interrogate, examine, and cross-examine the respondent and other witnesses. The trial attorney is authorized to appeal from a decision of the special inquiry officer pursuant to paragraph (j) of this section and to move for reopening or reconsideration pursuant to paragraph (k) of this section.

(2) *Opening.* The special inquiry officer shall advise the respondent of the nature of the proceeding and the legal authority under which it is conducted; advise the respondent of his right to representation, at no expense to the Government, by counsel of his own choice qualified under Part 292 of this chapter, and require him to state then and there whether he desires representation; advise the respondent that he will have a reasonable opportunity to examine and object to the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; place the respondent under oath; read the allegations in the notice to the respondent and explain them in nontechnical language, and enter the notice and respondent's answer, if any, as exhibits in the record.

(3) *Pleading by respondent.* The special inquiry officer shall require the respondent to state for the record whether he admits or denies the allegations contained in the notice, or any of them, and whether he concedes that the approval of the petition by the school or school system for the attendance of nonimmigrant students should be withdrawn. If the respondent admits all of the allegations and concedes that the approval in his case should be withdrawn under the allegations set forth in the notice, and the special inquiry officer is satisfied that no issues of law or fact remain, he may determine that cause for withdrawal as alleged has been established by the respondent's admissions. The allegations contained in the notice shall be taken as admitted when the respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the hearing.

(g) *Decision and order.* The decision of the special inquiry officer may be oral or written. Except when a determination of withdrawal is based on the respondent's admissions pursuant to paragraph (f)(3) of this section, the decision shall include a discussion of the evidence and findings as to withdrawal. The formal enumeration of findings is not required. The order shall direct either that the proceeding be terminated or that the approval be withdrawn.

(h) *Notice of decision*—(1) *Written decision.* A written decision shall be served upon the respondent and the trial attorney, together with the notice of the right to appeal pursuant to Part 103 of this chapter.

(2) *Oral decision.* An oral decision shall be stated by the special inquiry officer in the presence of the respondent and the trial attorney at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Notice of Appeal, Form I-290B, and advised of the provisions of paragraph (j) of this section. A typewritten copy of the oral decision shall be furnished at the request of the respondent or the trial attorney.

(i) *Finality of order.* The order of the special inquiry officer shall be final except when the case is certified to the regional commissioner as provided in Part 103 of this chapter or an appeal is taken to the regional commissioner by the respondent or the trial attorney.

(j) *Appeals.* Pursuant to Part 103 of this chapter, an appeal from a decision of a special inquiry officer under paragraph (g) of this section shall lie to the regional commissioner having jurisdiction over the district in which the proceeding was commenced. An appeal shall be taken within 15 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be stated briefly in the notice of appeal, Form I-290B; failure to do so may constitute a ground for dismissal of the appeal by the regional commissioner.

(k) *Reopening or reconsideration.* Except as otherwise provided in this section, a motion to reopen or reconsider shall be subject to the requirements of § 103.5 of this chapter. The special inquiry officer may upon his own motion, or upon motion of the trial attorney or the respondent, reopen or reconsider any case in which he has made a decision, unless jurisdiction in the case is vested in the regional commissioner under Part 103 of this chapter. A motion to reopen shall not be granted by a special inquiry officer unless he is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing.

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

The basis and purpose of the above-prescribed regulations are to provide that when withdrawal of Service approval of a petition by a school or school system for the attendance of nonimmigrant students is contested, the school or school system shall be entitled to a hearing before a special inquiry officer with the attendant rights of counsel, presentation of evidence and witnesses, cross-examination, and the right of appeal.

This order shall be effective on the date of its publication in the FEDERAL REGISTER (8-29-72). Compliance with the provisions of section 553 of title 5 of the United States Code (80 Stat. 383), as to delayed effective date, is unnecessary in this instance and would serve no useful purpose because the above rules confer a benefit upon the persons affected thereby.

Dated: August 23, 1972.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[FR Doc.72-14633 Filed 8-28-72;8:48 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

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

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS: INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Restrictions on Importation of Birds

Pursuant to the provisions of section 2 of the Act of February 2, 1903, as amended, and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 134a, 134b, 134c, and 134f), Part 92, Title 9, Code of Federal Regulations is hereby amended in the following respects:

1. In Part 92, in the Table of Contents the reference to § 92.5a is deleted.

2. In § 92.1, paragraph (j) is amended to read:

§ 92.1 **Definitions.**

* * * * *

(j) (1) *Poultry.* Chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl, of all ages, including eggs for hatching.

(2) *Birds.* All members of the class aves (including eggs for hatching) other than poultry.

* * * * *

3. In § 92.2, paragraphs (b) and (c) are deleted, and new paragraphs (b), (c), and (d) are added to read:

§ 92.2 **General prohibitions; exceptions.**

* * * * *

(b) In order to protect the poultry industry of the United States from exotic Newcastle disease and other communicable diseases of poultry, the importation of birds into the United States is prohibited, except as provided in paragraph (c) or (d) of this section.

(c) A lot consisting of no more than two pet birds, which are not known to be affected with or exposed to any communicable disease of poultry, which are caged (prior to release from port of entry) and which are personal pets, may be imported by the owner thereof at any port of entry designated in § 92.3 or at a military base designated in specific cases by the Deputy Administrator, Veterinary Services: *Provided,* That such birds are found upon port of entry veterinary inspection under § 92.3 to be free of poultry diseases; the owner importing such birds signs and furnishes to the Deputy Administrator, Veterinary Services, (1) a notarized declaration under oath or affirmation stating that the bird or birds have been in his possession for a minimum of 90 days preceding importation and that during such time such birds have not been in contact with poultry or other birds (for example, association with other avian species at exhibitions or in aviaries), and (2) an agreement on a form obtainable from a Federal inspector at the port of entry stating (i) that the birds will be maintained in confinement in his personal possession separate and apart from all poultry and other birds for a minimum period of 30 days following importation, at a place approved by the Deputy Administrator and will be made available for health inspection and testing by Department inspectors upon request until released at the end of such period by such an inspector, and (ii) that appropriate Federal officials in the State of destination[5] will be immediately notified if any signs of disease are noted in any of the birds or any of the birds die during that period; and such person complies with the terms of such agreement: *And provided further,* That the Deputy Administrator, Veterinary Services, may upon request in specific cases permit the importation in accordance with the conditions prescribed in this paragraph of more than two such birds that are personal pets when he determines in the specific case that such importation will not involve a risk of introduction or spread of any communicable disease of poultry.

(d) The provisions in this Part 92 shall not apply to healthy birds not known to be infected with or exposed within the 90 days preceding their arrival in the United States to communicable diseases of poultry and which are maintained under continuous confinement aboard an ocean vessel or aircraft while in U.S. territory: *Provided,* That the captain of the vessel or aircraft, if it enters any port of the United States, executes and furnishes to the collector of customs at the port a declaration stating that the birds will be retained aboard such means of conveyance under the conditions required by this paragraph: *And provided further,* That Department inspectors may inspect birds on board such means of conveyance as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d), to ascertain whether such conditions are met, and dispose of such birds in accordance with section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), if the conditions are not met.

§ 92.3 **[Amended]**

4. In § 92.3, paragraph (f) is deleted.

§ 92.4 **[Amended]**

5. In § 92.4(b), in the fourth sentence, the phrase "(and psittacine and mynah birds)" and the phrase "psittacine and mynah birds" in the second set of parentheses are deleted.

[5] Owners will be provided a copy of the agreement containing the name and address of the appropriate Federal officials in the State of destination.

§ 92.5 **[Amended]**

6. In § 92.5, footnote 5 and the reference thereto in the section heading, and all of paragraph (b)(2) are deleted.

§ 92.5a **[Deleted]**

7. Section 92.5a is deleted in its entirety.

§ 92.8 **[Amended]**

8. In § 92.8, paragraph (b) is deleted.

§ 92.11 **[Amended]**

9. In § 92.11, paragraph (c)(2) is deleted.

§ 92.19 **[Amended]**

10. In § 92.19, in paragraph (a), the phrase "(but is required for all species of psittacine and Greater and Lesser Indian Hill Mynah birds of the species Gracula religiosa)" is deleted, and paragraph (a)(2) is amended by changing the phrase "for 90 days or longer." to read "for 60 days or longer."

§ 92.26 **[Amended]**

11. In the heading of § 92.26, the phrase "(and birds)" is deleted; and in the text of § 92.26, the phrase "(and all psittacine species and all Greater and Lesser Indian Hill Mynah birds of the species Gracula religiosa)" is deleted.

§ 92.27 **[Amended]**

12. In § 92.27(c), the phrase "and birds" is deleted.

§ 92.38 **[Amended]**

13. In the heading of § 92.38, the phrase "(and birds)" is deleted; and in the text of § 92.38, the phrase "(and all psittacine species and all Greater and Lesser Indian Hill Mynah birds of the species Gracula religiosa)" is deleted.

(Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 29 F.R. 16210, as amended; 37 F.R. 6327, 6505)

Effective date. The foregoing amendments shall become effective upon issuance, except for shipments then in transit to the United States (i.e., loaded aboard a commercial carrier and en route to the United States).

On March 10, 1972, regulations were published in the FEDERAL REGISTER which restricted the importation of all psittacine and mynah birds. This action was deemed necessary to protect the poultry of the United States from exotic Newcastle disease since the virus of this disease had been isolated in several instances from such birds.

Evidence was accumulated substantiating the presence of exotic Newcastle disease among exotic birds which had been imported into the United States as early as October 1971, and that in November 1971, the disease had spread to poultry of the United States from shipments of exotic birds which entered the United States from Central and South America. Direct shipments of birds from foreign countries also resulted in outbreaks of exotic Newcastle disease in various pet bird operations.

For the past 20 years USDA import quarantine restrictions on poultry (members of the Orders Anseriformes, Galliformes, and Columbiformes) have successfully prevented the introduction of foreign diseases into U.S. poultry through importation of such birds. However, evidence more recently accumulated has shown that additional exotic species of birds have introduced the virus of exotic Newcastle disease and that the virus of this disease has been isolated from 14 different species of such birds on 12 separate occasions. Research advisors to APHIS have stated that all avian species must be considered susceptible to exotic Newcastle disease or can serve as a mechanism for introduction of this disease into the United States.

Palmer and Trainer in Infectious and Parasitic Diseases of Wild Birds, pages 4 and 5 (1971), list 69 species of wild birds that have been shown to be naturally infected or experimentally susceptible to Newcastle disease virus. This work does not imply that exotic Newcastle disease affects only the 69 species of birds cited, but to the contrary, indicates that when more documentation is accumulated all species of birds may be found to be susceptible to the disease.

Poultry is not included in this prohibition since, as stated above, existing import restrictions on poultry have successfully prevented the introduction of exotic Newcastle disease by this source. These restrictions include veterinary inspection and certification of freedom from disease and exposure thereto at origin, plus inspection and quarantine and testing as required on arrival in the United States.

Should exotic Newcastle disease become established in poultry of the United States, the anticipated loss for the first year is estimated to be $500 million. In addition, the country would be deprived of an economical source of animal protein in the Nation's diet.

To protect the poultry of the United States from exotic Newcastle disease, an emergency was declared to exist by the Secretary of Agriculture, March 14, 1972, and measures were placed in effect to eradicate exotic Newcastle disease from the United States.

It is inconsistent to carry out emergency exotic Newcastle disease eradication procedures in poultry of the United States while at the same time continuing to permit birds which may harbour the virus of such disease to be imported. The unrestricted movement of all birds into the United States from any country of the world constitutes a risk to poultry of the United States, and accordingly the foregoing amendments are hereby promulgated to prohibit the movement into the United States of all avian species except as provided in the regulations.

The amendments reflect changes which are essential to protect the poultry of the United States and must be placed in effect promptly to accomplish their objectives.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 24th day of August 1972.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72-14678 Filed 8-28-72;8:49 am]

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

General Prohibitions; Exceptions

Pursuant to the provisions of section 2 of the Act of February 2, 1903, as amended, and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 134a, 134b, 134c, and 134f), Part 92, Title 9, Code of Federal Regulations is hereby amended as follows:

In § 92.2, paragraph (a) is amended to read:

§ 92.2 **General prohibitions; exceptions.**

(a) No animal or product subject to the provisions of this part shall be brought into the United States except in accordance with the regulations in this part and Part 94 of this subchapter; nor shall any such animal or product be handled or moved after physical entry into the United States before final release from quarantine or any other form of governmental detention except in compliance with such regulations: *Provided,* That the Deputy Administrator may upon request in specific cases permit animals or products to be brought into or through the United States, under such conditions as he may prescribe, when he determines in the specific case that such action will not endanger the livestock or poultry of the United States.

* * * * *

(Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 29 F.R. 16210, as amended; 37 F.R. 6327, 6505)

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER (8-29-72).

The amendment would provide for the Deputy Administrator upon specific request to permit animals (including poultry but not other birds) or products to be brought into or through the United States under conditions prescribed by him in each specific case when he determines that such action will not endanger the livestock or poultry of the United States.

The amendment relieves certain restrictions presently imposed but no longer deemed necessary to prevent the introduction and spread of disease and must be made effective promptly to be of maximum benefit to affected persons.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable, and unnecessary, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 24th day of August 1972.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72-14679 Filed 8-28-72;8:49 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 72-SO-54]

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

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Beaufort, S.C., control zone.

The Beaufort control zone is described in § 71.171 (37 F.R. 2056), and is designated as part time, with the capability of changing the effective time by NOTAM. Since this provision is specifically provided for seasonable trends, it is no longer required at Beaufort MCAS. It is necessary to alter the description to reflect this change. Since this amendment is editorial in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., September 1, 1972, as hereinafter set forth.

In § 71.171 (37 F.R. 2056), the Beaufort, S.C., control zone is amended as follows:

All after "8.5 miles northeast of the RBN * * *" is deleted and "This control zone is effective from 0700 to 2300 hours, local time, daily * * *" is substituted therefor.

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

Issued in East Point, Ga., on August 18, 1972.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.72-14626 Filed 8-28-72;8:48 am]

[Airspace Docket No. 72-SW-43]

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

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter controlled airspace in the Dallas-Fort Worth, Tex., terminal area.

On July 11, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 13558) stating the Federal Aviation Administration proposed to alter the Dallas-Fort Worth, Tex., 700-foot transition area.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., November 9, 1972, as hereinafter set forth.

In § 71.181 (37 F.R. 2143), the Dallas-Fort Worth, Tex., transition area is amended by deleting "to latitude 32°23'-00" N., longitude 97°05'00" W., to latitude 32°25'00" N., longitude 97°29'00" W.; thence north along longitude 97°29'-00" W. to and clockwise along the arc of a 23-mile-radius circle centered at latitude 32°46'20" N., longitude 97°26'30" W.;" and substituting therefor "to latitude 32°23'00" N., longitude 97°05'00" W.; to latitude 32°16'30" N., longitude 97°25'-30" W.; to latitude 32°19'30" N., longitude 97°33'00" W.; thence north along longitude 97°33'00" W. to and clockwise along the arc of a 23-mile-radius circle centered at latitude 32°46'20" N., longitude 97°26'30" W.;".

(Sec. 307(a), Federal Aviation Act of 1958, 9 U.S.C. 1348; sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on August 18, 1972.

R. V. REYNOLDS,
Acting Director, Southwest Region.

[FR Doc.72-14627 Filed 8-28-72;8:48 am]

Chapter II—Civil Aeronautics Board

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. PR-130; Amdt. 14]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Service on All-Cargo Commuter Air Carriers

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 23rd day of August 1972.

In notice of proposed rule making PDR-34,[1] the Board proposed to amend Part 302 of its Procedural Regulations (14 CFR Part 302) to require service of exemption applications on affected all-cargo commuter air carriers which publish schedules in the "Air Cargo Guide."[2]

The only comment in response to the rule making notice was filed by the National Air Transportation Conferences, Inc.,[3] and that comment supports the proposed rule. Accordingly, we have determined to adopt the rule as proposed, and we incorporate herein the tentative findings made in PDR-34.

Since this rule is only procedural and no person has objected to its adoption after notice and public procedure were had thereon, the Board finds that the amendment may be made effective immediately.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends paragraph (b) of § 302.403 of the Procedural Regulations (14 CFR 302.403 (b)), effective August 23, 1972, the paragraph as amended to read as follows:

§ 302.403 Service of application.

* * * * *

(b) *Persons to be served.* Except in the case of an application for an exemption from sections 403 and 404 of the Act or an application for exemption which will permit the applicant to render irregular services only other than between specified points, a copy of an application shall be served on the following parties who shall be presumed to have an interest in the subject matter of the application: (1) Any air carrier which is authorized to render regular service to any point involved in the application; (2) any person whose application for a certificate of public convenience and necessity, or for an exemption, authorizing regular service to or from any such point has been filed with, and which has not been finally disposed of by, the Board; (3) the chief executive of any State, territory, or possession of the United States in which any such point is located: *Provided, however,* That if there be a State commission or agency having jurisdiction over transportation by air, service shall be made on such commission or agency, rather than the chief executive of the State; (4) the chief executive of the city, town, or other unit of local government at any such point located in the United States or any territory or possession thereof; (5) the Board, commission, manager, or other body or individual having direct supervision over and responsibility for the management of the airport located in the United States and which is being used to serve such point at the time the application is filed; and (6) any commuter air carrier which operates pursuant to Part 298 of this chapter or other exemption authority which provides at least five round trips per week between two or more points, one of which is involved in such application, and which publishes schedules in the "Official Airline Guide," or in the "Air Cargo Guide," which include service to the point involved in the application.

* * * * *

(Secs. 204(a), 1001, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 788; 49 U.S.C. 1324, 1481)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-14661 Filed 8-28-72;8:52 am]

[1] June 5, 1972, 37 F.R. 11485, Docket 24526.

[2] A carrier trade publication.

[3] The air taxi trade association whose petition initiated this proceeding.

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release IA-327]

PART 275—GENERAL RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

Definition of "Investment Performance" of an Investment Company and "Investment Record" of an Index of Securities Prices.

On April 6, 1972, the Securities and Exchange Commission published notice (Investment Advisers Act Release No. 316 and in the FEDERAL REGISTER issue of April 19, 1972, 37 F.R. 7713) that it has under consideration the adoption of Rule 205-1 (17 CFR 275.205-1) under the Investment Advisers Act of 1940 (Act) (15 U.S.C. 80b-1 et seq.), as amended by the Investment Company Amendments Act of 1970 (Public Law 91-547) the "1970 Act"). All interested persons were invited to comment on the proposal. The Commission has considered all of the comments and suggestions received and has determined to adopt Rule 205-1 in the form set forth below. The rule is adopted pursuant to the authority granted the Commission in sections 205 and 211 of the Act (15 U.S.C. 80b-205, 80b-211).

Under section 205, as amended, all performance fee contracts are prohibited unless compensation under them increases and decreases proportionately with investment performance of the company over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation, or order may specify. The point from which increases and decreases in compensation are measured must be the fee which is paid or earned when the investment performance of the company is equivalent to that of the index.

Section 211 of the Act gives the Commission authority to issue such rules and regulations as are necessary or appropriate to the exercise of the function and powers conferred upon it under the Act.

For investment company "investment performance" to be comparable to the "investment record" of an index, all in-

crements, both in the performance of the investment company and of the index, should be taken into account. Rule 205–1 requires that in computing the "investment performance" of the investment company and the "investment record" of the index, distributions of realized capital gains by the investment company, dividends paid by the investment company out of its investment income, and all cash distributions of the companies whose stocks comprise the index are to be treated as reinvested.[1]

In the rule as originally proposed, the "investment performance" of an investment company for any period was defined as the sum of the change in its net asset value per share during such period and the value of its cash distributions per share accumulated to the end of such period. The rule, as adopted, differs from the original proposal in that the value of capital gains taxes paid or payable on undistributed realized capital gains is also to be included in this sum from the date of which provisions is made for such taxes.[2] The value of such taxes is an additional increment attributable to the investment performance of the investment company and as such should be included in it. The sum is to be expressed as a percentage of the company's net asset value per share at the beginning of such period.

As in the original proposal, distributions of realized capital gains and of dividends paid from investment income of the investment company are to be treated as reinvested at the net asset value per share in effect at the close of business on the record date for the payment of such distributions or dividends. However, a statement has been added to the rule to make clear that such distributions are to be reinvested at the "ex-distributions" price.

Paragraph (b) of Rule 205–1, which defines the "investment record" of an appropriate index of securities prices, specifies that it shall include "the value, computed consistently with the index, of cash distributions made by companies whose securities compromise the index accumulated to the end of such period."[3]

Commission action:

Part 275 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding a new § 275.205–1 reading as follows:

§ 275.205–1 Definition of "investment performance" of an investment company and "investment record" of an appropriate index of securities prices.

(a) "Investment performance" of an investment company for any period shall mean the sum of:

(1) The change in its net asset value per share during such period;

(2) The value of its cash distributions per share accumulated to the end of such period; and

(3) The value of capital gains taxes per share paid or payable on undistributed realized long-term capital gains accumulated to the end of such period;

expressed as a percentage of its net asset value per share at the beginning of such period. For this purpose, the value of distributions per share of realized capital gains, of dividends per share paid from investment income and of capital gains taxes per share paid or payable on undistributed realized long-term capital gains shall be treated as reinvested in shares of the investment company at the net asset value per share in effect at the close of business on the record date for the payment of such distributions and dividends and the date on which provision is made for such taxes, after giving effect to such distributions, dividends and taxes.

(b) "Investment record" of an appropriate index of securities prices for any period shall mean the sum of:

(1) The change in the level of the index during such period; and

(2) The value, computed consistently with the index, of cash distributions made by companies whose securities comprise the index accumulated to the end of such period;

expressed as a percentage of the index level at the beginning of such period. For this purpose cash distributions on the securities which comprise the index shall be treated as reinvested in the index at least as frequently as the end of each calendar quarter following the payment of the dividend.

(Secs. 205, 211, 54 Stat. 852, 74 Stat. 887, 15 U.S.C. 80b–205, 80b–211; sec. 25, 84 Stat. 1432, 1433, Public Law 91–547)

In order not to disrupt existing relationships and to permit an orderly change in presently effective incentive fee arrangements, the rule shall take effect on September 1, 1973, or, with respect to any particular investment company within 60 days of its first regular annual meeting of shareholders held on or after September 30, 1972, whichever is sooner.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

AUGUST 8, 1972.

EXHIBIT I

METHOD OF COMPUTING THE INVESTMENT RECORD OF THE STANDARD & POOR'S 500 STOCK COMPOSITE INDEX FOR CALENDAR 1971

Quarter ending—	Index value [1]	Quarterly dividend yield-composite index	
		Annual percent [2]	Quarterly percent [3] (¼ of annual)
Dec. 1970	92.15		
Mar. 1971	100.31	3.10	0.78
June 1971	99.70	3.11	.78
Sept. 1971	98.34	3.14	.79
Dec. 1971	102.09	3.01	.75

[1] Source: Standard & Poor's Trade and Securities Statistics, Jan. 1972, p. 33.

[2] *Id.* See Standard & Poor's Trade and Securities Statistics Security and Price Index Record—1970 Edition, p. 133, for explanation of quarterly dividend yield.

[3] Quarterly percentages have been rounded to two decimal places.

Change in index value for 1971: 102.09−92.15=9.94

Accumulated value of dividends for 1971:

Quarter ending: March June Sept. Dec.

Percent yield = $1.0078 \times 1.0078 \times 1.0079 \times 1.0075 - 1.00 = .0314$

Aggregate value of dividends paid, assuming quarterly reinvestment and computed consistently with the index:

(Percent yield as computed above) × (ending index value) = Aggregate value of dividends paid

For 1971:

$$.0314 \times 102.09 = 3.21$$

Investment record of Standard & Poor's 500 stock composite index assuming quarterly reinvestment dividends:

$$\text{Investment record} = \frac{9.94 + 3.21}{92.15} = 14.27 \text{ percent}$$

The same method can be extended to cases where an investment company's fiscal quarters do not coincide with the fiscal quarters of the S & P dividend record or to instances where a "rolling period" is used for performance comparisons as indicated by the following example of the calculation of the investment record of the Standard & Poor's 500 Stock Composite Index for the 12 months ended November 1971:

Index value Nov. 30, 1971	93.99
Index value Nov. 30, 1970	87.20
Change in index value	6.79

Quarter ending—	Dividend yield		Rate for each month of quarter (⅓ of annual)
	Annual rate	¼ of annual	
Dec. 1970	3.41	0.85	0.28
March 1971	3.10	.78	.26
June 1971	3.11	.78	.26
Sept. 1971	3.14	.79	.26
Dec. 1971	3.01	.75	.25

Accumulated value of dividends reinvested:

December	=1.0028
January–March	=1.0078
April–June	=1.0078
July–September	=1.0079
October–November	=1.0053 [4]

[4] The rate for October and November would be two-thirds of the yield for the quarter ended Sept. 30 (i.e. .667×.79=5269) since the yield for the quarter ended Dec. 31 would not be available as of Nov. 30.

[1] Rule 205–1 is designed to clarify the section 205 requirements for measuring investment performance for those investment companies which include performance fee arrangements in their investment advisory contracts. It is not intended to prescribe an industry standard for computing rates of return and should not be considered as modifying the Commission's statement of policy in any respect.

[2] See Rule 6–02–9 of Article 6 of Regulation S–X. Under Subchapter M of the Internal Revenue Code, most investment companies receive "pass-through" treatment with respect to distributions of realized capital gains to their shareholders. These distributions are taxable to the shareholders as capital gains. However, a number of investment companies elect to retain capital gains and pay the taxes on such undistributed gains. Shareholders of these companies must include a proportionate share of the undistributed capital gains in their income tax returns and in turn receive a tax credit equal to the proportionate share of the capital gains taxes paid by the investment company. (Section 852(b)(3)(D) of the Internal Revenue Code.)

[3] Exhibits I and II contain illustrations of how the investment record of the Standard & Poor's 500 Stock Composite Index and the NYSE Composite Index may be adjusted to reflect the reinvestment of cash distributions in accordance with the rule.

Dividend yield:

$1.0028 \times 1.0078 \times 1.0079 \times 1.0053 - 1.00 = .0320$

Aggregate value of dividends paid computed consistently with the index:

$.0320 \times 93.99 = 3.01$

Investment record of the Standard & Poor's 500 Stock Composite Index for the 12 months ended November 30, 1971:

$$\frac{6.79 + 3.01}{87.20} = 11.24 \text{ percent}$$

EXHIBIT II

METHOD OF COMPUTING THE INVESTMENT RECORD OF THE NEW YORK STOCK EXCHANGE COMPOSITE INDEX FOR CALENDAR 1971

(1) Quarter ending	(2) Index value [1]	(3) Aggregate market value of shares listed on the NYSE as of end of quarter (billions of dollars) [2]	(4) Quarterly value of estimated cash payments of shares listed on the NYSE (millions of dollars) [3]	(5) Estimated yield [4] (quarterly percent)
Dec. 1970	50.23			
Mar. 1971	55.44	$709	$5,106	0.72
June 1971	55.09	710	4,961	.70
Sept. 1971	54.33	709	5,006	.71
Dec. 1971	56.43	742	5,183	.70

Change in NYSE Composite Index value for 1971: 56.43—50.23=6.20
Accumulated Value of Dividends on NYSE Composite Index for 1971:
Quarter ending: March June Sept. Dec.

Percent yield=1.0072×1.0070×1.0071×1.0070−1.00=0.0286

[1] Source: New York Stock Exchange Composite Index as reported daily by the New York Stock Exchange.
[2] Source: Monthly Review, New York Stock Exchange.
[3] Source: The Exchange, New York Stock Exchange magazine, May, Aug., Nov. 1971 and Feb. 1972 editions. Upon request the Statistics Division of the Research Department of the NYSE will make this figure available within 10 days of the end of each quarter.
[4] The ratio of column 4 to column 3.

Aggregate value of dividends paid on NYSE Composite Index assuming quarterly reinvestment:

For 1971: $.0286 \times 56.43 = 1.61$

Investment record of the New York Stock Exchange Composite Index assuming quarterly reinvestment of dividends:

$$\frac{6.20 + 1.61}{50.23} = 15.55 \text{ percent}$$

The same method can be extended to cases where an investment company's fiscal quarters do not coincide with the fiscal quarters of the NYSE dividend record or to instances where a "rolling period" is used for performance comparisons as indicated by the following example of the calculation of the investment record of the NYSE Composite Index for the 12 months ended November 1971:

Index value Nov. 30, 1971	51.84
Index value Nov. 30, 1970	47.41
Change in index value	4.43

Quarter ending:	Dividend yield quarterly percent	Rate for each month of quarter (1/12 of annual)
Dec. 1970	0.79	0.26
Mar. 1971	.72	.24
June 1971	.70	.23
Sept. 1971	.71	.24
Dec. 1971	.70	.23

Accumulated value of dividends reinvested:

December	=1.0026
January–March	=1.0072
April–June	=1.0070
July–September	=1.0071
October–November	=1.0047 [4]

Dividend yield:

$1.0026 \times 1.0072 \times 1.0070 \times 1.0071 \times 1.0047 - 1.00 = .0289$

Aggregate value of dividends paid computed consistently with the index:

$.0289 \times 51.84 = 1.50$

Investment record of the NYSE Composite Index for the 12 months ended November 30, 1971:

$$\frac{4.43 + 1.50}{47.41} = 12.51 \text{ percent}$$

[FR Doc.72-11541 Filed 8-28-72;8:45 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 72-221]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Imported Articles Exported and Reimported

On May 12, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 9564) which proposed to add a new § 10.8a to the Customs regulations to require supplementary documentation to support free entry under certain conditions for imported articles which are exported and thereafter reimported into the United States for failure to conform to sample or specifications abroad.

[4] The rate for October and November would be two-thirds of the yield for the quarter ended September 30 (i.e. $.667 \times .71 = .4736$), since the yield for the quarter ended December 31 would not be available as of November 30.

No comments were filed in response to the notice of proposed rule making. The following changes are made in the text of the proposed amendment:

1. Paragraph (b)(1) of § 10.8a is altered by inserting the following after the word "specifications" in the text of the declaration:

for the following reasons:

This change provides that persons who return articles exported from the United States claiming duty-free status on the grounds that these articles did not conform to a sample or specification identify the nature of the alleged nonconformity.

2. Editorial changes are made in paragraph (b)(2) of § 10.8a in that portion of the declaration form which concerns exportation from the United States. The phrase "Date of Entry" is altered by deleting the word "entry" and substituting the word "exportation." Further, the phrase "Name and dress of exporter" is changed by correcting the word "dress" to read "address."

Accordingly, proposed § 10.8a is hereby adopted as set forth below.

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

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: August 17, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

Part 10 is amended by adding a new § 10.8a reading as follows:

§ 10.8a Imported articles exported and reimported.

(a) In addition to regular entry procedures, supplementary documentation is required in connection with duty-free entries under item 801.10, Tariff Schedules of the United States (19 U.S.C. 1202), of articles which were originally entered duty paid, removed from Customs custody, and subsequently exported, if:

(1) The articles were exported within 3 years after the date of the previous importation.

(2) The articles were not advanced in value or improved in condition by any process of manufacture or other means while abroad.

(3) The articles did not conform to sample or specifications abroad.

(4) The articles are reimported by or for the account of the person who imported them into and exported them from the United States.

(b) The following supplementary documents shall be filed in connection with the entry of articles claimed to be free of duty under item 801.10, Tariff Schedules of the United States:

(1) A declaration by the person abroad who received and is returning the merchandise to the United States, in substantially the following form:

I declare that the _____
(Description of articles)
were received by me from _____
(Name and address
_____, that they have not been
of U.S. exporter)
advanced in value or improved in condition by any process of manufacture or other means and are being returned to _____
(Name and
_____
address of consignee in the United States)
because they do not conform to sample or specifications for the following reasons:

_____
_____
_____

_____ _____
(Date) (Signature)

_____ _____
(Address) (Title)

(2) A declaration by the owner, importer, consignee, or agent, in substantially the following form:

I declare that the _____
(Description of articles)
were previously imported into the United States at the Port of _____, Entry
(Name of port)
No. _____, on _____ by _____
(Date of entry) (Name and
_____ at which time duty was
address of importer)
paid; that they were exported from the United States at the Port of_____
(Name of port)
on _____ by _____
(Date of exportation) (Name and
_____ without benefit of draw-
address of exporter)
back; that the articles are being reimported by or for the account of _____, and, that the attached declaration from _____ is
(Name of foreign shipper)
correct in every respect.

_____ _____
(Date) (Signature)

_____ _____
(Address) (Title)

(c) If the district director concerned is reasonably satisfied because of the nature of the articles or production of other evidence that the requirements of item 801.10, Tariff Schedules of the United States, and the related headnotes have been met, he may waive the production of the documents provided for in paragraph (b) of this section.

(R.S. 251, as amended, secs. 484, 624, 46 Stat. 722, as amended, 759; 77A Stat. 14; 19 U.S.C. 66, 1202 (Gen. Hdnte. 11), 1484, 1624)

[FR Doc.72-14630 Filed 8-28-72;8:48 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORM

Protokylol Hydrochloride

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (12-054V) filed by Haver-Lockhart Laboratories, Post Office Box 676, Kansas City, Mo. 64141, proposing the safe and effective use of protokylol hydrochloride tablets and injection for the treatment of dogs and cats. The supplemental application is approved.

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

1. Part 135b is amended by adding the following new section:

§ 135b.56 Protokylol hydrochloride injection, veterinary.

(a) *Specifications.* Protokylol hydrochloride injection, veterinary, contains 0.5 milligram of protokylol hydrochloride per cubic centimeter of sterile aqueous solution.

(b) *Sponsors.* See code No. 074 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) It is used in dogs and cats for relief of bronchial spasm.

(2) It is administered subcutaneously or intramuscularly at a dosage level of 0.125 to 0.5 milligram to dogs and at a level of 0.125 to 0.25 milligram to cats.

(3) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

2. Part 135c is amended by adding the following new section:

§ 135c.70 Protokylol hydrochloride tablets, veterinary.

(a) *Specifications.* The drug is in tablet form with each tablet containing 0.5 or 2 milligrams of protokylol hydrochloride.

(b) *Sponsor.* See code No. 074 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) It is used in dogs and cats for the relief of bronchial spasm.

(2) It is administered three times a day (after feeding) at a level of 2 to 4 milligrams to dogs, 1 to 2 milligrams to cats, 0.5 to 1 milligram to puppies, and and 0.25 to 0.5 milligram to kittens.

(3) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (8-29-72).

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

Dated: August 21, 1972.

FRED J. KINGMA,
Acting Director,
Bureau of Veterinary Medicine.

[FR Doc.72-14616 Filed 8-28-72;8:47 am]

SUBCHAPTER D—COSMETICS

PART 172—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT AND COSMETIC RAW MATERIAL COMPOSITION STATEMENTS

Notification of Effective Date and Availability of Forms

In the matter of issuing regulations establishing a procedure for the voluntary filing of cosmetic product ingredient and cosmetic raw material composition statements:

An order establishing regulations (21 CFR Part 172) for such a procedure was published in the FEDERAL REGISTER of April 11, 1972 (37 F.R. 7151). The order stipulated that 21 CFR Part 172 would become effective 30 days after publication of a notice in the FEDERAL REGISTER stating that the necessary forms for filing of cosmetic product ingredient and cosmetic raw material composition statements (FD Forms 2512, 2513, and 2514) were available for distribution.

Notice is hereby given that FD Form 2512, "Cosmetic Product Ingredient Statement", FD Form 2513, "Cosmetic Raw Material Composition Statement", FD Form 2514, "Notice of Discontinuance of Commercial Distribution of Cosmetic Product or Cosmetic Raw Material", and a pamphlet of detailed instructions for use in completing the forms are now available for distribution. Those desiring FD Forms 2512, 2513, and 2514, and the pamphlet of instructions may submit requests to the Food and Drug Administration, Department of Health, Education, and Welfare, Washington, D.C. 20204, or to any Food and Drug Administration district office as provided in 21 CFR 172.4. Therefore, the provisions of 21 CFR Part 172 shall become effective 30 days after publication of this notice in the FEDERAL REGISTER.

Dated: August 23, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-14596 Filed 8-28-72;8:45 am]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Dept. Reg. 108.673]

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Exchange Visitors

Part 41, Chapter I, Title 22 of the Code of Federal Regulations is amended to clarify regulations on the applicability of section 212(e) of the Immigration and Nationality Act, as amended, to alien exchange visitors, and the notification required.

Section 41.65 is amended to read as follows:

§ 41.65 **Exchange visitors.**

* * * * *

(b) *Applicability of section 212(e) of the Act.* (1) An alien is subject to the 2-year foreign residence requirement of section 212(e) of the Act if—

* * * * *

(ii) At the time of the issuance to him of an exchange visitor visa and admission to the United States, or, if not required to obtain a nonimmigrant visa, at the time of his admission to the United States as an exchange visitor, or at the time of his acquisition of such status after admission, he is a national and resident, or if not a national he is a lawful permanent resident (or has status equivalent thereto), of a country which the Secretary of State had designated, through publication by public notice in the FEDERAL REGISTER, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien will engage in his exchange-visitor program.

(2) For the purposes of this paragraph, the terms "financed directly" and "financed indirectly" shall be defined as set forth in § 63.1 of this chapter.

(3) The country in which 2 years' residence and physical presence will satisfy the requirements of sections 212(e) of the Act in the case of an alien determined to be subject to such requirements shall be the country of which the alien is, at the time of such determination, a national and resident, or, if not a national, a lawful permanent resident (or has status equivalent thereto).

(4) If an alien is subject to the 2-year foreign residence requirement of section 212(e) of the Act, the spouse or child of such alien shall also be subject to such requirement if such spouse or child is admitted to the United States pursuant to section 101(a)(15)(J) of the Act for the purpose of accompanying or following to join such alien.

(c) *Notification to alien.* The consular officer to whom an alien applies for an exchange visitor visa shall, prior to the issuance of such visa, determine whether the alien will be subject to the 2-year foreign residence requirement of section 212(e) of the Act if admitted to the United States under section 101(a)(15)(J) of the Act and, if so, the country in which 2 years' residence and physical presence will satisfy such requirement with respect to the alien, and shall inform the alien of such determinations.

* * * * *

Effective date. The amendments to the regulations contained in this order shall become effective upon publication in the FEDERAL REGISTER (8–29–72).

The provisions of the Administrative Procedure Act (80 Stat. 383; 5 U.S.C. 553) relative to notice of proposed rule making are inapplicable to this order because the regulations contained herein involve foreign affairs functions of the United States.

(Sec. 104, 66 Stat. 174; 8 U.S.C. 1104)

For the Secretary of State.

[SEAL] BARBARA M. WATSON,
Administrator, Bureau of Security and Consular Affairs, Department of State.

AUGUST 17, 1972.

[FR Doc.72–14617 Filed 8–28–72;8:47 am]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER G—BOARDS

PART 865—PERSONNEL REVIEW BOARDS

Air Force Discharge Review Board; Correction

Subpart B to Part 865, Subchapter G of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

Section 865.101 is amended by changing the office symbol in: paragraph (a) from "(AFMPC)" to "(DPM)"; and in paragraph (d) from "AFMPC" to "USAFMPC/DPM."

Section 865.106 is amended by changing the office symbol in paragraph (b) from "USAFMPC (AFMPC)" to "USAFMPC/DPM."

(10 U.S.C. 8012, 1553)

By order of the Secretary of the Air Force.

JOHN W. FAHRNEY,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.72–14592 Filed 8–28–72;8:45 am]

Title 39—POSTAL SERVICE

Chapter I—U.S. Postal Service

PART 124—MATTER MAILABLE UNDER SPECIAL RULES

PART 145—PERMIT IMPRINTS

Live Day-Old Poultry and Rescission of Fractional Postage on Meter Mailings

Regulations of the Postal Service are amended to change the time for postal delivery from 60 to 72 hours with respect to day-old poultry, to make clear that boxes of such poultry may not be stacked more than 10 high, and to rescind the fractional postage requirement relating to meter mailings. Accordingly, Title 39, Code of Federal Regulations, is amended as stated below.

In § 124.3 *Perishable matter*, make the following changes in paragraph (c)(1):

1. Amend subdivision (iv) to read as follows:

(iv) The box must be properly ventilated and of proper construction and strength to bear safe transmission in the mail. (These boxes may not be stacked more than 10 high.)

2. In subdivisions (v), (vii), and (viii) change 60 to 72 wherever it appears therein.

In § 145.5 *Mailings with permit imprints*, delete subparagraph (2) of paragraph (f).

(39 U.S.C. 401)

ROGER P. CRAIG,
Deputy General Counsel.

AUGUST 23, 1972.

[FR Doc.72–14646 Filed 8–28–72;8:49 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 3—Department of Health, Education, and Welfare

PART 3–3—PROCUREMENT BY NEGOTIATION

Subpart 3–3.3—Determinations, Findings, and Authorities

Part 3, Chapter 3, Title 41, Code of Federal Regulations, is amended as set forth below. The purpose of this amendment is to reflect recent changes in approval authorities for determinations and findings and to provide additional requirements regarding the documentation of the need for such determinations.

It is the general policy of the Department of Health, Education, and Welfare to allow time for interested parties to participate in the rulemaking process. However, the amendment herein involves internal administrative procedures. Therefore, the public rulemaking process is deemed unnecessary in this instance.

1. The table of contents of Subpart 3–3.3 is revised to read as follows:

Subpart 3–3.3—Determinations, Findings, and Authorities

AUTHORITY: The provisions of this Subpart 3-3.3 are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

2. Section 3-3.302 is revised to read as follows:

§ 3-3.302 Determinations and findings required.

The following determinations in connection with the negotiation of contracts are required to be made in writing, supported by written findings.

(a) The determination required by section 304(b) of the Act (41 U.S.C. 254 (b)) as to estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contracts (see §§ 1-3.401, 1-3.405-4, and 1-3.405-5(c)(2));

(b) The determination required by section 304(b) of the Act that the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract is likely to be less costly than other methods or that it is impracticable to secure property or services of the kind or quality required without the use of a cost or cost-plus-a-fixed-fee contract or an incentive-type contract (see §§ 1-3.404-4 and 1-3.405-1 of this title):

(c) The determination required by section 303(b) of the Act (41 U.S.C. 253(b)) that it is in the public interest to reject all bids:

(d) The determination required by section 305(c) of the Act (41 U.S.C. 255(c)) that the making of advance payments would be in the public interest (see § 1-30.405 of this title);

(e) The determinations required with respect to waiving a requirement for the submission of cost or pricing data and the certification thereof (see § 1-3.807-3(b) of this title) and for the inclusion of the clauses required by §§ 1-3.814-1 through 1-3.814-3 of this title in contracts with foreign governments or agencies thereof.

(f) The determinations required by section 304(c) of the Act (41 U.S.C. 254(c)) and Subpart 1-6.10 of Part 1-6 with respect to omitting the clause specified in § 1-7.101-10 or § 1-7.602-7 of this title from contracts with foreign contractors or subcontractors regarding the right of the Comptroller General of the United States to examine the contractor's records when it is determined (1) that the omission will serve the best interests of the United States, or (2) that the public interest will best be served by the omission (see § 1-6.1001 of this title).

(g) Exceptions to the restrictions of the Buy American Act (41 U.S.C. 10(a-d) and determinations under the Balance of Payments program; see Subpart 3-6.1 of Part 3-6 and Part 1-6 of this title.

(h) Use of time and materials or labor-hour type contract (see § 1-3.406 of this title.

(i) Acquisition of construction of equipment or facilities on property not owned by the United States pursuant to an appropriation or other act incorporating the provisions of 10 U.S.C. 2353.

(j) Use of indemnification provision in a research contract pursuant to an appropriation or other act incorporating the provisions of 10 U.S.C. 2354.

(k) Use of letter contracts (see § 1-3.408).

3. Section 3-3.303 is revised to read as follows:

§ 3-3.303 Determinations and findings by the head of the agency.

The following determinations and findings shall be made by the Assistant Secretary for Health and Scientific Affairs (where health programs are involved), the Assistant Secretary for Education (where education programs are involved), or the Assistant Secretary for Administration and Management (where other programs are involved).

(a) The determination required by § 1-3.211 of this title with respect to contracts which will require expenditure in excess of $25,000.

(b) The determinations required by §§ 1-3.212 of this title and 3-3.213 of this part.

(c) The determination required for the omission of the Examination of Records clause from contracts with foreign contractors or subcontractors (see § 1-6.1004 of this title).

(d) Determinations in accordance with § 1-6.103-3.

§ 3-3.303-50 Other determinations and findings by the Assistant Secretary for Health and Scientific Affairs.

(a) The determination required for application of 10 U.S.C. 2353(b)(3).

(b) The determination required for application of 10 U.S.C. 2354 with respect to the use of an indemnification provision in a research contract.

§ 3-3.303-51 Determinations and findings by the Director, Office of Procurement and Materiel Management.

The determination required by § 1-3.202(d) that the making of advance payments is in the public interest shall be made by the Director, Office of Procurement and Materiel Management, OS-OASAM.

§ 3-3.303-52 Determinations and findings by the head of the procuring activity.

(a) The following determinations and findings shall be made by the head of the procuring activity or his designee.[1]

(1)[1] The determination required by § 1-3.201 for reasons other than:

(i) Assistance to labor surplus areas or small business concerns, and

(ii) Administration of the Balance of Payments Program.

(2) The determinations and findings required by §§ 1-3.202 and 1-3.214.

(3)[1] The determinations and findings required by §§ 1-3.302(c) and 1-3.302(e).

(4) The determinations which support exceptions to restrictions of the Buy American Act (41 U.S.C. 10(a-d)) and the determinations and deviations required by Subpart 1-6.8 in administration of the Balance of Payments Program, within the limitations of Subpart 3-6.1 and Part 1-6.

(5) The determination required for application of 10 U.S.C. 2353, (b)(1), and (b)(2).

(6)[1] All class determinations and findings except for the categories specified in §§ 3-3.303 and 3-3.303-51.

(7) The determinations and findings which support proposed payment of fixed fees in excess of: (i) 10 percent of estimated costs, exclusive of fee, of any cost-plus-a-fixed-fee contract for experimental, developmental, or research work, or (ii) 7 percent of estimated cost, exclusive of fee, for any other cost-plus-a-fixed-fee contract, but see § 3-75.104-2(a).

(8)[1] The determinations required by § 1-3.406 with respect to the use of time and materials and labor hour contracts.

(9)[1] The determinations required by § 1-3.408 with respect to the use of letter contracts.

§ 3-3.303-53 Determination and findings by the contracting officer.

The following determinations and findings shall be made by the contracting officer, unless the head of the procuring activity decides otherwise:

(a) The determinations required by §§ 1-3.207; 1-3.208, 1-3.210; and 1-3.215, if any.

(b) The determination required by § 1-3.211 for contracts not in excess of $25,000.

(c) The determinations required by § 1-3.302 (a) and (b).

(d) Any other determinations and findings not required to be made by higher authority.

4. Section 3-3.306-50 is revised to read as follows:

§ 3-3.306-50 Preparation and submission.

Determinations and findings to be made by an Assistant Secretary shall be prepared in an original and four copies (including the yellow box-imprinted copy) and forwarded to the Assistant Secretary through the Office of Procurement and Materiel Management, OASAM. The accompanying briefing letter shall be prepared in an original and three copies. Proposed procurement actions shall be planned so as allow a minimum of 20 working days to process a determination and findings.

5. Section 3-3.306-52 is revised to read as follows:

§ 3-3.306-52 Briefing letters for facilities construction determinations.

Each determination to be signed by the Assistant Secretary for Health and Scientific Affairs pursuant to 10 U.S.C. 2353 shall be accompanied by:

[1] A designee for making these determinations must be at least one organizational level above that of the contracting officer.

(a) A briefing letter signed by the chief officer of the operating agency responsible for administration, or cognizant Regional Director. The letter shall contain:

(1) A description of the procurement which includes: (i) Contract type; (ii) estimated dollar amount of contract; (iii) property and/or services to be procured; (iv) contractor; (v) approximate duration of the research effort; (vi) any urgency considerations; and (vii) any explanation necessary to apprise the approving authority of unique or unusual aspects.

(2) A description of the research, development, or test facilities and equipment and specialized housing therefor which are to be provided at Government expense. This information shall include: (i) Negotiated estimated total cost, including a breakdown of (*a*) nonseverable, and (*b*) severable items; (ii) details concerning ownership of land on which they are to be affixed; (iii) a statement as to whether any of the proposed facilities have general utility; (iv) details which show that the property is of a special character useful primarily for research, development, or test purposes; and (v) any explanation of why such property is necessary for the performance of the contract.

(3) An explanation as to whether the facilities and equipment are readily removable or separable without unreasonable expense or unreasonable loss of values and a description of the provisions to be included in the contract either for:

(i) Reimbursing the Government for the fair value of the property at or near the completion or termination of the contract;

(ii) An alternative provision such as an option afforded to the Government to abandon the facilities or to dismantle and remove the facilities without obligation to restore the premises to their former condition. An explanation shall be provided as to why such alternatives are considered adequate to protect the interests of the Government.

(b) A written representation by the contractor, signed by an executive corporate official, or his equivalent in noncorporate entities, which expresses either unwillingness or financial inability to acquire the necessary resources.

6. Section 3–3.306–53 is added and reads as follows:

§ 3–3.306–53 Briefing letter for other determinations.

Each determination to be signed by an official designated to act as head of the agency (see § 3–3.303) or by the head of the procuring activity shall be accompanied by a briefing letter signed by the chief officer of the operating agency responsible for administration, or cognizant Regional Director. The letter shall contain as much supplemental information as is necessary to establish that each requirement or condition of the applicable law or regulation is being fully complied with (e.g., Subpart 1–6.10, Omission of the Examination of Records Clause From Contracts With Foreign Contractors).

7. Section 3–3.306–54 is added and reads as follows:

§ 3–3.306–54 Briefing letters for advance payment determinations.

Each determination to be signed by the Director, Office of Procurement and Materiel Management, OASAM, shall be accompanied by a briefing letter to be signed by the chief officer of the operating agency responsible for administration, or cognizant Regional Director.

The letter shall contain:

(a) A description of the procurement which includes: (1) Name of a contractor; (2) contract type; (3) property and/or services to be obtained; (4) amount of contract.

(b) A statement concerning the proposed financing and contractor's financial responsibility which includes: (1) Amount of advance payment required, including justification and rationale in support of the amount requested; (2) method of financing the advance payment; and (3) safeguards adequate to protect the interests of the Government.

(c) Factual information shall be given in sufficient detail to support a finding that the advance payment is necessary and is in the interest of the Government.

Effective date: This amendment shall be effective upon publication in the FEDERAL REGISTER (8–29–72).

Dated: August 16, 1972.

N. B. HOUSTON,
Deputy Assistant Secretary for Administration.

[FR Doc.72–14658 Filed 8–28–72;8:51 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 72–739]

PART 1—PRACTICE AND PROCEDURE

Public Notice Regarding Broadcast Renewal Application Filings

Memorandum opinion and order. In the matter of amendment of § 1.580 (m) (1) (iii) of the rules, governing text of licensee notice to public of broadcast renewal application filings, RM–2026.

1. The Commission has before it a petition for rule making filed June 22, 1972, by Black Efforts for Soul in Television (BEST) seeking a corrective change in the language of § 1.580(m) (1) (iii) of the rules which specifies the text of the announcement renewal applicants are required to broadcast and publish.

2. In connection with the filing of renewal applications, notice to the public is to be given in the form of an announcement that is both published and broadcast. The text of the notice is specified in § 1.580(m) (1) (iii). The notice provides an invitation to members of the public to comment in writing on station performance, and specifies a deadline for submission of such comments. As the rule now reads, a renewal applicant is to specify a date 30 days after the last date for timely filing of the renewal as the deadline for filing such comments. This phrasing is used because notice is to be given before the application is actually filed. BEST asserts that the 30-day period for filing comments is inconsistent with the Commission's clear intentions in this regard and thus can mislead members of the public into believing that a petition to deny must be filed within 30 days although another provision (§ 1.580(i)) of the rules makes it clear that a 60-day period obtains for filing such a petition. BEST urges[1] us to act immediately to correct this error and to notify renewal applicants promptly so that they will not continue to utilize a notice form that is incorrect.

3. BEST is correct in its observation that the 30-day filing deadline is not consistent with other provisions of our rules or with our intentions in this regard. Inadvertently, when the deadline for filing a petition to deny a renewal application was changed (see 20 FCC 2d 191 (1969)) from 30 days following the filing of a renewal application to 60 days following the last day on which the renewal application could be timely filed, we did not make a change in the text of the notice renewal applicants were required to use. Thus, a corrective change in the text is clearly warranted. The rules applicable to various matters connected with renewal applications, including public involvement in the renewal application process, are currently being considered in a rule making proceeding now well under way in Docket No. 19153, 27 FCC 2d 697 (1971). Because of the simplicity of the relief sought here and the ease of its accomplishment, we do not consider it necessary or appropriate to make this matter a part of that proceeding. Although not directly a part of BEST's prayer for relief, the petition reveals that there are other real or apparent inconsistencies in the procedural rules applicable to public filings in connection with renewal applications. Essentially, these involve formal versus informal filings and the question of which is governed by what filing deadlines, if any. While clarification on these points is clearly in order, such a basic restructuring does not have the urgency of the matter now before us, and any attempt to deal with these other matters in this context could only disrupt the orderly and comprehensive

[1] We are also asked to require licensees whose renewal applications are now on file to again give notice, this time specifying the correct period for filing comments, but BEST has not provided a basis for believing that the seriousness of the matter could justify such a requirement or that its benefits would outweigh the serious disruptive effects it would have on the orderly consideration of applications. Accordingly, this request will be denied.

review to be given these and other issues in Docket No. 19153. Therefore, we will defer such revisions for later consideration, observing only that petitions to deny are subject to the 60-day deadline specified in our rules and that public comment on station performance is welcome at any time regardless of the pendency of a renewal application.

4. The change here sought is corrective and is directed to the Commission's Rules of practice and procedure. Thus, under the administrative procedure and judicial review provisions of 5 U.S.C. 553 (b) (3) (A), prior notice of proposed rule making need not be given through publication in the FEDERAL REGISTER. Such publication would also have the serious effect of delaying the resolution of this matter and in so doing would have the effect of continuing a notice which misinforms members of the public about their opportunity to participate in the consideration of renewal applications. In addition to the urgency of the matter, the cause of the problem (our inadvertent failure to amend an affected rule) indicates that no useful purpose would be served by providing for the submission of comments, on the requested change. Ample opportunity for comment on the rules, of which the renewal notice text is but a reflection, has already been provided and was a part of the proceeding that led to the change in the dates for giving notice of renewal filings and for filing petitions to deny. Not only does this provide a basis under 5 U.S.C. 553(b) (3) (B) of the above Act for dispensing with prior notice, it also constitutes grounds for making the rule effective without waiting until 30 days following its publication in the FEDERAL REGISTER—see 5 U.S.C. 553(d) (3). In our view, such a delay would clearly be contrary to the public interest and the change herein shall be made effective September 1, 1972. All notices published or broadcast by renewal applicants after that date shall employ the amended text.

5. *Therefore, it is ordered,* That pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, effective September 1, 1972, § 1.580(m) (1) (iii) is amended as set forth below.

6. *It is further ordered,* That the subject petition is granted to the extent indicated and in all other respects is denied.

7. *It is further ordered,* That this proceeding is terminated.

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

Adopted: August 22, 1972.

Released: August 23, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[1] Commissioner Johnson concurring in the result; Commissioners H. Rex Lee and Wiley absent.

Section 1.580(m) (1) (iii) is amended by substituting 60 days for 30 days where it appears in the parenthetical material at the second sentence of the indented material.

As amended, the text of § 1.580(m) (1) (iii) reads:

§ 1.580 Local notice of the filing of broadcast applications, and timely filing of petitions to deny them.

* * * * *

(m) (1) * * *

(iii) Notices for stations subject to paragraphs (c) and (d) of this section shall include the following statement, in addition to the information required under paragraph (f) (1) and (4) of this section.

The application of this station for renewal of its license to operate in the public interest is required to be filed with the Federal Communications Commission no later than (insert here the date prescribed in § 1.539(a)). Members of the public who desire to bring to the Commission's attention facts concerning the operation of this station should write to the Federal Communications Commission, Washington, D.C. 20554, not later than (insert here the date 60 days after the last day for timely filing of the license renewal application). Letters should set out in detail the specific facts which the writer wishes the Commission to consider in passing on the application.

A copy of the license renewal application and related material will, upon filing with the Commission, be available for public inspection at (state here the address where station records are made available for public inspection as required by § 1.526(d)) between the hours of _____ and _____. (Regular business hours.)

* * * * *

[FR Doc.72-14673 Filed 8-28-72;8:52 am]

Title 49—TRANSPORTATION

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

[Docket No. 70-23; Notice 5]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Motor Vehicle Brake Fluids

The purpose of this notice is to amend 49 CFR 571.116, Motor Vehicle Safety Standard No. 116, *Hydraulic Brake Fluids,* to permit certain required information to be placed on any permanent part of brake fluid containers.

Paragraphs S5.2.2.2(b) and S5.2.2.-2(d) specify respectively that the name of the packager of the brake fluid, if in code form, and a serial number identifying the packaged lot and date of packaging shall be placed either beneath the distributor's name and mailing address, or on the bottom of the container. Gold Eagle Products Co. has asked if it is permissible to place the information required by S5.2.2.2(b) on the top of square gallon brake fluid containers. Such location is not presently allowed. The Administration, however, has concluded that manufacturers should not be restricted in their choice of location and that if it is more convenient for them to place the required information on the side or top of a container they should be allowed to do so, provided that the information is on a permanent part of the container. Accordingly, the NHTSA is amending the requirements to allow all required certification, marking and labeling information to be placed in any location except on a removable part such as a lid.

In consideration of the foregoing, paragraph S5.2.2.2 of 49 CFR 571.116, Motor Vehicle Safety Standard No. 116, is revised in part to read as follows:

§ 571.116 Standard No. 116; motor vehicle hydraulic brake fluids.

* * * * *

S5.2.2.2 Each packager of motor vehicle brake fluid shall furnish the following information clearly and indelibly marked on each brake fluid container, in any location except on a removable part such as a lid.

* * * * *

(b) The name of the packager of the brake fluid, which may be in code form.

* * * * *

(d) A serial number identifying the packaged lot and date of packaging.

* * * * *

Effective date: August 29, 1972. Because the amendment relaxes an existing requirement and creates no additional burden, it is found for good cause shown that an effective date earlier than 180 days after issuance is in public interest.

(Secs. 103, 112, 119, National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.51)

Issued on August 22, 1972.

DOUGLAS W. TOMS,
Administrator.

[FR Doc.72-14647 Filed 8-28-72;8:49 am]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Motorcycle Controls and Displays; Response to Petitions for Reconsideration

This notice responds to petitions for reconsideration of Motor Vehicle Safety Standard No. 123 (49 CFR 571.123) and amends the standard in minor respects.

Motor Vehicle Safety Standard No. 123, establishing requirements for the location, operation, identification, and illumination of motorcycle controls and displays, effective September 1, 1974, was published on April 12, 1972 (37 F.R. 7207). Thereafter, pursuant to 49 CFR 553.35, petitions for reconsideration of the rule were filed by Japan Automo-

bile Manufacturers Association, Inc. (JAMA), Kawasaki Motors Corp. (Kawasaki), and Cushman Motors (Cushman) through counsel. In response to these petitions the standard is being revised in minor respects. The administrator has declined to grant requested relief from other requirements of the standards.

1. *Manual fuel shutoff valve.* Standard No. 123 requires that the manual fuel shutoff control point downward when in the "on" position, forward in the "off" position, and upward to supply fuel from a reserve source if one is provided.

JAMA has requested that the configuration found on most Japanese motorcycles be adopted: "off" with the control position to the left, "reserve" to the right, and "on" downward. JAMA's request was originally made in response to the notice proposing control positions for the shut-off valve, and was considered at that time. JAMA's petition is denied. The NHTSA has determined that the control should be standardized by requiring its operation along a longitudinal rather than a transverse axis. In this location there is a greater likelihood that in the event of a crash, the control will be carried by inertia to the off position, thereby shutting off the fuel.

JAMA also asked for an interpretation of the words "control pointing" asking if the words mean the direction of a non-operational pointer indicating the off-position, or the direction of the control end operated by the fingers. "Control pointing" means the direction of the control end operated by the fingers. To eliminate this possible ambiguity, the word "pointing" is deleted from the entry in Table I.

2. *Headlamp control.* The NHTSA requires, in Standard No. 123, that the upper headlamp beam be activated with an upward motion of the beam control, and the lower beam by a downward motion. Kawasaki has asked that these positions be reversed. It reasons that when the left thumb is under the handlebar, the lower beam control can be more quickly activated with an upward movement of the thumb, rather than by raising the thumb above the switch and then depressing it. The Administration denies Kawasaki's request, as it is considered contrary to good human factors engineering. Control mechanisms which are used for increasing the output of a system are generally designed to be switched upward for higher intensity.

3. *Speedometer graduations.* Both reconsideration of the requirement that major and minor graduations and numerals appear at the 10 and 5 m.p.h. intervals respectively, alleging that operator confusion could be caused by a clutter of numerals and graduations at 5 m.p.h. intervals. The NHTSA considers these petitions to have merit and is amending Standard No. 123, to require only minor graduations at the 5 m.p.h. intervals.

4. *Control identification.* JAMA has petitioned for an amendment of Table 3 to eliminate identification of some controls and to identify only control positions. The petition also requested abbreviation of the identification presently required. JAMA alleges difficulty in providing all the identification marks due to lack of space around the handlebar. It argues that an individual operator will not mistake one equipment item for another on different cycles when all controls are uniformly located as specified by Standard No. 123.

The Administration denies JAMA's petition. Labeling control positions without identifying the control itself could confuse the novice motorcyclist and may contribute to traffic hazards. During the initial learning stage the cyclist will not be able to identify controls by their required location. Further, there are no common abbreviations with universal acceptance for the controls mentioned, viz., choke, starter, horn, and neutral indicator.

JAMA also requested a clarification as to whether control identification must be indicated in capital letters. The answer is no: use of upper or lower case lettering is at the manufacturer's discretion. Kawasaki asked whether it is permissible to add information to the tachometer identification indicating that it registers thousands of revolutions per minute. The marking requirements of the standard are minimum requirements only, and the NHTSA has no objection to further identification of this nature for the tachometer.

5. *Three-wheeled motorcycles.* Cushman manufactures three-wheeled motorcycles. It alleged that many of the requirements of Standard No. 123 are incompatible with the configuration of its vehicle. It requested that Standard No. 123 be amended to exclude three-wheeled motorcycles that are designed to achieve a maximum speed no greater than 40 m.p.h. Cushman raised a number of specific objections concerning control location and operation, identification, and displays. In view of the disposition of Cushman's petition it is not necessary to discuss the objections in detail.

Cushman's petition is denied for the following reasons. Petitioner manufactures two types of three-wheeled vehicles, identical except for steering configuration. One type employs handlebars, the other a steering wheel. Its sales literature indicates that most models manufactured with handlebars are intended for industrial applications on private property, and are not intended to be licensed as motor vehicles for use on the public roads. The remaining models manufactured with handlebars are intended for police use. Standard No. 123 does not apply to this type of vehicle. Cushman's models intended for street use are equipped with the steering wheel as standard equipment. The standard does not apply to motorcycles with steering wheels. Thus denial of Cushman's petition will affect only three-wheeled motorcycles for street use equipped with handlebars, a combination that evidently comprises only a very small number of vehicles.

6. *Miscellaneous.* A typographical error is corrected concerning the integrated clutch and gear change.

In consideration of the foregoing, 49 CFR 571.123, Motor Vehicle Safety Standard No. 123, is revised in the following respects:

1. Item 1 in Column 1, Table 1, is corrected to read: "Manual clutch or integrated clutch and gear change."

2. Column 3, Item 7 in Table 1 is revised to read: "Off-Control forward; On-control downward; "Reserve" (if provided) on-control upward."

3. Column 3, Item 8 in Table 3 is revised to read: "M.P.H. increase in a clockwise direction. Major graduations and numerals appear at 10 m.p.h. intervals minor graduations at the 5 m.p.h. intervals."

Effective date. September 1, 1974, the same effective date as the standard as previously issued (37 F.R. 7207).

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51)

Issued on August 22, 1972.

DOUGLAS W. TOMS,
Administrator.

[FR Doc.72-14649 Filed 8-28-72;8:49 am]

Title 50—WILDLIFE AND FISHERIES

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

PART 32—HUNTING

Kofa Game Range, Ariz.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (8-29-72).

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

ARIZONA

KOFA GAME RANGE

The public hunting of quail, rabbits, coyotes, gray fox, bobcat, and skunks on the Kofa Game Range is permitted except it those areas designated by signs as closed to hunting. The open area, comprising 660,000 acres, is delineated on maps available at the refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103. Hunting shall be in accordance with all applicable State regulations governing the hunting of quail, rabbits, coyotes, gray fox, bobcat, and skunks subject to the following special conditions:

(a) The open season for hunting quail, rabbits, coyotes, gray fox, bobcats, and skunks on the refuge extends from October 1 through November 30, 1972, inclusive.

The provisions of this special regulation supplement the regulations which goven hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 30, 1972.

GERALD E. DUNCAN,
Acting Refuge Manager,
Kofa Game Range, Yuma, Ariz.

AUGUST 7, 1972.

[FR Doc.72-14607 Filed 8-28-72;8:46 am]

PART 32—HUNTING

Imperial National Wildlife Refuge, Ariz. and Calif.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (8-29-72).

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

ARIZONA AND CALIFORNIA

IMPERIAL NATIONAL WILDLIFE REFUGE

Public hunting of quail, cottontail, and jack rabbits on the Imperial National Wildlife Refuge is permitted except in the area designated by signs as closed to hunting. This open area, comprising 16,500 acres, is delineated on maps available at refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103. Hunting seasons are as follows: Arizona—quail, October 1, 1972, through January 31, 1973, inclusive; cottontail and jack rabbits, October 1, 1972 through November 30, 1972, inclusive. California—quail, October 28, 1972 through January 28, 1973, inclusive. Cottontail and jack rabbits, October 1, 1972 through January 28, 1973, inclusive.

Hunting shall be in accordance with all applicable Federal and State Regulations covering the hunting of quail and rabbits subject to the following special conditions:

(a) Quail and rabbits may be taken with shotguns only. Possession of .22 caliber rimfire firearms is prohibited.

(b) A maximum of two (2) dogs per hunters may be used while engaged in hunting so long as these animals are kept under strict control.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 31, 1973.

GERALD E. DUNCAN,
Acting Refuge Manager, Imperial National Wildlife Refuge, Yuma, Ariz.

AUGUST 7, 1972.

[FR Doc.72-14609 Filed 8-28-72;8:46 am]

PART 32—HUNTING

Kofa Game Range, Ariz.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (8-29-72).

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

ARIZONA

KOFA GAME RANGE

Public hunting of bighorn sheep and deer on the Kofa Game Range is permitted except in those areas designated by signs as closed to hunting. The bighorn sheep season extends from December 2 through December 17, 1972, inclusive. The deer season extends from September 8 through September 24, 1972, inclusive, and from October 27 through November 12, 1972, inclusive. The open bighorn sheep and deer hunting area, comprising 660,000 acres, is delineated on maps available at refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103.

Hunting shall be in accordance with all applicable State regulations covering the hunting of bighorn sheep and deer subject to the following special conditions:

(a) Bighorn sheep limited to ten (10) permits issued by the Arizona Game and Fish Department.

(b) Bighorn sheep hunters may hunt only in those areas designated on their permits.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generaly which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 19, 1972.

GERALD E. DUNCAN,
Acting Refuge Manager,
Kofa Game Range, Yuma, Ariz.

AUGUST 7, 1972.

[FR Doc.72-14606 Filed 8-28-72;8:46 am]

PART 32—HUNTING

Imperial National Wildlife Refuge, Ariz. and Calif.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (8-29-72).

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

ARIZONA AND CALIFORNIA

IMPERIAL NATIONAL WILDLIFE REFUGE

Public hearing of deer and bighorn sheep on the Imperial National Wildlife Refuge, Arizona and California, is permitted except in the area designated by signs as closed to hunting. This open area, comprising 16,500 acres, is delineated on maps available at the refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N.M. 87103. Hunting seasons are as follows: Arizona—deer, September 8 through September 24, 1972, inclusive, and October 27 through November 12, 1972, inclusive; bighorn sheep, December 2 through December 17, 1972, inclusive; California—deer, September 23 through November 12, 1972, inclusive; bighorn sheep, no open season in California.

Hunting shall be in accordance with all applicable Federal and State regulations covering the hunting of deer and bighorn sheep subject to the following special conditions:

(a) Except as provided under the special regulations covering the hunting of small game, doves and migratory waterfowl on the Imperial National Wildlife Refuge, possession of any firearm other than a legal deer hunting firearm as defined by State hunting regulations is prohibited.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 17, 1972.

GERALD E. DUNCAN,
Acting Refuge Manager, Imperial National Wildlife Refuge, Yuma, Ariz.

AUGUST 7, 1972.

[FR Doc.72-14608 Filed 8-28-72;8:46 am]

Title 6—ECONOMIC STABILIZATION

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Miscellaneous Amendments

The purpose of these amendments is (1) to conform the language in § 300.13(a) relating to price increases by wholesalers and retailers with the language in §300.12 relating to price increases by manufacturers; (2) to conform the reporting requirements of § 300.52 with the provisions of §§ 101.13 (a)(2) and 101.17(b) of the regulations of the Cost of Living Council; (3) to provide a special rule for the pricing by dental laboratories and dentists of items containing gold; and (4) to provide that in certain cases the entering into of a contract by a subcontractor, with a contractor that has a contract with an agency of the Federal Government, constitutes prenotification.

Some wholesalers and retailers have misinterpreted the price increase provisions prescribed in § 300.13(a) to mean that a firm may increase its price for a particular product if its aggregate or total price changes do not increase its

profit margin. Such an interpretation was not intended when § 300.13(a) was adopted by the Commission. The requirements for a price increase by a wholesaler or a retailer have not been interpreted by the Commission to be different than those prescribed for a price increase by a manufacturer under § 300.12. To preclude any further misunderstanding the language prescribed in § 300.13(a) has been changed to conform with the language prescribed in § 300.12.

Section 101.13(a)(2) of the regulations of the Cost of Living Council defines a price category II firm as an institutional or noninstitutional provider of health services (as defined in §§ 300.18 and 300.19) with annual sales or revenues in excess of $1 million which has received an exception from the Price Commission from the price adjustment limitations imposed in §§ 300.18 and 300.19. Section 101.13(b) of the regulations of the Cost of Living Council further provides that each category II firm shall submit certain quarterly reports to the Commission. The exception to the submission of quarterly reports to the Price Commission contained in § 300.52(c) is hereby changed to conform with the provisions of §§ 101.13(a)(2) and 101.17(b) in this regard.

A new paragraph (f) is added to § 300.19 to provide a special rule for the pricing by dental laboratories and dentists of items containing gold. The new rule is required because of the large increases in the price of gold in the world market during recent months. Many dental laboratories make products that are 85 percent composed of gold for the use of dentists. Without relief such as this rule would provide, the increases in the price of gold would have to be absorbed or the making of the product abandoned, since in most cases continued price increases by the dental laboratory or dentist would not be within the limitations of § 300.19. The new paragraph limits price increases to a dollar-for-dollar pass through. It also retains the applicable profit margin limitations and requires corresponding price decreases to reflect market price decreases.

In a recent amendment to § 300.51(a) issued on August 7, 1972 (37 F.R. 15996), the Commission provided that in cases involving prenotification and approval with regard to contracts for the purchase of products and services by an agency of the Federal Government, the entering into of the contract constitutes prenotification and approval of the price in the contract. The Commission is of the opinion that the rule should also apply to subcontracts under those contracts. Accordingly, the last sentence of § 300.51(a) is changed by this amendment to provide that the entering into of a subcontract under a contract for the purchase of a product or service by an agency of the Federal Government also constitutes a prenotification and approval of the price stated in that subcontract.

Since these amendments provide relief from restrictive provisions, are clarifying in nature, and are needed for conformance with the regulations of the Cost of Living Council, the Price Commission finds that further notice and public procedure is impracticable and unnecessary and that good cause exists to make them effective in less than 30 days after publication in the FEDERAL REGISTER.

(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; and Executive Order No. 11640, as amended)

In consideration of the foregoing, Part 300 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective August 29, 1972.

Issued in Washington, D.C., on August 25, 1972.

By direction of the Commission.

JAMES B. MINOR,
General Counsel,
Price Commission.

1. Section 300.13(a) is amended to read as follows:

§ 300.13 Retailers and wholesalers.

(a) *General.* A retailer or wholesaler may charge a price in excess of the base price whenever its customary initial percentage markup after November 13, 1971, with respect to the property sold, is equal to or less than its last customary initial percentage markup before November 14, 1971, or, at its option, its customary initial percentage markup during its last fiscal year ending before August 15, 1971. However, the increased price may not result in an increase in its profit margin over that which prevailed during the base period.

* * * * *

2. Section 300.19 is amended by adding a new paragraph (f) to read as follows:

§ 300.19 Noninstitutional providers of health services.

* * * * *

(f) *Dental laboratories and dentists; items using gold.* A dental laboratory or dentist may increase the price of a dental item in which gold is used, without regard to paragraph (c) of this section, to reflect the increase since November 14, 1971, in the cost of gold used in that item on a dollar-for-dollar basis. Any decrease in the cost of gold used in that item shall likewise be reflected, dollar-for-dollar in the price of that item, except that the decrease need not be made below the base price for that item.

3. The last sentence of paragraph (a) of § 300.51 is amended to read as follows:

§ 300.51 Prenotification firms.

(a) *General-manufacturers and service organizations.* * * * The entering into of a contract for the purchase of a product or service by an agency of the Federal Government, or the entering into of a subcontract under a contract for the purchase of a product or service by an agency of the Federal Government, is considered to be a prenotification and approval of the price stated in that contract or subcontract for the purposes of this paragraph.

* * * * *

4. Section 300.52(c) is amended to read:

§ 300.52 Reporting firms.

* * * * *

(c) *Persons to whom this section does not apply.* This section does not apply to public utilities covered by § 300.16 or § 300.16(a), providers of health services covered by § 300.18 or § 300.19 (except for those providers with annual sales or revenues in excess of $1 million which have received exceptions from the Price Commission), or insurers covered by § 300.20.

[FR Doc.72-14770 Filed 8-25-72;2:23 pm]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 10]

DUTY-FREE FUEL FOR AIRCRAFT

Warehouse Withdrawals; Notice of Extension of Time for Submission of Data, Views, or Arguments

Notice of proposed amendment to the Customs Regulations providing for the withdrawal from bonded warehouse of fuel oil of foreign origin for suppliers of certain aircraft free of duty and internal revenue tax, was published in the FEDERAL REGISTER on Friday, August 4, 1972 (37 F.R. 15707). Thirty days from the date of publication of the notice were given for submission of data, views, or arguments pertinent to the proposed amendment.

A request has been received for extension of the time for submission of comments. The period for submission of data, views, or arguments relating to the revision is extended an additional 60 days.

[SEAL] EDWIN R. RAINS,
Acting Commissioner of Customs.

[FR Doc.72-14631 Filed 8-28-72;8:48 am]

Internal Revenue Service

[26 CFR Parts 49, 301, 601]

COLLECTION OF FACILITIES AND SERVICES EXCISE TAX

Notice of Extension of Time for Comments

Proposed regulations to be prescribed under sections 4291 and 6672 of the Internal Revenue Code of 1954, and a proposed amendment to 26 CFR Part 601 (Statement of Procedural Rules), relating to the collection of facilities and services excise tax, appear in the FEDERAL REGISTER for Friday, July 28, 1972 (37 F.R. 15159).

Written comments or suggestions were required by August 28, 1972. The time for submission of written comments pertaining to the proposed regulations is hereby extended to September 27, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel.

[FR Doc.72-14798 Filed 8-28-72;8:55 am]

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

[21 CFR Part 308]

SCHEDULES OF CONTROLLED SUBSTANCES

Exempt Chemical Preparations

The Director of the Bureau of Narcotics and Dangerous Drugs has received applications pursuant to § 308.23 of Title 21 of the Code of Federal Regulations requesting that several chemical preparations containing controlled substances be granted the exemptions provided for in § 308.24 of Title 21 of the Code of Federal Regulations.

Therefore, under the authority vested in the Attorney General by sections 301 and 501(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 821 and 871(b)) and redelegated to the Director of the Bureau of Narcotics and Dangerous Drugs by § 0.100 of Title 28 of the Code of Federal Regulations, the Director hereby proposes that section 308 of Title 21 of the Code of Federal Regulations be amended as follows:

By amending § 308.24(i) by adding the following exempt chemical preparations:

§ 308.24 **Exempt chemical preparations.**

* * * * *

(i) * * *

Manufacturer or supplier	Product name and supplier's catalog number	Form of product	Date of application
Cordis Laboratories	Barbital-Acetate Buffer, Powder 709-317	Package: 20 envelopes—10.65 grams per envelope.	July 27, 1972
Do	Counterelectrophoresis, Plates CEP I 709-304.	Package: 5 plates—18 ml. per plate.	Do.
Do	Counterelectrophoresis, Plates CEP II 709-305.	Package: 5 plates—18 ml. per plate.	Do.
Do	Counterelectrophoresis, Plates CEP III 709-306.	Package: 5 plates—18 ml. per plate.	Do.
Do	Counterelectrophoresis, Plates CEP IV 709-307.	Package: 5 plates—18 ml. per plate.	Do.
Do	Counterelectrophoresis, Plates CEP I 709-324.	Package: 10 plates—8.5 ml. per plate.	Do.
Do	Counterelectrophoresis, Plates CEP II 709-325.	Package: 10 plates—8.5 ml. per plate.	Do.
Do	Counterelectrophoresis, Plates CEP III 709-326.	Package: 10 plates—8.5 ml. per plate.	Do.
Do	Counterelectrophoresis, Plates CEP IV 709-327.	Package: 10 plates—8.5 ml. per plate.	Do.
Do	GVB^{3+} Buffer, 753-037	Bottle: 50 ml	Do.
Do	Glucose—GVB^{3+} Buffer, 753-036	Bottle: 50 ml	Do.
Do	EDTA (0.04M)—GVB Buffer, 753-034	Bottle: 5 ml	Do.
Do	EDTA (0.01M)—GVB Buffer, 753-031	Bottle: 5 ml	Do
Do	5X Isotonic Veronal Buffer	Bottle: 1000 ml	Do.
TIC Corp	Urine Control	Vial: 1.9 cm. in diameter and 1.6 cm. in height.	July 6, 1972

All interested persons are invited to submit their comments and objections in writing regarding this proposal. Comments and objections should be submitted in quintuplicate to the Office of Chief Counsel, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Room 611, 1405 I Street NW., Washington, DC 20537, and must be received no later than September 28, 1972.

Dated: August 21, 1972.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.72-14764 Filed 8-28-72;8:47 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 927]

CERTAIN VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Proposed Expenses and Rate of Assessment for Fiscal 1972–73

Consideration is being given to the following proposal submitted by the Control Committee, established pursuant to the marketing agreement, as amended, and Order No. 927, as amended (7 CFR Part 927), regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and California, effective under 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 necessary to be incurred by the Control Committee, during the period July 1, 1972, through June 30, 1973, will amount to $56,350.

(2) That the rate of assessment for such period, payable by each handler in accordance with § 927.41, be fixed at $0.01 per standard western pear box of pears, or an equivalent quantity of pears in other containers or in bulk.

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 112A, 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: August 24, 1972.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-14681 Filed 8-28-72;8:51 am]

[7 CFR Part 966]

TOMATOES GROWN IN FLORIDA

Decision With Respect to Proposed Amendment of Marketing Agreement and Order

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601–674), hereinafter referred to as the "act" and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held in Orlando, Fla. during the 5-week period October 4–November 4, 1971. It was held pursuant to a notice thereof which was published in the April 28, 1971, issue of the FEDERAL REGISTER (36 F.R. 7969) and as amended on August 25, 1971 (36 F.R. 16677).

The purpose of the hearing was to collect evidence with which to reevaluate the basis and method for regulating the handling of Florida tomatoes differently for different stages of maturity. Such authority, now provided in § 966.52, has been used on several occasions in past years to impose different minimum size limitations on shipments of Florida grown mature green tomatoes than those imposed on tomatoes of more advanced maturity. As required by § 608e–1 of the act, identical minimum size limitations were imposed on imported tomatoes.

The regulations imposed under the order have been recommended by the Florida Tomato Committee and supported by the Florida tomato industry. However, importers of Mexican tomatoes and others have opposed such regulations, both in views filed under rule making proceedings and in the courts. On March 19, 1971, the U.S. Court of Appeals for the District of Columbia recommended that a hearing should be provided for on "novel and crucial" issues.

This hearing was held in response to the Court's ruling. All interested parties were given an opportunity to present pertinent evidence on the material issues.

Sixteen witnesses appeared including representatives of the Florida tomato industry and the Florida Tomato Committee, an importer of Mexican tomatoes, a tomato repacker, and a retailer. Staff members of the University of Florida and private consulting firms, an expert witness from the U.S. Department of Agriculture, and two representatives of consumer organizations also testified.

The testimony amounted to 4,238 pages. In addition 116 exhibits were identified or received in evidence.

Based on evidence adduced at the hearing and the record thereof, the Deputy Administrator, Consumer and Marketing Service, on March 31, 1972, filed with the Hearing Clerk, U.S. Department of Agriculture, a recommended decision which was published in the FEDERAL REGISTER April 5, 1972 (37 F.R. 6857). It afforded opportunity to file written exceptions thereto within 15 days, and was later extended another 15 days to May 5, 1972.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under Material Issue No. (1) two paragraphs are added at the end of the discussion.

2. Under Material Issue No. (2): (a) Paragraph 33 is revised; (b) paragraph 35 is revised; (c) paragraph 39 is revised and a new paragraph is inserted following paragraph 39; (d) a new paragraph is inserted between paragraphs 40 and 46; (e) paragraph 43 is revised; (f) two new paragraphs are inserted between paragraphs 45 and 46; and (g) paragraph 46 is revised.

3. Under Material Issue No. (3): (a) Paragraph 17 is revised; (b) paragraph 18 is revised; and (c) a new paragraph is inserted between paragraphs 35 and 36.

4. Under "Rulings on Proposed Findings and Conclusions", the third sentence of paragraph 5 is revised.

Material issues. The material issues on the record of the hearing are as follows:

(1) The basis for regulating tomato shipments differently by maturity. Involved in this issue are the following matters relating to tomato production, harvesting, and handling in Florida:

(a) Season and scope of production;
(b) Classes of producers;
(c) Cultural practices;
(d) Vine ripe production;
(e) Mature green production;
(f) Districts;
(g) Packinghouse operations;
(h) Controlled atmosphere ripening;
(i) Machine harvesting;
(j) Tomato growth and size characteristics;

(2) The effect of regulating tomato shipments differently by maturity on Florida producers and others involved in the production and marketing of winter season tomatoes; and

(3) Whether § 966.51 *Recommendations for regulation,* should be amended to specify the factors to be considered in developing and recommending regulations.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

(1) The basis for regulating tomato shipments differently by maturity.

(a) *Season and scope of production.* Planting of tomatoes in Florida usually begins in midsummer and is active through the fall and early winter. Most acreage is direct seeded, although in some parts of the State growers transplant seedlings. The latter practice is more prevalent in the more northerly areas of Florida where the production season is shorter due to a cooler climate.

Annual production varies considerably from year to year, reflecting the vagaries of weather. But the long-term trend has been downward. Shipments during the 1970–71 marketing season of 13.3 million 40-pound cartons were 27 percent above those in 1969–70, but 12 percent below the average of the three preceding seasons.

Harvest of Florida's fresh tomato crop typically gets underway in late October and continues well into the following June. During the five most recent seasons (1966–67 through 1970–71), an average of 22 percent of the total seasonal shipments occurred in October through December, 33 percent were made during the months January through March, and 45 percent from April to the end of the season.

Throughout each of the five aforementioned seasons, Florida shipped both "mature green" and "vine ripe" tomatoes. These terms refer to the stage of maturity of the tomatoes at the time of inspection. A "mature green" tomato is one that is mature as defined by U.S. Standards for Fresh Tomatoes and the skin of which is completely green in color. The U.S. Standards definition of mature is "that the contents of two or more seed cavities have developed a jelly-like consistency and the seeds are well-developed."

A "vine ripe" tomato is also mature but the skin color has reached at least the breaker stage. Breaker means that there is a definite change in color from green to a tannish yellow, pink, or red on not more than 10 percent of the surface. In appearance, such a tomato is green with just a touch of yellow or pink, usually at the blossom end of the tomato.

Under the marketing order, the maturity of Florida tomatoes, including color as an indication of the degree of maturity, is officially determined at the packinghouse where tomatoes are inspected by the Federal-State Inspection Service. Such inspection is compulsory when a marketing order regulation is in effect requiring all shipments meet a specified size or grade and to provide a basis for collecting assessments needed to operate a marketing order program. Inspection is commonly used even when a market order program is not operating as a means of identifying the composition of particular lots being traded.

(b) *Classes of producers.* The terms vine ripe and mature green also are used to describe tomato growers in Florida in the sense that such terms indicate the particular maturity of tomatoes predominantly produced and harvested by such growers. Every grower when he plants an individual field has a basic intent to harvest tomatoes from that field as either mature green or vine ripe. His plans are influenced by many factors

including type of soil, climate, the prospective supply of labor while the crop is growing and at harvest, and the packinghouse facilities that will be available to handle his harvested tomatoes.

The record shows that most growers specialize in harvesting just one maturity although a few persons have tomato operations so organized as to produce and harvest both vine ripe and mature green tomatoes. The record also shows that all fresh tomato growers, whether specialists or not, may at some time harvest both mature green and vine ripe tomatoes from their fields. As shown later herein, this results primarily from practical considerations in commercial harvesting practices.

(c) *Cultural practices.* The initial activities of preparing the soil and planting the tomato seed or seedlings are essentially the same for both maturities. But the vines usually are handled differently and harvesting practices for a vine ripe tomato operation vary greatly compared with one in which tomatoes are picked primarily mature green.

As the tomato vines grow they are either left on the ground or "staked". In staking tomatoes, the vines are tied to stakes or may be supported by a trellis-like system constructed of strings tied to stakes set at intervals in the row, and their growth is directed upward. The staked vines, unlike ground grown, are pruned and grow taller. They produce larger tomato fruit and a greater total quantity than ground grown vines and, because the tomatoes do not touch the ground, the incidence of disease is reduced.

Tomatoes, in both stake and ground culture, grow larger and mature earlier at the lower part of the vine. The quantity and size of the fruit progressively decreases toward the top of the vine.

(d) *Vine ripe production.* Tomatoes intended to be harvested as vine ripes are "staked". Such staking results in the tomato fruit being more accessible to the pickers and because, unlike ground grown, the vine does not have to be picked up and turned to expose the fruit, there is less damage to the vine than otherwise would result from the frequent harvesting required in a vine ripe operation. Vine ripe fields in Florida generally are picked every other day and all tomatoes showing "color" are picked. The frequent picking schedule is necessary in order to pick the vine ripes as close as possible to the breaker stage, i.e., when the fruit is almost entirely or predominately green. Tomatoes which are picked mature green or as breakers usually have a firm internal texture and a relatively tough surface. If left on the vine a "breaker" could turn red within a few days. As the fruit turns pink and then red, it becomes progressively softer and less able to withstand the frequent handling involved in a commercial tomato harvest, packing, and marketing operation without suffering bruising and other deterioration.

Harvesting of a vine ripe tomato field may continue for several months. However, as the vines get older and yields decline, the vine ripe grower may decide that continued harvest of the field would be uneconomical. Under such circumstances, he will pick both vine ripe and mature green tomatoes as he cleans out the field.

The record shows that the relative importance of "true" vine ripe tomato producers in Florida has been declining in terms of numbers of growers and the volume of their production. However, such producers harvest tomatoes during most of the season, and account for a significantly large portion of the tomato production in several districts of the production area in Florida.

(e) *Mature green production.* In a mature green tomato harvest operation, most fields are picked twice, but occasionally a third picking will be made if the condition of the remaining crop is suitable for such harvest and the market is relatively strong.

As the time for first picking of a mature green field nears, the grower must assess the progress of the tomato crop and decide whether enough fruit are sufficiently mature to warrant sending in a picking crew. The producer considers various external characteristics of his tomatoes which he can associate by experience with adequate maturity. He may squeeze the fruit to gauge its firmness. Some tomatoes may be cut—if the seeds give way before the edge of the knife and are not cut, the tomato is mature. Another common test is the amount of "colored" (vine ripe) tomatoes in the field. Usually a grower will pick only "vine ripe" tomatoes at first, and may do this several times until he decides that there are sufficient mature tomatoes in a field to warrant the initial full scale harvest. Then he has his crew pick every mature tomato. While most of the tomatoes will be mature green, some will have reached the breaker (vine ripe) stage.

The second and occasional third pickings occur at 7- to 10-day intervals. Within these intervals, tomatoes left on vines continue to grow in size and increase in maturity. Some vine ripe tomatoes are included in every subsequent mature green picking and constitute a significant economic commodity to the grower. The proportion of vine ripes included in each harvest of mature greens varies, primarily because of the effects of weather on the growth of the tomatoes. During unusually warm weather, the amount of vine ripes in a picking might be above average if the harvest crews were unable to keep up with the crop; i.e. the tomatoes would grow unusually fast during the normal time interval between harvests. One witness testified that on occasion vine ripes account for up to 20 percent of the production from his basically mature green harvest operation. Conversely, when temperatures are low, the overall growth of tomatoes is slowed and the incidence of vine ripes in a second or third picking of mature greens may be relatively low.

Because of its more advanced stage of maturity, a vine ripe tomato is more tender than a mature green tomato and therefore usually requires special handling. When a mature green tomato grower makes the preliminary harvests of vine ripes, small containers may be used in the field to avoid pressure bruising. But when the full scale picking occurs, all tomatoes usually are placed in 60- to 90-pound field crates, and in some areas in pallet boxes which hold much larger amounts.

The largest portion of mature green tomatoes is produced on vines which lie on the ground. However, some tomatoes to be harvested mature green also may be staked. This practice is increasing in those areas of Florida where soil structure is suitable for the use of stakes. Staking of mature green fields is more expensive than allowing the vine to stay on the ground, but as with vine ripe culture, it results in less vine damage and better yields. In contrast to a staked vine ripe operation wherein tomatoes are picked at frequent intervals over several months, the staked mature green field is harvested only two or three times. Although the mature green harvest operation theoretically could be changed to a vine ripe operation, this would be impractical because a sharp increase in labor would be required, and as will be shown later, the harvest operation must be geared to the capacity of the packinghouse which will handle the tomatoes.

(f) *Districts.* The types of cultural systems used by Florida growers are related in part to soil and climatic factors, and vary by District within the State. District 1 is comprised of Dade County and is the southern-most tomato producing area in the State. Although a few people grow a small amount of vine ripe tomatoes on a trellis or hydroponically, all large tomato operations in the District are organized for mature green production. In this District, mature green tomatoes are harvested from vines on the ground, planted in soil composed of crushed coral rock. Stakes are not used since it is impracticable to drive them into the underlying coral. Harvest of the Dade County mature green crop usually begins in mid-November and continues into the following May. During the 1970–71 season, 164 million pounds of tomatoes were shipped from District 1, of which 93 percent were mature greens and 7 percent were vine ripe.

District 2 is in the Southeastern corner of the Florida peninsula and includes the Counties of Brevard, Broward, Glades, Indian River, Martin, Osceola, Okeechobee, Palm Beach, and St. Lucie. Tomato production is concentrated in sandy soils along the Atlantic Coast. Vine ripe culture is dominant in the more southern coastal area where the Gulf Stream moderates winter temperatures. Harvest begins in November and terminates during the following spring. The last shipments during the 1970–71 season from Pompano, the center of the area's vine ripe production and marketing, were reported on May 28, 1971. About 93 percent of the total seasonal shipments of 63 million pounds from the district's south coastal area were tomatoes of vine ripe maturity.

Mature green "ground" production is the prevalent practice in the more northerly Fort Pierce area of District 2; tomatoes there are grown for both fall and spring season harvest. For the entire 1970–71 marketing season, shipments reported from the Fort Pierce shipping point amounted to 96 million pounds, of which 96 percent were mature green.

District 3 is in the Southwestern corner of the peninsula, including the Counties of Charlotte, Collier, Hendry, Lee, and Monroe. Tomato growers in this District use all three basic types of culture—vine ripe and mature greens on stakes at mature greens on the ground. Vine ripe production is concentrated on lands close to the ocean, while green tomato operations are inland. Harvest is continuous from November into the following June, with seasonally heaviest shipments typically occurring in December and May. Shipments amounted to 115 million pounds in 1970–71; about 80 percent were mature green.

District 4 is on the west coast of Florida and includes the Counties of De Soto, Hardee, Highlands, Hillsborough, Manatee, Pinellas, Polk, and Sarasota. Tomato production is concentrated in the Manatee-Ruskin-Wauchula area, which is southeast of Tampa. Virtually all tomatoes are grown on stakes for harvest as mature greens. The 1970–71 tomato shipments from this area totaled 124 million pounds, 92 percent being mature green. Shipments begin in late October or early November and continue until frosts occur, usually during the first half of December. Spring crop harvest usually starts in April and runs into June.

Each of the Districts have unique characteristics with regard to tomato production and marketing. Nevertheless, producers in the various Districts are growing the same commodity in about the same manner as their neighbors, harvesting and handling their tomatoes in essentially the same way albeit at different stages of maturity, and selling them in the same market, often at the same time. The result is a continuous flow to market of both mature green and vine ripe tomatoes throughout Florida's November–June season. During the 1970–71 marketing season Florida's shipments totalled 562 million pounds, of which 81 percent were mature green and 19 percent were vine ripe.

(g) *Packinghouse operations.* Vine ripe and mature green tomatoes are not only harvested differently, they also are handled differently.

Tomatoes harvested in a vine ripe operation are hauled from the field to a packinghouse where they are washed, waxed, mechanically segregated by size using sizing belts, and graded. They are then segregated by color so they can be placed in highly stratified packs such as 5 x 6 pinks, 5 x 6 light pinks, and 5 x 6 breakers. While many of the packinghouse operations have been mechanized, the color separation process depends upon the human eye and hand, resulting in relatively large labor requirements for a vine ripe packing operation. Most vine ripes are packed in 20-pound cartons, but special containers which provide additional protection for the product also are used. Some operators will individually wrap vine ripes to provide cushioning for the tomato during transportation and marketing.

Tomatoes picked during a mature green harvest go through essentially the same process. They are hauled in field boxes to the packinghouse where they are first sorted to remove those with "color." Tomatoes showing color move to a "pink" machine on which they are handled as indicated above for the tomatoes from a vine ripe operation.

The sorted out mature green tomatoes go to a "green" machine whereon they are segregated by size, graded, and jumble packed in cardboard containers. Since there is no need for a color separation, labor requirements are much less to operate a green than a pink machine. A 40-pound carton is the most common container for mature greens but smaller containers are becoming more popular.

Although essentially the same type of machinery is used to process vine ripe and mature green tomatoes, the organization and speed of operation is different. Since vine ripes are segregated by size and then color, they must be sorted an additional time than is the case for mature greens. Belts run slower for vine ripes than mature green in order to reduce bruising of the more tender vine ripes, and to facilitate visual color selection.

A typical tomato packinghouse is equipped to specialize in the handling of a particular maturity, but as noted some have secondary machinery so that both mature green and vine ripe tomatoes can be graded and packed. This specialization in packinghouse equipment is directly associated with the harvesting practices of the producers whose tomatoes are graded in such houses. Thus, in District 4 where virtually all tomatoes are produced to be harvested as mature greens, the bulk of the machinery in the packinghouse is designed to handle mature greens but each house will have a small "pink" machine for use in grading the vine ripe tomatoes that are picked incidental to mature green harvest. This specialization reduces the grower's flexibility in harvesting tomatoes with regard to the maturity at which such tomatoes may be picked. A basically mature green grower must time his harvests so that the incidence of vine ripes does not exceed the capacity of the vine ripe machine in the packinghouse handling his primarily mature green tomatoes. Otherwise his vine ripes will have to be left in the field or, if picked, dumped at the packinghouse.

Due to the additional handling required for vine ripe tomatoes—encompassing more labor, and different machinery and packages—the costs of such handling and preparation for market are substantially higher than those incurred for mature green tomatoes. Data in the record show that packing and selling costs run about 25 percent higher for vine ripes. When harvest charges are taken into account, the total cost of picking, packing, and selling tomatoes during the 1970–71 season averaged 4.6 cents per pound for mature greens as compared with 7.2 cents per pound for vine ripes.

The sized, graded, and packaged tomatoes usually are loaded directly on trucks or rail cars for transporting to market although when supplies are relatively large some may be held in the packinghouse for a day or more until sold. During periods of warm weather, refrigeration is commonly used both in the packinghouse and during transportation to maintain quality and retard ripening.

(h) *Controlled atmosphere ripening.* As a tomato ripens, it emits ethylene gas and the rate of emission increases as the fruit approaches a fully ripe condition. The introduction of additional ethylene into closed tomato ripening rooms under controlled conditions merely hastens the ripening process, with the further result of having the tomatoes all ripen at a uniform rate. The increasing use of smaller containers for mature green tomatoes is associated with the practice of gassing tomatoes. In this process, mature greens are placed in a room in which humidity and temperature are controlled. Ethylene gas is injected into the room and the tomatoes remain there for a day or two until the desired color appears. Since the tomatoes in the room tend to ripen uniformly, packinghouse operators can pack mature green tomatoes in 20- or 30-pound cartons, ripen them in a controlled atmosphere room and ship them direct to retail outlets, thus bypassing the repacking (ripening) operation in the terminal market.

Industry witnesses testified that the introduction of additional ethylene is not detrimental to a tomato. On the contrary, in their opinion the process hastens maturity and actually improves the quality of the product ultimately available to the consumer because there is less damage to tomatoes as compared with that which occurs during the repeated handling required for ordinary ripening. By the latter method, a lot of tomatoes often may be sorted several times over a period of days by the repacker as he attempts to obtain tomatoes of uniform color in the package he sends to the retail outlets.

(i) *Machine harvesting.* Because of rising wage rates and a decline in the supply and quality of field labor, efforts are being made to develop a method or system by which fresh tomatoes can be effectively harvested by machines. The two major parts of such a system are a mechanical harvester that will operate efficiently under various soil conditions in Florida, and a tomato variety with sufficient strength to withstand the buffeting that occurs during harvest and which ripens with a high degree of uniformity. The latter characteristic is essential since each field will be machine picked only once; the plant will be severed from its roots, thus terminating further production.

The record shows that the machine harvesting system now in the testing

stage is primarily a mature green operation. A witness testified to his belief that when the use of such a system becomes widespread and general, Florida growers will continue to harvest and market both mature green and vine ripe tomatoes. It is expected that they will continue to use the amount of "color" in the field as an indication of maturity, hand-picking the "color" one or more times until the field of tomatoes reaches the stage of maturity which justifies complete harvest by machine. Even then, it is anticipated that there will be vine ripe tomatoes among the machine harvested crop. And because of differences in production schedules of the various growers, at any given time throughout a season some growers probably will be hand picking only vine ripe tomatoes while others will be machine harvesting predominantly mature green tomatoes. Thus, both vine ripe and mature green tomatoes will be marketed simultaneously.

(j) *Tomato growth and size characteristics.* A tomato becomes "mature green" as many as 21 days before it reaches the so-called breaker stage, at which stage it is commonly considered to be "vine ripe". During that interval or maturation period of up to 21 days, the tomato continues to increase in size and weight according to the testimony of industry witnesses based upon their many years of experience in producing tomatoes. These witnesses differed however in their judgment as to the extent of such increases.

Research on the extent of growth during the maturation period is limited. The U.S. Department of Agriculture has published two documents, which were placed in evidence, containing material which relates to this matter. The more recent publication dealt with a study performed in Mississippi in the late 1930's. The author reported a substantial gain of 12 percent in tomato size took place during the last 4 days prior to breaking and becoming vine ripe. However, he did not discuss his method of analysis and it is impossible to determine whether the observed size increase related to diameter, volume or some other measure.

The other publication described a research project undertaken shortly after World War I. The research was performed in northern Virginia and southern Florida with a tomato variety which has not been used for many years. Average growth in Virginia during the usual period of maturation amounted to about a fifth of an inch, whereas the experiment in Florida showed a gain of slightly over one-third of an inch. The tomatoes in Florida were grown under weather conditions of extreme stress which may have been responsible for the erratic growth pattern observed, comprised of an especially large increase during the 7-day period beginning 21 days before breaking and becoming vine ripe, and a small increase thereafter. Nevertheless, the growth pattern observed in this experiment suggests that there was a significant increase in size during the 21-day period of maturation.

The differences in tomato-growth rates during maturation, as measured in these USDA research projects and as testified to by various witnesses, are indicative of the variation in growth that may occur because of differences in such factors as cultural practices, varieties, type of soil, and season of production, and to the influence of short-run changes in weather.

The relative sizes of vine ripe and mature green tomatoes—of varieties now commonly used and as harvested over many weeks during a recent winter season—can be ascertained from shipment data compiled by the Florida Tomato Committee.

Each season since reactivation of the marketing order in 1968, the Florida Tomato Committee has reported, by grade and size, all shipments regulated under the marketing order. During the first two seasons these data gave some indication of the general size relationship among tomatoes of different maturities, but the data were not complete because only interstate shipments were regulated and therefore recorded. The quantity and size composition of Florida tomatoes that moved to market within the State were unknown.

In addition, the Florida shipment data for those seasons (1968–69 and 1969–70) provided no insight into the quantity of salable tomatoes which were not marketed. When total supplies of tomatoes are larger than market demand, prices are depressed and some of the smaller and less valuable tomatoes are not shipped. During such periods of low prices, many small mature green tomatoes are abandoned in the fields or dumped at the packinghouse. Similarly, even though all vine ripe tomatoes are usually picked and moved from the fields because of cultural requirements, economic factors generally result in small vine ripes also not being shipped when the market is saturated with larger tomatoes. In addition, during significant portions of these two marketing seasons, regulations were in effect which restricted shipment of certain of the smaller sizes of tomatoes.

The deficiency in statistical data relating to tomato sizes was relieved in the 1970–71 marketing season. During that season, marketing order regulations limiting the sizes of tomatoes that could be shipped were imposed only briefly near the end of the season. But regulations requiring inspection of intrastate as well as interstate shipments were in effect all season. Therefore all shipments of Florida tomatoes, whether marketed within or without the State, were inspected and recorded. Further, for an extended number of weeks during the main portion of the season, the market for tomatoes was unusually strong. During that period virtually every marketable tomato was picked, shipped, and recorded. The combination of (1) mandatory inspection of all shipments, (2) intensive harvest of all marketable tomatoes, and (3) only brief imposition of size requirements resulted in a detailed picture of the size and grade composition of the 1970–71 tomato crop in Florida.

The shipment data indicate that tomato sizes vary between districts in Florida, and that, overall, tomato sizes change during the season. While this variation may result from a number of factors, the primary causes are differences in cultural practices, changing weather conditions, and the general stage of harvest. Thus tomatoes produced using a ground cultural system may be smaller than those which are staked; extended periods of temperatures which are too low or too high will reduce size; and tomato sizes tend to decrease in the late stage of harvest, whether in a particular field or for a whole district.

Despite these variations in the general size of tomatoes, in every district and all through the season, vine ripe tomatoes averaged larger than mature green tomatoes. As indicated in the following table, a significantly larger portion of vine ripes shipped were 6 x 6 size or larger compared with mature greens. Conversely, the proportion of the vine ripes in the smaller sizes was much less than was the case for mature greens. These basic relationships prevailed in all Florida producing districts, regardless of whether the district harvested its tomatoes predominantly mature green or vine ripe.

PERCENTAGE DISTRIBUTION OF SHIPMENTS OF FLORIDA TOMATOES, BY SIZE AND DISTRICT, 1970/71 SEASON

District	6 x 6 and larger [1]		6 x 7 and smaller	
	Vine ripe	Mature green	Vine ripe	Mature green
	Percent			
1	56	38	44	62
2	83	53	17	47
3	80	55	20	45
4	75	60	25	40
State	79	50	21	50

[1] A 6 x 6 size tomato must be over 2 17/32 inches and no more than 2 23/32 inches in diameter according to Florida tomato marketing order size classifications. A 6 x 7 size tomato must be over 2 9/32 inches and no more than 2 17/32 inches in diameter.

Tomato size relationships between maturities during the months of strong markets and high prices in the 1970–71 season were particularly significant. Prices for tomatoes were especially high during much of the winter and early spring of 1971 because of tight supplies due to weather damage in both Florida and Mexico. Over the 15 consecutive week period—from mid-January through April 1971—shipping point prices for 85 percent U.S. No. 1 6 x 6 size mature green tomatoes averaged 27 cents per pound which was about 60 percent above the average price of a year earlier.

This sustained period of very high prices—the strongest market in many years—resulted in virtually every salable tomato being picked and marketed. The proportions of the tomatoes shipped, by size categories, during this period were as shown in the following table. In every size category 6 x 6 and larger, the proportion of vine ripes substantially exceeded the proportion of mature greens.

FLORIDA TOMATOES, DISTRIBUTION OF SHIPMENTS BY SIZE CATEGORIES, MID-JANUARY THROUGH APRIL, 1971

Size	Vine ripe	Mature green
	Percent	*Percent*
4 x 4	[1] 1.9	0
4 x 5	3.2	0
5 x 5	8.8	.1
5 x 6	22.4	8.6
6 x 6	39.1	30.3
6 x 7	18.0	35.6
7 x 7	5.2	18.4
7 x 8	1.4	7.0

[1] Includes less than 0.1 percent of size 3 x 4 vine ripes.

Thus, not only did vine ripe tomatoes clearly average larger than mature green tomatoes, but a regulation providing for withholding mature greens $2\frac{4}{32}$ inches and smaller in size (7 x 8) and vine ripes $2\frac{9}{32}$ inches and smaller (7 x 7 and 7 x 8) would have resulted in near equality of withholding between the two maturities during that time span. About 6.6 percent of the vine ripes would have been withheld compared with 7 percent of the mature greens.

Likewise a regulation providing for withholding mature greens $2\frac{9}{32}$ inches and smaller in size (7 x 7 and 7 x 8) and vine ripes $2\frac{17}{32}$ inches and smaller (6 x 7, 7 x 7, and 7 x 8) would have provided proportionate withholding—24.6 percent vine ripes and 25.4 percent mature greens—of the two maturities in that period.

On the other hand, prices for 85 percent U.S. No. 1 6 x 6 size mature green tomatoes during November–December 1970, and May–June 1971, were about 17 cents per pound. Although vine ripe tomato sizes also averaged larger than mature green sizes during these periods, the quantities of each maturity in the smaller size classifications were relatively small, reflecting the impact of nonmarketing. This was mostly due to the economic influence of low prices although regulations prohibited the shipment of the 7 x 7 size in both maturities in late May and June.

The size relationship among mature green and vine ripe tomatoes also is apparent from a comparison of average diameters of the two maturities. For each size category of Florida tomatoes, the average diameter was weighted by shipments of that size to compute a weighted average diameter for all tomatoes of each maturity. The average diameter for all vine ripe tomatoes during the mid-January through April period was 2.764 inches which is equivalent to about $2\frac{24}{32}$ inches. This was a little more than one size larger than the 2.488 or $2\frac{15}{32}$ inches average diameter of all mature green tomatoes.

From these findings based on the record evidence, it is concluded that vine ripe tomatoes average larger than mature greens. This fact, together with the fact that all tomato growers, including mature green growers, harvest various portions of their crops at the vine ripe stage of maturity, is of substantial significance when considering the regulation of tomato shipments.

Because of the average size difference of the two maturities, a single minimum size requirement imposed on shipments of both vine ripe and mature green Florida tomatoes under normal conditions would require growers predominantly harvesting tomatoes at the mature green stage to withhold a disproportionately larger share of their crops from market as compared to those harvesting primarily at the vine ripe stage. Similarly as between growers who harvest both mature greens and vine ripes from their fields, the grower with the greater volume of vine ripes would be able to market a greater proportion of his crop. A regulation based on maturity, i.e., requiring larger minimum sizes for vine ripe tomatoes than mature green tomatoes, has the effect of achieving a proportionate sharing of withholding of both maturities.

Exceptions filed by counsel for importers of tomatoes disputed the foregoing findings and conclusions on the issue of tomato production and handling in Florida, contending instead that regulations requiring larger minimum sizes for vine ripe than mature green tomatoes were designed to result in a disproportionate withholding of imports from Mexico. Such contentions are without merit. As discussed heretofore, the record evidence shows that vine ripe tomatoes average larger than mature greens. Therefore, a regulation which accommodates this size difference is a rational and appropriate method of regulating tomato shipments.

In support of their argument with regard to the effect of regulations on imports, said counsel relied heavily on a statistical study placed in the record which was constructed at their direction by a management consulting firm and which suggested that a regulation requiring larger minimum sizes for vine ripe than mature green tomatoes would result in relatively more vine ripes being withheld. However, an underlying premise of said study is that shipments of tomatoes are synonymous with production or supply which the record clearly shows is not the case. As was found earlier herein, shipments of tomatoes are often affected by economic considerations and occasionally by regulations, both of which result in some marketable tomatoes being left in the field or dumped at the packinghouse. The basic size relationships among tomatoes of different maturity were additionally distorted in that study by mathematical techniques which involved comparisons of shipment values rather than quantities shipped. A more appropriate method of evaluating the impact of regulations upon shipments is to use the factual data available to determine the quantities which would be withheld if a specific type of regulation were to be imposed. This was the method used in this decision to analyse the effect of regulation on Florida shipments. A similar evaluation with regard to the effect on imports of a regulation requiring larger minimum sizes for vine ripe than mature green tomatoes is discussed later herein. The results show that contentions as to discrimination are not supported by the record evidence.

(2) *The effect of regulating shipments differently by maturity on Florida producers and others involved in the production and marketing of winter season tomatoes:* Tomato growers space the planting of their crop so that there will be a steady flow of their commodity to market beginning several months later. But the vagaries of weather cause erratic growth which results in distorted harvest schedules. And growers sometimes misjudge market demand, and plant too many acres. The result, as the record shows, is an occasional oversupply of tomatoes available for market, which, depresses prices to producers.

Numerous witnesses representing both the Florida and Mexican tomato industries agreed that some method was needed to cope with these periodic surplus supplies. Some thought promotional efforts would be most productive. One mentioned that the Mexican government has imposed minimum size and grade requirements on its shipments a number of times in recent seasons when prices on the U.S. market became depressed. A few had no specific suggestions. The Florida industry representatives testified to their belief that the approach used in past seasons was a proper way to balance tomato supplies with demand on the U.S. market. It is their position that requiring different minimum sizes for different maturities is an effective way to tailor the supply to demand and at the same time tend to equate the burden of withholding as between mature green and vine ripe tomatoes.

Shipments of Florida's tomatoes begin in November and continue into the following June. Distribution is nationwide and some are exported to Canada. Throughout its marketing season and in each of the receiving markets, Florida tomatoes compete in varying degrees with tomatoes from other sources. Typically, they compete with small amounts of tomatoes from other States in early November and again very late in the spring, and hothouse tomatoes are available in light volume throughout Florida's marketing season. However, the greatest competition is with tomatoes from Mexico which have sharply increased in U.S. markets in recent years. Ten years ago, during the 1960-61 season, tomato imports from Mexico accounted for 20 percent of the U.S. winter market supply. During the November 1970-June 1971 marketing season, imported Mexican tomatoes accounted for about 45 percent of the total supply marketed in the United States.

When regulations have been considered, the U.S. market supply in nearly all instances has been comprised primarily of the crop in Florida about to be harvested and shipped, and the then current imports from Mexico. Various reports concerning acreage, growing conditions and current yields provided detailed information about the potential supply in Florida, and packout data showed the size and grade of Florida's tomatoes currently being marketed.

Current information regarding Mexican supplies is restricted to data com-

piled by the National Union of Horticultural Producers, a Mexican growers association, which shows by size and maturity the quantity of tomatoes crossing the border at Nogales, Ariz. These data account for about 90 percent of the total quantity of Mexican tomatoes crossing the U.S. border destined for markets in the United States and Canada.

With the potential supply identified in total and classified by size, that supply can then be related to estimated demand to determine the extent of withholding which may be necessary to maintain a reasonable level of returns to growers. Thus, if the potential supply exceeds demand by 10 percent and tomatoes of the smaller, less valuable sizes (those which return the least to the producer) account for a 10th of the supply, restrictions can be imposed which preclude such tomatoes from shipment.

This method of regulating shipments, which has been recommended by the Florida Tomato Committee, was subjected to intensive examination during the hearing. Special attention focused on the issue of whether regulations requiring larger minimum sizes for vine ripes than mature greens discriminated against tomatoes produced in other countries, particularly Mexico.

Mexico has been exporting tomatoes to the United States since the early part of this century, but the volume of such exports was relatively small until the early 1960's when a concerted effort was made to expand the export-oriented industry on the west coast. Vast irrigation systems were developed and there was an influx of capital and production skills. With an abundant supply of low cost labor also available, Mexican producers reduced the scope of their mature green tomato operations and concentrated on developing a vine ripe tomato production system. Although most of their tomatoes are harvested at the vine ripe stage of maturity, mature green production is still common, and supplies of this maturity are exported throughout the season.

West Mexican tomato production and export sales have risen steadily and sharply. Exports to the United States during the November 1970–June 1971 marketing season, at 570 million pounds, were more than 300 percent of those a decade earlier. The increase in exports was particularly sharp during the late 1960's even though import regulations were imposed on several occasions following reactivation of the Florida Tomato Marketing Order for the 1968–69 marketing season. The 570 million pounds exported in the 1970–71 season were 63 percent above such exports during the 1967–68 season, just prior to the reactivation of marketing order regulations. One witness estimated that West Mexico's tomato crop now far exceeds output in Florida with production in the 1970–71 season of nearly a billion pounds being about 65 percent above that in Florida.

Published detailed information is not available as to the composition of the Mexican tomato crop by size and quality. Witnesses who surveyed the Mexican producing area at various times testified however that it is little different from that in Florida. Mexican tomato growers use the same varieties, produce and harvest at the same time of year, and use the same cultural methods used by growers in Florida. Grading, packing, and tomato transportation facilities in Mexico also match the most modern in the United States.

The main difference in production is that Florida harvests 80 percent of its tomatoes at the mature green stage of maturity whereas Mexico harvests most of its tomatoes as vine ripes. It has been contended that because of this difference, a regulation requiring larger minimum sizes for vine ripes than mature greens discriminated against Mexican tomatoes. However, inasmuch as vine ripe tomatoes average larger in size than mature greens, the burden of withholding under such regulations should fall evenly on the mature green and vine ripe tomatoes in both areas. On the other hand, a regulation making a single minimum size restriction applicable to both mature green and vine ripe tomatoes would result in a proportionately smaller withholding of vine ripes as compared to mature greens, regardless of the location of production.

When examining the impact of a regulation, it is appropriate to examine its effect on Florida growers and Mexican growers, and also on the importers of Mexican tomatoes.

At the producer level, the hearing evidence indicates that burden of withholding falls more heavily on Florida growers than on growers in Mexico. This is true because Florida tomatoes withheld under marketing order regulations are nearly totally restricted from any fresh market outlet. In addition to the ban on sales in U.S. markets, exports of the restricted sizes to Canada are precluded because of reciprocal regulations imposed by that country. (Whenever shipments of U.S. fruits and vegetables are limited by a marketing order regulation, Canada prohibits the import from the United States of the restricted item. However, such items produced in other countries including Mexico still are permitted to enter Canada.) The only alternative outlets for affected Florida tomatoes are in Caribbean countries, which usually look to the United States as a market for their own tomatoes rather than as a source of supply.

Mexican tomatoes which cannot be shipped to the U.S. market because of marketing order regulations can be shipped to other countries such as Canada, or to consumers in Mexico. Although the Mexican domestic market is a secondary outlet for those tomatoes produced on the West Coast of Mexico, sales to this outlet are economically valuable. According to industry witnesses, average prices received for Mexican tomatoes shipped to Mexican markets have been as low as 8 pesos and as high as 60 pesos per 60 pounds, with the market considered good at a range of 20 to 25 pesos ($1.60 to $2). The record shows that average production and harvesting costs would be covered at 8 pesos, and a price of 20 pesos would exceed average production, harvesting and packing costs by approximately 50 percent.

The marketing of West Mexican tomatoes differs from practices in Florida in that the Mexican industry segregates its total marketable supply according to market outlets. The industry selectively grades its tomatoes with the result that annually only about 60 percent of their total production is exported to the United States, Canada, or elsewhere and the remainder is available to markets in Mexico. It is the West Mexican practice of selecting the tomatoes to be exported that may cause the proportion of their exports to the U.S. market affected by an import regulation to differ from the proportionate effect of a regulation on Florida or Mexican growers, i.e., an import regulation applies only to the segment of the Mexican crop selected for export whereas the regulation is applied to the total crop in Florida. This does not necessarily mean proportionately more Mexican tomatoes would be banned from the U.S. market as compared with Florida. As will be shown later herein, the proportionate effect upon imports might be smaller.

Most of the Mexican tomatoes imported into the United States are handled by importers located in Nogales, Ariz. The importers are middlemen in the marketing chain whose main function is to facilitate the entry of the tomates and arrange for the sale of such tomatoes to U.S. buyers. For these services, they receive a commission of 7.5 to 10 percent of gross sales, although on large sales a fixed fee may be charged. Some of the importers participate in Mexican tomato production through various joint venture arrangements.

An import regulation imposed pursuant to a marketing order regulation would result in some reduction in volume from that which otherwise might be handled by importers. This would not necessarily result in reduced income to importers however.

The commission merchant, whether an importer at the border or a broker in the terminal market, who received a percentage of the sales dollars, might receive more than otherwise would prevail without a shipment regulation. Record evidence on recent research on tomato price and quantity relationships suggests that total revenue from sales of tomatoes can be increased substantially by the removal of smaller sizes from the market when total supplies are heavy. As stated in Exhibit 10 ("Supplying U.S. Markets with Fresh Winter Produce"), "—removal of 7 x 7 and 7 x 8 vine ripes from marketings would have increased the average price of the remainder of the supply (vine ripes and mature greens) by 12 percent, although only about a 2-percent increase in price would have offset the loss in revenue from not marketing these sizes."

The quantitative effect of minimum size requirements upon growers and importers can be determined using data available for the 1970–71 season. It has

already been shown that a regulation providing for withholding mature green tomatoes 2$^{2}/_{32}$ inches and smaller in size (7 x 7 and 7 x 8) and vine ripe tomatoes 2$^{17}/_{32}$ inches and smaller (6 x 7, 7 x 7, and 7 x 8) during a representative period in the 1970–71 season would have resulted in near equality of withholding between the two maturities in Florida. Such a regulation would have precluded the shipment of 25.4 percent of Florida's mature greens and 24.6 percent of Florida's vine ripes.

During this period, Mexican authorities prohibited the export of 7 x 7 and smaller size tomatoes. However, 80.2 million pounds of 6 x 7 size vine ripe tomatoes and 6.5 million pounds of 6 x 7 size mature greens moved north across the Mexican-United States border. If an import regulation had been in effect (based upon the aforementioned 2-size requirement in Florida), the shipments of mature green tomatoes would have been unaffected. The 80.2 million pounds of vine ripes, which represented 24 percent of the total crossings of this maturity, would have been excluded. However, a portion of the 80.2 million pounds were destined for sale in Canada and therefore unaffected by the U.S. import requirements. Thus, the percentage of vine ripes ultimately excluded would have been something less than 24 percent.

In summary, imposition of the type of regulation advocated by the Florida Tomato Committee during the aforementioned period would have resulted in the dumping of about 25 percent of Florida's production, and the exclusion from the U.S. market of something less than 24 percent of the tomatoes from Mexico. Any Mexican tomatoes so excluded would have been available for sale in Mexican markets, Canada, or elsewhere.

The fundamental reason for requiring different minimum sizes for different maturities is to equalize the proportionate burden of withholding among Florida producers. It was speculated that some growers in Florida might be able to minimize the impact of withholding on them by switching from harvesting their tomatoes vine ripe to harvesting them mature green. For example, this might have enabled them to pick and market 6 x 7 size tomatoes during portions of the 1968–69 and 1969–70 marketing seasons when regulations precluded shipments of 6 x 7 vine ripes but permitted shipment of mature green tomatoes of the same size.

It has been shown that when a Florida grower plants a field to tomatoes, he has a basic intent as to the maturity of the tomatoes he will harvest from that field. Further, differences in harvesting and packing methods restrict the freedom of such a grower to vary the maturity of tomatoes to be harvested from a field. To a limited degree, however, it is possible to switch from picking tomatoes vine ripe to picking them mature green. Whether this occurs depends upon the producer's evaluation of potential total economic returns.

When he changes from picking vine ripe to picking mature green, the producer sacrifices volume—size and weight—inasmuch as mature green tomatoes average smaller than vine ripes and weigh less. In some instances, such a sacrifice may be the best alternative. For example, if freezing weather is imminent, a vine ripe producer might harvest all the tomatoes possible (whether vine ripe or mature green) before everything is lost. Also, a prospective labor shortage which would preclude continuing harvest later in the season also might induce a vine ripe producer to finish off his field by picking it mature green.

Witnesses testified that a marketing order minimum size regulation would not in itself be an incentive to switch maturities because such a change would increase the likelihood of economic loss. For by switching from vine ripe to mature green, the producer would be reducing the volume that could be harvested from a field and concentrating his sales of that smaller volume of less valuable sizes of tomatoes on a depressed market (which would be the impetus for marketing order regulations in the first place). The alternative would be to continue to pick tomatoes vine ripe, harvest a larger total volume of the more valuable larger sizes, and hopefully benefit from higher prices as the market improves due to the effect of the marketing order regulations.

Another option reviewed would be to continue the vine ripe operation but also pick all 6 x 7 size tomatoes mature green. Representatives of both the Florida and Mexican industries agreed that this would be impractical. It would be necessary to pick the whole crop green or else employ more people to pick the 6 x 7 greens. And since the 6x7 mature greens would be at various stages of maturity (i.e. from 1 to as many as 21 days away from changing color and becoming vine ripe), some would have grown much larger before turning color. Therefore, picking 6 x 7 tomatoes at the mature green stage would not be practicable to offset any loss occasioned by the prohibition of shipment of 6 x 7 vine ripe tomatoes because of the loss in potential size, weight and value of the tomatoes so harvested.

A third consideration relating to "switching" was whether because of differences in the time and place of inspection, a Florida vine ripe grower who changed to picking his tomatoes mature green would have an advantage over his counterpart in Mexico who also changed to picking tomatoes mature green.

Florida tomatoes generally are inspected and certified as to grade, size, or maturity on the same day they are harvested although during the peak of the season some may not be so handled and inspected until the following day. Mexican tomatoes exported are inspected by U.S. inspectors at the United States-Mexican border, usually at the request of the importers who use the certification as to the composition of the shipment for trading purposes. When import regulations are in effect, the inspection is necessary to determine whether the shipment complies with such regulations and is therefore permitted to enter the United States.

It was contended that because it takes about 18 hours to transport Mexican tomatoes 600 miles from the main growing area to the U.S. border, it would be impractical to switch to picking tomatoes mature green since such tomatoes might advance to the vine ripe stage of maturity by the time they reached the border and were inspected. This contention suggests that under import regulations such as imposed in past years (permitting entry of 6 x 7 mature greens but precluding entry of 6 x 7 vine ripes) a 6 x 7-size Mexican tomato picked at the mature green stage could therefore not be marketed in the United States. The suggested advantage to Florida growers is that a 6 x 7-size Florida tomato picked mature green probably could be marketed when such regulations were in effect since inspection and certification would take place relatively soon after harvest and before the tomato reached the breaker stage.

Record evidence indicates that such an inequity would not occur. It is a common practice to cool Mexican tomatoes after harvest to remove field heat and retard ripening. Also, packinghouse and transportation facilities—which includes refrigeration equipment—are the same or better than such facilities in the United States. Thus, it is physically practicable to harvest and export Mexican tomatoes to the United States at the mature green stage of maturity. As has been shown, in recent years, Mexican mature green tomatoes regularly have moved north across the Mexican-United States border in substantial volume throughout each marketing season even during periods of regulation. And for many years prior to the development of the vine ripe industry in the early 1960's, almost all Mexican tomatoes exported were mature green in maturity.

Even though some Mexican tomatoes are harvested and exported at the mature green stage of maturity, it is unlikely that there would be an incentive for producers generally to switch from picking their tomatoes as vine ripes to picking them mature green because of an import regulation imposed under 608e–1 of the Act. For in Mexico as in Florida, a producer making such a change would be sacrificing size and weight inasmuch as mature green tomatoes average smaller than vine ripes. It has been shown that picking 6 x 7 tomatoes at the mature green stage would not be practicable to offset any loss occasioned by the prohibition of export of 6 x 7 vine ripe tomatoes because of the loss in potential size, weight, and value of the tomatoes so harvested.

Evidence regarding the effect of shipment regulations such as advocated by the Florida tomato industry upon consumer interests is generally inconclusive. It was suggested that the overall nutritional value of tomatoes marketed would be reduced by imposing regulations such

as those issued in past seasons because proportionately more vine ripe tomatoes than mature green tomatoes would be withheld from shipment. Further, it was assumed that vine ripe tomatoes are more nutritional than mature greens. As shown earlier herein, the type of regulation recommended by the Florida Tomato Committee does not result in disproportionate withholding between the two maturities. With regard to the relative nutritional values, there is no evidence of substantial differences between vine ripe and mature green tomatoes.

Several publications relating to various aspects of tomato quality were offered in evidence by counsel for Mexican tomato importers but not accepted by the Hearing Examiner on the grounds that they contained either outdated or immaterial evidence. These exhibits—Nos. 102, 104, and 105, together with exhibit 103 which was received in evidence—dealt with research performed generally in the 1920's or earlier on various nutritional characteristics of tomatoes of different maturities such as vitamins A and C values, starch content, acidity, and sugar/acid ratios. They showed for example that mature green tomatoes have a higher starch content and are more acid than those which are vine ripened. Further, some researchers said that acidity decreases as a tomato ripens while others found that the pattern is one of decreasing acidity through the pink stage and an increase thereafter. The ratio of sugar to acid is much lower in mature green tomatoes when fully ripened compared with those that fully ripen on the vine. Pink or fully ripe tomatoes scored much higher on Vitamin A values compared with mature green fruit. On the other hand, the difference between such pinks, ripes, and mature greens was relatively minor with regard to vitamin C, which is the nutrient of greatest importance in tomatoes. Although these analyses concern quality attributes of tomatoes in general, their applicability to the present matter is dubious since the tomatoes were of a different variety than those presently used and the fully ripe tomatoes used in most of the research were much more advanced in maturity than the commercially grown "vine ripe" tomato presently marketed during the winter. As noted earlier herein, the winter "vine ripe" tomatoes are picked at a very early stage of maturity.

They are primarily green in color with a tinge of yellow, pink, or red color on 10 percent or less of the surface. Therefore, the Hearing Examiner's rulings relating to these submissions are upheld.

Some witness and exceptors questioned the desirability of using ethylene gas in the handling of tomatoes. However, as has been shown, witnesses with many years of experience in marketing tomatoes believe that the use of additional ethylene, a gas emitted by the tomato itself, to hasten ripening results in a superior product in the retail store. Therefore, it is used by handlers in many producing areas and terminal markets throughout the United States.

Consumers preferences for tomatoes have been examined on several occasions in the past by various researchers. Among the observations noted in the record were that consumers were aware of grade and size differences when they are making comparisons among large tomatoes such as 5 x 6's and 6 x 6's. Thus, a U.S. No. 1 5 x 6 size tomato is definitely superior to all other smaller and lower graded tomatoes. However, grade and size differences among smaller tomatoes such as 7 x 8, 7 x 7, and 6 x 7 are not significant to consumers.

Witnesses who produce or sell primarily vine ripe tomatoes said such tomatoes are the best, and that they probably could distinguish between vine ripe and mature green tomatoes placed before them even when both had been fully ripened. Florida producers and handlers testified that their largest chain-store buyers preferred mature greens. These witnesses also believed that it is virtually impossible for consumers to detect any material difference in appearance, texture, or taste between fully ripened mature green and vine ripe tomatoes.

The most recent survey of buyers' attitudes was that performed by the Department in its analysis of competitive aspects of fresh vegetable marketing, "Supplying U.S. Markets with Fresh Winter Produce," which is exhibit 10 in the record. It was found that wholesalers in both Chicago and New York City ranked tomatoes from Florida (mostly harvested mature green) in first place while those from Mexico (mostly harvested vine ripe) tied with California for second. Middlemen customers of wholesalers in Chicago ranked California ahead of Florida, Texas, and Mexico in that order, but Florida held first place among wholesalers' customers in New York City.

During the hearing witnesses expressed their belief that restrictions on shipments of the smaller sizes of tomatoes were responsible for high retail prices for this commodity in recent seasons. Several exceptors reiterated this belief and also claimed that such regulations were contrary to Government programs intended to curb inflation. However, the record shows that short supplies due to weather damage in both Florida and Mexico were largely responsible for high prices for tomatoes during much of the 1970–71 marketing season. Regulations affecting shipments were imposed only briefly during late May and the first half of June 1971. Supplies were similarly reduced by weather influences for many weeks during the 1969–70 marketing season, and the shipment of smaller sizes of tomatoes was precluded significantly by marketing order regulation only at the end of the season, beginning in late April 1970.

Shipment regulations which might be issued pursuant to the Florida tomato marketing order are intended to result in more orderly market conditions and thereby tend to increase prices received by farmers to parity, as expressly directed by Congress. Obviously any price increase might tend to be counter to a policy to curb inflation. However, this alleged conflict between any particular anti-inflation policy and tomato shipment regulations is irrelevant to a proceeding such as this which was initiated to determine whether the authority to require different minimum sizes for different maturities was appropriate.

Although periods of high retail prices have occurred in recent years, prices received by Florida producers have not been unduly enhanced over those which prevailed during seasons prior to reactivation of the marketing order. Using parity relationships as a measure, such prices have in fact been somewhat less favorable to Florida producers than in earlier years. The average return to Florida producers for tomatoes was 99 percent of parity in 1968–69, 85 percent in 1969–70, and 87 percent in 1970–71. During the 5-year period 1963–64 through 1967–68, prices received by Florida producers averaged 91 percent of parity.

Exceptors also claimed in effect that tomato shipment regulations based upon size conflicted with congressional policy directives in the Agricultural Marketing Agreement Act which require the Secretary to consider the interests of consumers. In several instances—sections 602 (2), 602(3), and 602(4)—the act does refer to interests of consumers. The primary purpose of the act, however, is to protect the purchasing powers of U.S. farmers and the value of agricultural assets. The whole objective is to raise the price of particular agricultural commodities including tomatoes to levels prescribed by the act, and to establish orderly marketing. Clearly, as to conpress congressional policy enunciated in terests so as to result in a strong agricultural economy which is in the national public interest.

At the hearing a witness for the importers of Mexican tomatoes suggested that U.S. foreign policy and trade policy with regard to Mexico must be considered by the Secretary when promulgating and issuing regulations on tomatoes and, specifically, that the Secretary should avoid restrictions which might conflict with Article XI of the General Agreement on Tariffs and Trade (GATT) which provides with certain exceptions, for the general elimination of quantitative restrictions on imports.

GATT is a multilateral agreement of the United States and other countries relating to trade between the signatory countries and is concerned primarily with nondiscriminatory treatment, duties, and quantitative restrictions on commodities traded between such countries. GATT is not an enactment of Congress but rather an executive agreement entered into by the President under authority of section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351). GATT is binding solely upon the countries that are signatories to the agreement. Mexico is not a signatory to GATT and, therefore the terms,

conditions, prohibitions, and principles of GATT do not apply to that country.

It was, however, argued by a witness at the hearing that the provisions of Article XI of GATT have been made applicable to imports into the United States from Mexico by virtue of the Most-Favored-Nation Principle contained in section 251 of the Trade Expansion Act of 1962 (19 U.S.C. 1881). This section provides that "any duty or other import restriction or duty-free treatment" proclaimed in carrying out trade agreements under section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), or title II of the Trade Expansion Act of 1962 (19 U.S.C. 1821–1888) shall apply to products of all foreign countries, with certain exceptions. The provisions of Article XI of GATT, stating the principles to be followed with respect to the elimination of quantitative restrictions on imports, are not "any duty or other import restriction or duty-free treatment" referred to in section 251. Furthermore, neither GATT nor the provisions of Article XI thereof have ever been proclaimed by the President of the United States in carrying out a trade agreement. Therefore, the provisions of Article XI have not been made applicable by virtue of the Most-Favored-Nation Principle to the importation of articles from Mexico into the United States. In their exceptions, counsel for the importers take the position that the provisions of Article XI of GATT were in fact proclaimed by Presidential Proclamation 2761A of December 16, 1947 (12 F.R. 8863). However, this Proclamation did not proclaim the provisions of GATT but instead merely proclaimed "modifications of existing duties and other import restrictions and such continuance of existing customs or excise treatment of articles imported into the United States of America as are specified or provided for" in GATT.

Mexico, not being a signatory to GATT, would derive benefit therefrom under the Most-Favored-Nation Principle only to the extent that the tariff concessions granted by the United States under GATT are extended to the products of other countries. While duties on the importation of tomatoes have been proclaimed in carrying out trade agreements under the provisions of law referred to in the Most-Favored-Nation Principle, such duties are unrelated to the grade, size, quality, or maturity restrictions which are made applicable to imports of tomatoes by operation of section 608e–1. Further, the grade, size, quality, or maturity restrictions under section 608e–1 are not made operative by Presidential proclamation but rather are statutorily mandated by Congress by requiring the Secretary to issue the restrictions whenever such restrictions are applied to domestic shipments under a marketing order regulation.

Accordingly, Article XI of GATT is not applicable to the section 608e–1 import restrictions applicable to imports from Mexico. In any event, even if Article XI of GATT were applicable to imports of tomatoes from Mexico, the section 608e–1 restrictions would be authorized under the exceptions provided in paragraph 2 of Article XI.

In a similar vein, an exception filed claimed that regulations requiring larger minimum sizes for vine ripe than mature green tomatoes conflicted with antitrust laws and government policies related thereto because such regulations had a disproportionate effect on imports and, when imposed, reduced competition for Florida producers. However, as shown earlier, such regulations are not discriminatory; the burden of withholding tends to fall evenly on the vine ripe and mature green tomatoes regardless of where grown.

Contentions were also made that regulations imposed pursuant to section 608e–1 of the act should recognize any difference between tomatoes imported from Mexico and those shipped from Florida. Under section 608e–1, the Secretary is required to establish for imported commodities "equivalent or comparable" grade, size, quality, and maturity restrictions whenever he finds that the application of the restrictions under a marketing order to the imported commodity is not practical because of variations in characteristics between the domestic and imported commodity. For fresh tomatoes, there is no such variation between tomatoes produced in the United States and those imported, including tomatoes imported from Mexico. The record of this proceeding shows that growers in both Florida and Mexico use the same varieties and the same cultural practices. In both countries they pick some tomatoes at the vine ripe stage of maturity and others are picked mature green. They are sized, graded, packed, and marketed in essentially the same manner, and are sold in direct competition in U.S. markets. It would be impossible to distinguish between tomatoes from the two sources unless they were labeled.

It was contended during the hearing and in exceptions filed that tomato shipment regulations requiring larger minimum sizes for vine ripe tomatoes than mature green tomatoes were inappropriate and discriminatory, and therefore the authority to so regulate should be deleted from the Florida tomato marketing order and preference be given instead to regulating shipments by a combination of grade and a single minimum size or by grade alone. However, as the record evidence shows, the method used in recent years—i.e., to require different minimum sizes for different maturities—is appropriate and is nondiscriminatory to others involved in the marketing and consumption of tomatoes.

Since the marketing order presently contains authority to regulate by maturity, including different size limitations for mature green tomatoes than for those of a greater maturity, it is concluded that such authority should be retained in the Florida tomato marketing order and that no amendatory action is necessary.

(3) Whether § 969.51 *Recommendations for regulation* should be amended to specify the factors to be considered in developing and recommending regulations:

The proposal in the notice of hearing to amend § 966.51 of the marketing order was as follows:

(a) The committee may recommend regulations to the Secretary pursuant to § 966.52 after consideration of the factors specified in paragraph (b) of this section.

(b) In making its recommendations the committee shall give due consideration to the following factors:

(1) Market prices for tomatoes by maturity, grades, and sizes for production area tomatoes and tomatoes from competing areas;

(2) Estimated supplies within the production area and from competing sources, by maturity, grades, and sizes;

(3) Estimated effect on shipments, assuming alternative maturity, grade, or size requirements, or combinations thereof; and

(4) Any other relevant factors which may influence tomato marketing or prices.

(c) Each recommendation for regulations as are provided for in § 966.52, together with the committee's reasons and supporting data or other material for such recommendation, shall be promptly submitted to the Secretary.

The record shows that the factors and considerations as proposed are virtually the same as those already being used by the Florida Tomato Committee. As has been discussed, a shipment regulation is intended to correct a depressed price situation or to prevent a depressed situation from occurring when it appears that the supply of tomatoes in relation to market demand will be excessive. There was general agreement among witnesses that, barring substantial crop changes because of weather, supply, and market conditions can be estimated accurately for approximately 2 weeks and reliable projections are possible for up to 4 weeks. Projections beyond 4 weeks tend to be less reliable. There also was general agreement that a shipment regulation should be issued promptly if it is to accomplish its intended purpose.

In developing a regulation for recommendation to the Secretary, the committee examines all the pertinent data and information relating to the current and prospective supply and price situation. Voluminous data and information concerning tomato production and marketing are published periodically by the Department and by the various State Departments of Agriculture in conjunction with the Department. Since these are official publications, this information is readily available to all interested persons. The typical information in these publications includes tomato prices on a daily basis; supply and market trends on a daily and weekly basis, and summaries of the supply and marketing conditions in past seasons. Detailed information on Florida's production indicates the acreage planted in tomatoes and the time at which such plantings were made; the acres already harvested, those

still in production and the number of times picked; and the effects of weather on quality and size of the tomatoes.

Additional data compiled weekly by the committee show shipments by district from Florida by grade, size, and maturity. Information regarding Mexican tomatoes is restricted to data on the size and maturity of tomato shipments crossing the border into the United States at Nogales. These represent about 90 percent of the border crossings and are furnished the committee by the Mexican National Union of Horticultural Producers. The Florida shipment and Mexican export data are regularly exchanged between the two producer groups.

Proposed regulations are developed during committee meetings open to all interested persons. The record shows that representatives of importers of Mexican tomatoes attended virtually all committee meetings in the last two marketing seasons and were accorded the opportunity to participate therein. A representative of the Secretary also attends. In addition to having the above mentioned material available at such meetings, the committee receives the observations of its fieldman and individual growers and handlers to further aid in evaluating the supply. To the extent possible the committee also obtains such observations from growers, importers, and handlers of Mexican tomatoes on the current and prospective status of the Mexican tomato crop.

Utilizing the above information, the committee then develops a proposed regulation designed to withhold a sufficient supply from market to correct the prospective supply-demand imbalance. This recommended regulation together with supporting information explaining the economic justification is then submitted to the Secretary for action thereon. The committee noted that the Secretary apparently considered this a practical method of operating, and did not object to the noticed proposal.

Several witnesses of the West Mexico Vegetable Distributors' Association endorsed the concept in the proposal of factual analysis of current and prospective supply-price relationships for tomatoes and regulations needed to correct any imbalance. However, these witnesses in commenting on the proposal, emphasized considering the probable producer price resulting from the regulation and its relationship to parity and also the effect of such regulations on the various segments of the industry such as repackers, wholesalers, and retailers in the various areas of the country as well as its effect on importers of tomatoes and on consumers. Section 602 of the Act requires the Secretary to take into account the relationship of producer prices with parity. As to the other matters, they are inherent in the factors and considerations discussed elsewhere herein relating to developing, recommending, and issuing a regulation.

A witness for the importers contended that the Florida Tomato Committee had acted in the past to develop regulations which would discriminate against tomato imports from Mexico, and that inadequate or erroneous information occasionally had been provided the Secretary in support of its recommendations. Therefore, it was proposed that an opportunity for a hearing be provided so they could confront and contest the data and views presented to the Secretary by the committee and others.

It was further proposed that there be provision for maintaining a public file with the Hearing Clerk in Washington, which would contain all the data and information submitted by the committee to the Secretary relating to the proposed regulation as well as submissions of any other interested persons. This material would also be subject to cross-examination during the proposed hearings. Exceptors reiterated virtually all of the foregoing proposals, comments, and contentions.

The importer witness additionally recommended that all segments of society throughout the country who were interested in or affected by the tomato regulation be afforded the opportunity to participate in such a hearing. Such segments of society were identified as tomato growers, packinghouse operators, repackers, brokers, importers, commission merchants, wholesalers, chain store operators, consumers and any others interested in the regulation. However, the witness recognized that such a hearing must be held and completed within a relatively short time in order for the proposed regulation to accomplish its intended purpose. In this regard, it was suggested that the Secretary omit publishing a notice of the hearing in the FEDERAL REGISTER but instead notify all such interested segments of society of the hearing by telephone or telegram.

He proposed that it was necessary or desirable for the Secretary to set the hearing within a matter of 3 or 4 days after the committee submitted its recommendation for regulation to the Secretary, and indicated that this would allow sufficient time for interested persons throughout the country to prepare for their presentation at the hearing and to travel from all parts of the country. The importer witness further recommended that the Secretary should arbitrarily restrict or cut short cross-examination of any witness in the event it appeared that the hearing would run more than 1 or 2 days. It was further recommended that if there was extreme urgency for the regulation, the hearing procedure could be omitted.

The importer witness then recommended that if a tomato shipment regulation is issued, the Secretary provide a fully detailed analysis of the basis for the regulation based upon all the data, views, and arguments submitted to him whether presented written or at the hearing. In his opinion, this analysis could be done in 1 or 2 days after the hearing.

The requirements of the Administrative Procedure Act encompass virtually all of the procedures recommended by the witness for the importers. After the committee's recommendation for regulation has been submitted to the Secretary, the procedure under which a regulation is issued is governed by section 553 of the Administrative Procedure Act (5 U.S.C. 553) which provides:

> (b) General notice of proposed rule making shall be published in the FEDERAL REGISTER, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include:
>
> (1) a statement of the time, place, and nature of public rule making proceedings;
>
> (2) reference to the legal authority under which the rule is proposed; and
>
> (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.
>
> Except when notice or hearing is required by statute, this subsection does not apply—
>
> (A) * * *
>
> (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.
>
> (c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose.
>
> (d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except:
>
> (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
>
> (2) interpretative rules and statements of policy; or
>
> (3) as otherwise provided by the agency for good cause found and published with the rule.
>
> (e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

The Secretary in applying these procedures to marketing order regulations issues a notice of the proposed regulation and provides an opportunity for the public to submit written data, views, and arguments on the proposed regulation. As to those who would be directly regulated by the proposed regulation such as Florida growers, shippers and importers of Mexican tomatoes, such persons, as noted heretofore, have access to essentially the same information utilized by the Florida Tomato Committee in developing and recommending a regulation to the Secretary. Further, all persons who will be affected by the regulation are in a position to evaluate the effect of the proposed regulation on them by virtue of the terms of the regulation itself. Thus, all interested persons can furnish to the Secretary for his analysis any information or argument supporting their position as to the need for and type of regulation to be made effective. This of course is what is contemplated by the Administrative Procedure Act i.e., that the Secretary be pro-

vided and take into account the data, views, and arguments submitted by all interested persons in arriving at his determination.

In issuing a regulation the Secretary is required to provide a statement in support of the basis and purpose of the regulation. Here again, this comports with the recommendation that the Secretary provide a detailed analysis of the data supporting the regulation.

Several exceptions recommended that the decision on this proceeding include a mandate for action by the Secretary within a specified period on recommendations for regulation made by the Florida Tomato Committee. The volatile nature of tomato prices may justify the need for prompt imposition of shipment limitations if such regulations are to be effective in achieving orderly marketing conditions. However, the Administrative Procedure Act has taken into account the fact that there may be instances where it is "impracticable, unnecessary or contrary to the public interest" to go through the notice and public rule making procedure. Under conditions where the issuance or modification of a regulation required prompt and expedited action thereon, the Secretary has issued such regulations without the notice and rulemaking procedure.

The Administrative Procedure Act requires that the Secretary give any interested person the right to petition for the "issuance, amendment, or repeal" of the regulation. Thus, in the event an interested person disagrees with the regulation issued by the Secretary or the reasons supporting the regulation, whether issued after rule making or under the expedited procedure, he has the further opportunity to request that such regulations be reviewed by the Secretary.

Further, the Administrative Procedure Act provides all interested persons the opportunity to participate in rule making "through the submission of written data, views, or arguments with or without opportunity for oral presentation." Accordingly, in the event there are circumstances in which a hearing is appropriate, the Administrative Procedure Act provides that option to the Secretary. However, it should be noted that if novel or crucial issues again develop which would warrant a hearing they would be more appropriately handled through the hearing procedure provided by section 608c of the act for consideration of an amendment of the marketing order itself.

The record shows that the factors and considerations in the noticed proposal are virtually the same as those already being used by the committee in developing regulations. Further, such factors and considerations are essentially encompassed by §§ 966.50 and 966.51 relating to establishing a marketing policy and recommending regulations which provide as follows:

§ 966.50 *Marketing policy.* Prior to or at the same time as initial recommendations are made pursuant to § 966.51, the committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in shipping tomatoes from the production area during the ensuing season. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new or modified marketing policy because of changes in the demand and supply situation with respect to tomatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Market prices of tomatoes, including prices by grades, sizes, and quality in different packs, and such prices by foreign competing areas;

(b) Supply of tomatoes, by grade, size and quality in the production area, and in other production areas, including foreign competing production areas;

(c) Trend and level of consumer income;

(d) Marketing conditions affecting tomato prices; and

(e) Other relevant factors.

§ 966.51 *Recommendations for regulations.* The committee, upon complying with the requirements of § 966.50, may recommend regulations to the Secretary whenever it finds that such regulations, as are provided for in this subpart, will tend to effectuate the declared policies of the act.

It is contemplated that the committee and the Secretary will continue to utilize such factors and considerations in developing, recommending, and issuing regulations. Accordingly, it is unnecessary to amend the marketing order as proposed in the notice of hearing.

Rulings on proposed findings and conclusions. The Hearing Examiner fixed December 23, 1971, as the time within which interested parties were to file briefs with respect to the matters involved in the hearing. Briefs were filed by the following: Counsel for the West Mexican Vegetable Distributors Association of Nogales, Ariz.; counsel for the Florida Tomato industry; and counsel on behalf of various consumer organizations.

In their brief, counsel for the West Mexican Distributors Association objected to the Hearing Examiner's ruling excluding from evidence certain testimony and exhibits offered by them at the hearing.

The direct testimony of Dr. Schnittker was offered in the form of a written statement and marked exhibit 101 for identification and offered in evidence. Portions of such testimony-exhibit were not received in evidence by the Examiner. A review of the record reveals that Dr. Schnittker was the last witness of the hearing and that one of the basic reasons for excluding such material was that the testimony-exhibit characterized, analyzed, and offered conclusions on the testimony and evidence which, in most part, made up the hearing record up to the time of his appearance as a witness and was in the form of a brief which appropriately should be filed after the close of the hearing. In addition to his general ruling that the testimony-exhibit was a brief rather than testimony, the Hearing Examiner further ruled on the excluded portions of the testimony-exhibit paragraph by paragraph and indicated additional bases for excluding specific portions of the material. Based on a review of the record and the bases of the rulings of the Hearing Examiner on the excluded portions of the testimony-exhibit, such rulings are sustained.

Certain affidavits submitted by the importer organization were not received by the Hearing Examiner. These were marked exhibits 111, 112, 113, 114, 115, and 116 for identification. These affidavits were excluded on the basis that there was no opportunity for cross-examination of the affiant on the matters contained therein.

Objection was made to the Hearing Examiner's ruling excluding affidavits marked for identification as exhibits 107, 108, 109, and 110 on the grounds that these affidavits had been submitted and received in the Holm v. Hardin court proceeding and, therefore, should also be received in this proceeding. The Hearing Examiner ruled out these affidavits because there was no opportunity for cross-examination by interested persons in this proceeding. Further, with regard to exhibit 107—the affidavit of Richard M. Fairbanks, an attorney for Holm—such affidavit did not contain facts of his independent knowledge but was merely his analysis of various documents, records and depositions involved in the court proceeding. As to his rulings on the affidavits, the Examiner also noted that the rules of practice had been amended specifically to eliminate the authority to receive affidavits in these proceedings. Objection was also made of the failure of the Hearing Examiner to receive in evidence documents marked for identification as exhibits 81 and 82. These were the depositions of Floyd F. Hedlund and Harold Willis, which were again part of the record of the Holm v. Hardin case. These depositions were also excluded on the ground that the deponents were not available for cross-examination by interested parties at this proceeding. Based on a review of the record and the rulings of the Hearing Examiner on each of the matters involved, such rulings are sustained.

Counsel for the West Mexican Vegetable Distributors Association made the further contention that the Hearing Examiner was predisposed in favor of the Florida growers. A review of the record however reveals that the Hearing Examiner conducted the hearing in a fair and impartial manner and that each of the persons appearing at the hearing had a full and complete opportunity to participate therein in accordance with the applicable rules of practice governing such proceedings.

Every point in the briefs was carefully considered along with record evidence in making the findings and reaching the conclusions herein set forth. To the extent that the findings and conclusions proposed in the briefs are inconsistent with findings and conclusions contained herein, requests to make such findings or to reach such conclusions are denied on

the basis of facts found and stated in connection with this decision.

Rulings on exceptions:

Several exceptions filed related to collateral issues associated with this proceeding. One exceptor complained that the decision was based upon insufficient evidence with regard to the financial condition of the tomato industry as it relates to a need for market order regulations, the effects of ethylene on tomatoes, and the nutritional characteristics of vine ripe and mature green tomatoes. He contended that the Department should make further investigation of the aforesaid matters before finding that regulations requiring different minimum sizes for different maturities are an appropriate method of regulating tomato shipments. However, the law requires that a decision be based strictly upon evidence adduced at a hearing. The hearing in this proceeding lasted 5 weeks, testimony amounted to 4,238 pages, and 116 exhibits were identified or received in evidence. The record shows that each of the aforementioned issues was explored in depth.

Consequently, this exception must be denied.

The recommended decision inadvertently omitted reference to a letter to the Department from the Commissioner of the Department of Consumer Affairs for the city of New York which, by ruling of the Hearing Examiner, was entered as a brief in this proceeding. Every point in this brief has been considered and to the extent that the suggested findings and conclusions therein are inconsistent with the findings and conclusions herein, the request to make such findings and conclusions is denied for the reasons previously stated in the decision.

Certain exceptors contended that there should have been a ruling on each of the proposed findings and conclusions submitted by interested parties. However, the recommended decision contains a detailed discussion relating to the matters raised in these submissions. Accordingly, each of the proposed findings and conclusions was ruled upon either directly or by the context of the discussion in the recommended decision.

Counsel for tomato importers took exception to the rulings in the recommended decision on proposed findings and conclusions, and noted the lack of a ruling on their request for official notice to be taken of certain FEDERAL REGISTER citations related to the Florida tomato marketing order. For the reasons stated, the rulings in the recommended decision are upheld. However, notice is hereby taken of the relevant FEDERAL REGISTER citations.

In arriving at the findings and conclusions, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Summary findings and conclusions. Upon the basis of the evidence introduced at such hearing, the record thereof, and for the reasons stated, it is found and concluded that: The authority presently contained in section 966.52 of the Florida tomato marketing order which authorizes the regulation of shipments differently by maturities should be retained. Further, the procedures now provided for in the order as to Committee recommendations for regulations are proper and adequate; no significant purpose would be served by amending the order to further delineate these criteria. Accordingly, it is concluded that no amendatory action is necessary as a result of this proceeding, and this proceeding is hereby terminated.

Signed at Washington, D.C., on August 24, 1972.

RICHARD E. LYNG,
Acting Secretary.

[FR Doc.72-14640 Filed 8-28-72;8:48 am]

[7 CFR Part 981]

ALMONDS GROWN IN CALIFORNIA

Proposed Expenses of Control Board and Rate of Assessment for 1972–73 Crop Year

Notice is hereby given of a proposal regarding expenses of the Almond Control Board for the 1972–73 crop year and rate of assessment for that crop year, pursuant to §§ 981.80 and 981.81 of the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981; 37 F.R. 3983), regulating the handling of almonds grown in California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The Control Board has unanimously recommended for the 1972–73 crop year beginning July 1, 1972, a budget of expenses in the total amount of $2,075,000 and an assessment rate of 1.160 cent per pound of almonds (kernel weight basis). Expenses in that amount and the assessment rate are specified in the proposal hereinafter set forth.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, to be received not later than September 5, 1972. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is as follows:

§ 981.322 Expenses of the Control Board and rate of assessment for the 1972–73 crop year.

(a) *Expenses.* Expenses in the amount of $2,075,000 are reasonable and likely to be incurred by the Control Board during the crop year beginning July 1, 1972, for its maintenance and functioning and for such purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for said crop year, payable by each handler in accordance with § 981.81, less any amount credited pursuant to § 981.41 but not to exceed 1 cent per pound of almonds (kernel weight basis), is fixed at 1.160 cent per pound of almonds (kernel weight basis).

Dated: August 23, 1972.

FRED DUNN,
Acting Director,
Fruit and Vegetable Division.

[FR Doc.72-14638 Filed 8-28-72;8:48 am]

[7 CFR Part 1108]

[Docket No. AO 243–A24]

MILK IN CENTRAL ARKANSAS MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Central Arkansas marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Little Rock, Ark., May 2, 1972, pursuant to notices thereof issued April 10, 1972 (37 F.R. 7341), and April 21, 1972 (37 F.R. 7901).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on July 20, 1972, filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

The material issue on the record of the hearing relates to location adjustments.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

The location adjustment applicable at a plant should be based on the plant's distance from the nearest of the State Capitol in Little Rock, the County Courthouse at Arkadelphia, or the County Courthouse at Forrest City, Ark.

The present location adjustment provisions reduce the Class I and uniform prices at any plant 60 miles or more from Little Rock or Arkadelphia by 1.5 cents for each 10 miles or fraction thereof that such plant is located from the nearer of the two cities.

A proposal to add Memphis, Tenn., as a basing point for determining location adjustments was submitted jointly by six handlers who have substantial Class

I sales in the marketing area. They proposed further that at plants located within a contiguous area in northeastern Arkansas and southeastern Missouri, the location adjustment be fixed at 9 cents rather than be determined by the plant's distance from an appropriate basing point. Such area would include the Arkansas counties of Clay, Craighead, Greene, Lawrence, Mississippi, Poinsett, and Randolph; and the Missouri counties of Dunklin and Pemsicot.

One of the six proponent handlers operates plants pooled under each of the Central Arkansas and Memphis orders. Of the remaining five, two operate pool plants under the Central Arkansas order and the other three operate plants pooled under the Memphis order.

There is only one Central Arkansas regulated plant in the nine-county area for which the 9-cent location adjustment was proposed. That plant, at Paragould in Greene County, is 152 miles from Little Rock. Milk received from producers at that plant currently is subject to a 24-cent location adjustment.

Milk from the Paragould plant is distributed in 25 counties in eastern Arkansas, in 14 counties in southeastern Missouri, and in Shelby County, Tenn. Its distribution in Arkansas includes sales in 13 of the 21 counties in the Central Arkansas marketing area. The Paragould plant's Class I sales in the Central Arkansas marketing area are about 25 percent of its total Class I distribution. Its Class I sales in the Memphis marketing area are approximately half the amount of its sales in the Central Arkansas marketing area.

The handlers who proposed the location adjustment changes are the principal competitors of the Paragould handler in the Central Arkansas marketing area and in much of the remainder of its sales area. They testified that the location adjustment at Paragould results in a cost advantage to the Paragould handler in the purchase of milk with adverse effect on their competitive position in the resale market.

The justification offered by proponents for a 9-cent location adjustment at Paragould is that it would provide a better alignment of Class I prices under the Central Arkansas, Memphis, Paducah, and St. Louis-Ozarks orders. They contend that the Class I prices under the four orders should result in approximately the same Class I price, f.o.b. Paragould, under each of the orders. They stated that this is desirable because of the overlapping of the sales areas of Paducah and St. Louis-Ozarks handlers with Central Arkansas and Memphis handlers in various northeastern Arkansas and southeastern Missouri counties.

There is relatively little Class I distribution in the Central Arkansas marketing area from plants regulated by the St. Louis-Ozarks and Paducah orders. A St. Louis-Ozarks handler supplies his chain of stores in the Central Arkansas marketing area from his plant in St. Louis (353 miles from Little Rock). Such sales represent no more than 5 percent of the total Class I distribution in any county in the Central Arkansas marketing area.

If there is any distribution in the Central Arkansas marketing area from Paducah order regulated plants, it is negligible.

The only sales in the St. Louis-Ozarks and Paducah marketing areas by a Central Arkansas regulated handler are from the Paragould plant. About 9 percent of that plant's Class I distribution is in the Paducah marketing area, and about 5 percent in the St. Louis-Ozarks marketing area.

While handler proponents suggested at the hearing that the Class I differentials in one or more of the four orders might be changed to obtain a better price alignment, the Class I price, or any other provision of an order, may be revised, of course, only on the basis of the record evidence presented at a public hearing at which the applicable provisions of that particular order are open for consideration and adequately supported for revision. However, in view of the findings set forth below, it is not necessary in this case to open the provisions of other orders to ameliorate the problem presented.

The Paragould handler, on the other hand, opposed making any change in the location adjustment provisions. He pointed out that the proposal to provide a 9-cent location adjustment (instead of the present 24 cents) at his plant would increase his Class I price by 15 cents.

He contended, however, that if the 24-cent location adjustment at Paragould were changed as a result of the hearing, the new rate should not be less than 19 cents. This, he indicated, is the amount by which the cost of delivering an alternative source of supply from the major milk production area in the country, the production area for the Chicago market, to Little Rock exceeds the cost for such milk delivered to Paragould. Little Rock is 124 miles farther from Chicago than Paragould. Computed at the order's location adjustment rate of 1.5 cents for each 10 miles or fraction thereof, the additional hauling cost for the 124 miles would be 19.5 cents.

The Paragould plant became subject to the Central Arkansas order when the marketing area was enlarged effective December 1, 1963. It has been a Central Arkansas order pool plant continuously since then. At that time, Arkadelphia was added to Little Rock as a basing point for applying location adjustments. Arkadelphia is 67 miles southwest of Little Rock. No provision was made then for adding a basing point east of Little Rock.

The basing points for computing location adjustments should be established in relation to the major consumption center in the marketing area. Little Rock is a principal city in the Central Arkansas marketing area. Of the 884,000 population (1970 census) in the marketing area, 287,000 reside in the county (Pulaski) in which Little Rock is located.

The earlier addition of Arkadelphia as a basing point gave consideration to Arkadelphia as a secondary consumption center and provided a basis for determining location adjustments at plants generally west and south of Little Rock.

It is appropriate to add Forrest City as a basing point, as provided for in this decision, for determining location adjustments at plants generally east and northeast of Little Rock. Forrest City is 93 miles east of Little Rock on the main east-west highway in Arkansas. It is also 44 miles from Memphis. It is the principal city between Little Rock and Memphis on Interstate Highway 40 and is centrally located in the eastern Arkansas counties, which together now form a significant area of consumption.

Paragould is 87 miles north of Forrest City. Hence, the location adjustment at Paragould resulting from this decision would be 13.5 cents. Since this is the same differential as would apply at the Paragould plant if it were regulated under the Memphis order, the minimum Class I price for Paragould milk will be on a par with Memphis Class I milk, and with the Class I milk of eastern Arkansas handlers under the Central Arkansas order. Such a price relationship will promote orderly marketing.

The proposal to add Memphis as a basing point is denied. As indicated above, location pricing under a given order is related to the problems of providing supplies for outlets in the marketing area regulated by that order and of achieving uniform prices for regulated handlers similarly circumstanced. No purpose would be served by designating Memphis, a city outside the marketing area, in addition to, or in lieu of, Forrest City as a basing point under the Central Arkansas order since we are here concerned with the milk supply of the Central Arkansas market.

Moreover, it would not be appropriate to determine the location adjustment for Paragould or any other plant east or northeast of Little Rock primarily on the relative distances of Paragould and Little Rock from Chicago. While the Chicago milksheld is an important possible alternative source of supply for such plants, there are other supplies much closer to such locations in Arkansas. There is also supply competition with the Memphis, Paducha, and St. Louis-Ozarks markets. These factors outweigh the establishment of location pricing relative to Chicago.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied

for the reasons previously stated in this decision.

GENERAL FINDINGS

The findings and deteminations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an order amending the order regulating the handling of milk in the Central Arkansas marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

DETERMINATION OF PRODUCER APPROVAL AND REPRESENTATIVE PERIOD

July 1972 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Central Arkansas marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on: August 22, 1972.

RICHARD E. LYNG,
Acting Secretary.

Order[1] Amending the Order, Regulating the Handling of Milk in the Central Arkansas Marketing Area.

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central Arkansas marketing area.

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Central Arkansas marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on July 20, 1972, and published in the FEDERAL REGISTER on July 25, 1972 (37 F.R. 14812) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein:

In § 1108.53, paragraph (a) is revised as follows:

§ 1108.53 Location adjustments to handlers.

(a) For milk received from producers at a pool plant located more than 60 miles, by shortest highway distance as measured by the market administrator, from the nearest of the County Courthouse in Arkadelphia, Ark., the County Courthouse in Forrest City, Ark., or the State Capitol in Little Rock, Ark., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section and for other source milk to which a location adjustment is applicable, the price computed pursuant to § 1108.51(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof between such plant and such nearest point; and

* * * * *

[FR Doc.72—14554 Filed 8-28-72;8:52 am]

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

[7 CFR Part 1133]

MILK IN INLAND EMPIRE MARKETING AREA

Notice of Proposed Suspension of Certain Provisions of the Order

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of certain provisions of the order regulating the handling of milk in the Inland Empire marketing area is being considered for the months of September, October, and November 1972.

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file the same with the Hearing Clerk, Room 112–A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the FEDERAL REGISTER. All documents filed should be in quadruplicate.

All written submissions made pursuant to this notice will be made available for

public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The provisions proposed to be suspended are as follows:

1. In § 1133.12(c)(1), "and 20 percent in the months of September through November", and

2. In § 1133.12(c)(5), "Producers eligible for diversion in the months of September, October, or November must in addition have their milk received at a pool plant on 6 days (3 days in the case of every-other-day delivery) during the current month; and".

The proposed suspension would remove the requirement that each individual producer must deliver 6 days' production to a pool plant to qualify his milk for diversion during the months of September through November of 1972. In addition, the proposed action would permit a cooperative to divert producer milk from a pool plant to a nonpool plant during September–November 1972 without limit if the milk of such producer had been received at a pool plant prior to diversion from such plant.

A cooperative association, representing a substantial number of producers on the market, requested the suspension. The request was made to facilitate handling an increasing quantity of the market's reserve milk supply. Without the suspension, the cooperative would have to make uneconomic movements of milk to qualify such milk for pooling.

Signed at Washington, D.C., on August 24, 1972.

JOHN C. BLUM,
Deputy Administrator, Regulatory Programs.

[FR Doc.72-14680 Filed 8-28-72;8:51 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-GL-38]

FEDERAL AIRWAYS

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter V-100 between Rockford, Ill., and Northbrook, Ill., to overlie Woodstock Intersection, and V-9 southwest of Milwaukee, Wis., to realign this airway approximately 4 miles to the west of its present location.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, IL 60018. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The primary clearance limit northwest of Chicago for traffic inbound to O'Hare Airport is the Lakewood Intersection. The proximity of Lakewood to O'Hare and the resultant constriction of vectoring space renders it operationally advisable to relocate the primary clearance limit from Lakewood to the Woodstock Intersection (junction of V-97 and V-429). Therefore, it is proposed to realign V-100 from Rockford, IL., via the intersection of the Rockford 079°T (076°M) and the Northbrook 292°T (290°M) radials (over Woodstock Intersection) to Northbrook. Relocation of the primary clearance limit from Lakewood to Woodstock would result in insufficent lateral spacing between aircraft holding at Woodstock and en route aircraft on V-9 Airway. Therefore, it is also proposed to realign V-9 in part from Milwaukee to the intersection of Milwaukee 205°T (203°M) and Rockford 078°T (076°M) radials.

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 August 22, 1972.

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

[FR Doc.72-14628 Filed 8-28-72;8:48 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 69-19; Notice 2]

LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

Proposed Identification Code for Motor Vehicle Lighting Equipment

The purpose of this notice is to propose an amendment to 49 CFR 571.108a, Motor Vehicle Safety Standard No. 108a, *Lamps, Reflective Devices, and Associated Equipment*, that would specify an identification code for motor vehicle lighting equipment.

The national Highway Traffic Safety Administration published an advance notice of proposed rule making on December 31, 1969 (Docket No. 69-19; Notice 1, 34 F.R. 20436) asking, in part, for comments on marking and identification of lighting equipment. Possible requirements suggested in the notice were: (a) Name of manufacturer and manufacturer's model or part number, (b) date of manufacture, (c) the function for which the equipment is designed, and (d) the mounting position of the equipment. These requirements would be applicable both to lighting equipment on new vehicles, and to replacement lighting equipment. In addition, Standard No. 108 was amended by notice published on January 12, 1972 (37 F.R. 445), to allow manufacturers to certify lighting equipment items by placing the symbol "DOT" directly on the item, if they choose to do so.

The NHTSA believes that Standard No. 108a should be amended effective January 1, 1974, to specify a comprehensive marking and certification code. Use of such a code should insure that conforming equipment items are used in new motor vehicles, aid vehicle owners in choice of proper replacement items, and assist vehicle or equipment manufacturers in proper identification of defective items in the event of a notification campaign. Under the proposal a new paragraph S4.8 would be adopted, applicable to each lamp, reflective device, and item of associated equipment to which Standard No. 108a applies, or that is supplied as original equipment on a vehicle to which the standard is applicable.

The marking and certification code would consist of four elements. The first would be the symbol DOT, constituting a certification of compliance. Use of this symbol is currently an optional means of certifying compliance with Standard No. 108. The second element would be one or more letters identifying the function for which the device is designed. However, if more than one lamp or reflector is used to perform a single function the identifying letter would be preceded by a number within a circle indicating the number of items needed to meet the performance requirements of Standard No. 108 for that function. If a device is designed to perform more than one function, it would be marked in alphabetical sequence to identify each function. If more than one reflex reflector or separately lighted compartment is needed within a single device to meet the performance requirements for a function, the identifying letter would be preceded by a number within a circle indicating the number of items needed to perform that function. This proposed requirement is based upon a similar specification in SAE Recommended Practice J759b "Lighting Identification Code", September 1971, through turn signal and hazard warning signal flashers would be identified by the letters "TSF" and "HSWF" respectively, rather than by reference to SAE standards.

The third element of the code would be two digits representing a calendar year. As a general rule, the digits would indicate the last two digits of the calendar year in which the item of equipment was manufactured. However, if revised requirements of Standard No. 108a applicable to the item are effective within the

calendar year of manufacture, or the next succeeding year, the digits of the next succeeding year would be used if the item is manufactured to comply with the revised requirements. The following is an example of how this identification could be used were it presently in effect. Revised requirements for turn signal and hazard warning signal flashers are effective January 1, 1973, but optional compliance is permitted before that date. A manufacturer who elects to meet the new requirements for flashers manufactured in 1972 would use the digits "73" to indicate that he is meeting the requirements of Standard No. 108a rather than of Standard No. 108. Assuming no change in flasher requirements, the digits "73" would continue to be used until replaced by "74" on January 1, 1974.

Finally, the code would contain the manufacturer's name or identifying symbol and model designation or part number. This identification is also similar to that specified in J759b. The final rule would specify a means by which the manufacturer would submit his symbol to NHTSA for identification purposes and so that duplication would be avoided. The code would be located on the lens or housing, visible with the item mounted in its normal position on the vehicle. However, headlamps and turn signal and hazard warning signal switches and flashers may have the code located where it can be observed by removing other parts. The proposed location is based upon corresponding SAE provisions, as is the proposal on size of markings. Identification numerals and letters would be at least ⅛ inch high but raised molded markings at least 0.075 inch high could be used on lenses having an area less than 2 square inches. Turn signal and hazard warning signal flashers could use markings at least 0.075 inch high that are permanently stamped, etched, or lettered in indelible ink. If the identification code is adopted, this would not prohibit SAE-type identification of lighting equipment not included in Standard No. 108, such as fog lamps.

In consideration of the foregoing, it is proposed that 49 CFR 571.108a, Motor Vehicle Safety Standard No. 108a, be revised by adding a new paragraph S4.8 to read as follows:

§ 571.108a Standard No. 108a; lamps, reflective devices, and associated equipment. (Reflecting amendments effective Jan. 1, 1973.)

* * * * *

S4.8 *Marking and certification.* Each lamp, reflective device, and item of associated equipment manufactured on or after January 1, 1974, to which this standard applies, or that is supplied as original equipment on a vehicle to which this standard applies, shall be permanently marked with an identification code in accordance with S4.8.1 through S4.8.3, to identify its manufacturer and the functions for which it is designed.

S4.8.1 The identification code shall consist of a series of letters and numbers in the following sequence:

(a) The symbol DOT, constituting a certification that the item conforms to all applicable Federal motor vehicle safety standards.

(b) One or more letters identifying the function for which the item is designed. If a function at a single location (e.g. left tail lamp) is divided between two or more lamps other than headlamps, or reflex reflectors, the identifying letter shall be preceded by a number within a circle indicating the number of items needed to conform to the performance requirements for that function. If a device is designed to perform more than one function, it shall be marked in alphabetical sequence to identify each function. If more than one reflex reflector or separately lighted compartment is needed within a single device to meet the performance requirements for a function, the identifying letter shall be preceded by a number within a circle indicating the number of items needed to perform that function. The identifying letters shall be:

A reflex reflectors.
D turn signal lamps, Class B.
H sealed beam headlamp (on housing).
I turn signal lamps, Class A.
TSF turn signal flasher.
HWSF hazard warning signal flasher.
L license plate lamps.
M motorcycle headlamps.
P parking lamps.
P2 clearance, side marker and identification lamps.
PC combination clearance and side marker lamps.
Q turn signal operating unit, Class A.
QB turn signal operating unit, Class B.
QC vehicular hazard warning signal operating unit.
R backup lamps.
S stop lamps.
T tail lamps.
W2 school bus warning lamps.

(c) The last two digits of the calendar year in which the item of equipment was manufactured, except that if revised requirements applicable to the item are effective within the calendar year, or become effective within the next succeeding calendar year, and an item is manufactured to comply with the revised requirements, the last two digits of the next succeeding calendar year shall be used.

(d) The manufacturer's name or identifying symbol, and model designation or part number.

Example: DOT A (2)I (2)S (3)T 74
XYZ 400

This identifies a device combining stop lamps, turn signal lamps, tail lamps, and reflectors, manufactured in 1974, or in 1973 to meet requirements that will become effective in 1974. The manufacturer is XYZ Corporation, and the model number of the device is Model 400. The device is a three compartment or three lamp arrangement with two of the items needed to optically meet the stop and turn signal requirements and all three needed to meet the tail lamp requirement. If each item fully complied with the tail lamp requirements, the (3) preceding the letter T would be omitted.

Example: DOT (2)T 74
XYZ 400

This identifies a tail lamp used in a rear lighting arrangement in which two tail lamps or compartments on each side of the vertical centerline must be used to meet the tail lamp requirements.

S4.8.2 The identfication code shall be located on the lens or housing and shall be visible with the item mounted in its normal position on the vehicle, except that headlamps, turn signal operating unit and flashers, and hazard warning signal operating unit and flashers may have the code located where it can be observed by removing other parts.

S4.8.3. Identification numerals and letters shall be at least ⅛ inch high, except that raised molded markings at least 0.075 inch high may be used on lenses having an area less than 2 square inches, and turn signal and hazard warning signal flashers may use markings at least 0.075 inch high that are permanently stamped, etched, or lettered in indelible ink.

* * * * *

Interested persons are invited to submit written data, views, or arguments on this proposal. Comments should refer to the docket number and notice number, and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted. All comments received before close of business on October 31, 1972, will be considered, and will be available in the docket at the above address for examination both before and after the closing date. To the extent possible, comments filed after the above date will also be considered by the Administration. However, the rule making action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The Administration will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

Proposed effective date: January 1, 1974.

This notice is issued under the authority of sections 103, 114, and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1403, 1407) and the delegations of authority at 49 CFR 1.51 and 49 CFR 501.8.

Issued on August 17, 1972.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.72-14648 Filed 8-28-72;8:49 am]

[49 CFR Parts 571, 575]

[Docket No. 72-8; Notice 2]

MOTOR VEHICLE TEST CONDITIONS
Extension of Time for Comments

A notice proposing a change in the wind velocity test condition appearing in certain of the Federal motor vehicle safety standards and other regulations, was published on July 19, 1972 (37 F.R.

14319). The closing date for comments on the proposal was August 25, 1972.

Motor Vehicle Manufacturer's Association (MVMA) has petitioned for an extension of the closing date in order to allow its member companies "to more adequately evaluate the revised test procedures, and allow time to provide a meaningful, comprehensive and constructive response." The NHTSA grants MVMA's petition.

In consideration of the foregoing, the closing date for comments is hereby extended to September 25, 1972.

This notice is issued under the authority of sections 105 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407), and the delegation of authority at 49 CFR 1.51 and 49 CFR 501.8.

Issued on August 24, 1972.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Program.

[FR Doc. 72—14755 Filed 8-25-72;12:21 pm]

ENVIRONMENTAL PROTECTION AGENCY

[41 CFR Part 15–55]

SERVICE CONTRACTS

Notice of Proposed Rule Making

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to the Federal Property and Administrative Services Act of 1949, as amended, the Environmental Protection Agency is considering an amendment to 41 CFR Chapter 15 by adding a new Part 15–55, Service Contracts.

Interested parties may submit, in triplicate, written comments concerning the proposed amendment, to the Contracts Management Division, AMAC, Environmental Protection Agency, Washington, D.C. 20460. Communications received within 45 days from publication of this notice in the FEDERAL REGISTER will be considered prior to adoption of the final regulation. A copy of each communication received will be placed on file for public inspection in the Contracts Management Division, Room 3220–D, Waterside Mall, Washington, D.C. 20460.

Dated: August 23, 1972.

THOMAS E. CARROLL,
Acting Administrator.

PART 15–55—SERVICE CONTRACTS

Sec.

AUTHORITY: The provisions of this Part 15–55, issued under 40 U.S.C. 486(c), sec. 205(c), 63 Stat. 377, as amended.

§ 15–55.000 Scope of part.

(a) One way of classifying Government contracts is by the nature of what is purchased. The two major categories are contracts for "property" ("supply contracts") and contracts for "services." This part states EPA policy regarding contracts for services, or "service contracts."

(b) This part does not apply to appointments under Civil Service employment procedures, nor to the obtaining of services through the award of grants. This part is not intended to implement the Service Contract Act of 1965, as amended.

Subpart 15–55.1—Service Contracts Generally

§ 15–55.101 Definition of service contract.

(a) A service contract is one which requires the contractor to furnish to the Government the time and effort of his personnel, rather than (or in addition to) an end product. A contract may call for the furnishing of both supplies and services; in such a case, this subpart applies to the extent that the furnishing of services is involved.

(b) The category of service contracts includes, but is not limited to, contracts for the procurement of the following:

(1) Architect and engineering services relating to construction;
(2) Communications services;
(3) Data processing;
(4) Engineering and technical services;
(5) Expert and consultant services;
(6) Housekeeping services;
(7) Installation of equipment obtained under separate contract;
(8) Maintenance of personal and real property;
(9) Management consultant services;
(10) Medical services;
(11) Modernization or modification of supplies, systems, and equipment;
(12) Operation of Government-owned equipment, facilities, and systems;
(13) Photographic, printing, and publication services;
(14) Research and development;
(15) Stenographic services;
(16) Test services;
(17) Training and education;
(18) Transportation and related services;
(19) Warehousing;
(20) Construction.

§ 15–55.102 Definition of personal service contracts and nonpersonal service contracts.

(a) Service contracts may be classified as "personal" or "nonpersonal." These two terms refer to the relationship between those employees of the contractor who perform the services and the Government agency for which the services are performed.

(b) Contracts for personal services are those contracts where, either under the terms of the contract or the method of its performance and administration, the Government has the right to (or does in fact) supervise or direct the method by which contract work is performed, subsequent to the date of execution of the contract by means other than change orders or other contract modifications.

(c) All contracts for services, other than contracts for personal services as defined in paragraph (b) of this section, are contracts for nonpersonal services.

§ 15–55.103 Policy.

(a) (1) Applicable statutes and Government-wide regulations, and EPA Order 3110. __, provide that requirements for personal services generally shall be satisfied only by appointing individuals through personnel procedures. These statutes and directives shall not be circumvented by means of contracting for personal services.

(2) On the other hand, contracts for nonpersonal services, properly written and administered, represent an approved resource for the accomplishment of EPA programs and functions.

(b) No contracting officer or other Environmental Protection Agency (EPA) official or employee shall enter into a contract for, or authorize, the furnishing of personal services to the Government by contract.

(c) Paragraphs (a) (1) and (b) of this section do not apply to contracts for services of bona fide experts and consultants, which contracts are governed by the provisions of Subpart 15–55.2 of this part.

§ 15–55.104 Determinations and documentation of contract file.

(a) Unless the procurement is exempted under paragraph (b) of this section, the contracting officer shall, prior to issuance of any invitation for bids, request for procurement, or award, determine in writing that the services to be procured are nonpersonal in nature, stating the reasons for his determination. This determination shall be maintained in the contract file in the form of a separate memorandum or an appropriate statement in the negotiation memorandum.

(b) The requirements of paragraph (a) of this section do not apply to the following types of procurements:

(1) Contracts for construction and contracts for architect-engineering services for preparations of designs, plans, drawings, and specifications, awarded pursuant to Part 1–18 of this title;

(2) Simplified small purchases under Subpart 1–3.6 of this title;

(3) Contracts for the furnishing of services of bona fide experts or consultants.

(c) The contracting officer shall, prior to award, obtain the advice of the Office of General Counsel regarding any procurement of services the authority for which appears questionable.

§ 15–55.105 Competition in service contracting.

The provisions of statutes and regulations requiring competition are fully applicable to service contracts.

§ 15–55.106 Contracts with detective agencies prohibited.

5 U.S.C. 3108 prohibits contracts with detective agencies or their employees, regardless of the nature of services to be performed.

Subpart 15–55.2—Contracts for the Services of Experts and Consultants

§ 15–55.201 Scope of subpart.

This subpart sets forth EPA policy and procedure for procurement by contract of services of experts or consultants. The EPA policy and procedure regarding the obtaining of such services by appointment under personnel procedures are set f orth in EPA Order 3110.

§ 15–55.202 Definitions.

(a) "Consultant" means a person who serves as an advisor to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. He gives his views or opinions on problems or questions presented him by the agency, but he neither performs nor supervises performance of operating functions. Ordinarily, he is expert in the field in which he advises, but he need not be a specialist. His expertise may consist of a high order or broad administrative, professional, or technical experience, indicating that his ability and knowledge make his advice distinctly valuable to the agency.

(b) "Consultant position" means a position requiring the performance of purely advisory or consultant services, not including performance of operating functions.

(c) "Expert" means a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. His knowledge and mastery of the principles, practices, problems, methods, and techniques of his field of activity or of a specialized area in the field are clearly superior to those usually possessed by ordinarily competent persons in that activity. His attainment is such that he usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity.

(d) "Expert position" means a position that, for satisfactory performance, requires the services of an expert in the particular field, and with duties that cannot be performed satisfactorily by someone not an expert in that field.

(e) "Intermittent employment" means occasional or irregular employment on programs, projects, problems, or phases thereof requiring intermittent service. (When an intermittently employed expert or consultant works more than one-half of full-time employment i.e., he is paid for all or any part of a day for more than 130 days in a service year, his employment automatically ceases to be intermittent and becomes temporary and may not continue beyond the service year in which the limit was exceeded (a "service year is a 12-month period beginning on the date of the first appointment on the assignment)."

(f) "Temporary employment" means employment for 1 year or less on programs, projects, problems, or phases thereof, requiring temporary service for 1 year or less.

(g) "Personal services" means services furnished to the Government with regard to which, under the terms of the pertinent contract or employment agreement, the Government has the right to (or does in fact) supervise or direct the method of performance, and such supervision or direction is to be exercised (or is in fact exercised) subsequent to the date of execution of the contract or employment agreement by means other than contract change orders or other contract modifications.

(h) "Nonpersonal services" means all services furnished to the Government which are not personal services.

§ 15–55.203 Authority.

(a) The procurement of nonpersonal services of experts or consultants, either by a prime contract or a subcontract, does not require special statutory authority.

(b) EPA is authorized by 5 U.S.C. 3109, as implemented by annual appropriations acts, to obtain by contract or by appointment, without regard to certain otherwise applicable Civil Service requirements, personal services of experts or consultants to fill expert positions or consultant positions, on a temporary or intermittent employment basis.

§ 15–55.204 Policy.

(a) Where the services of experts or consultants are to be nonpersonal in nature, such services will be obtained by contract, utilizing normal procurement procedures and complying with this part.

(b) Where the services of experts or consultants are to be personal in nature, such services will be obtained by appointment pursuant to EPA personnel procedures whenever possible. Contracts for such personal services will not be used for the purpose of avoidance of agency manpower ceilings. Contracts for such personal services may be executed only under the procedures set forth in § 15–55.205. (Although individuals, firms or other organizations can contract to provide services to the Government, only individuals can be appointed under personnel procedures. Strictly speaking, only an individual can render personel services to the Government; even when a firm is under contract to provide personal services, it can really only provide individuals who will actually perform the services.)

§ 15–55.205 Procedure.

(a) An activity requesting the procurement by contract of the services of experts or consultants shall—

(1) Obtain and furnish to the contracting officer a determination by the Director, Personnel Management Division (or his designee) that the services in question will be nonpersonal in nature; or

(2) Obtain and furnish to the contracting officer a determination by the Director, Personnel Management Division (or his designee) that the services in question will be personal in nature, and furnish to the contracting officer satisfactory evidence that the personal services of a particular individual are required and that circumstances beyond the control of such individual would prevent his accepting an appointment under personnel procedures if such an appointment were tendered.

(b) No contract for the services of experts or consultants shall be awarded unless paragraph (a) of this section has been complied with.

§ 15–55.206 Limitations and conditions.

(a) Contracts for services of experts and consultants shall not be used—

(1) To perform work which can be done as well by regular EPA employees.

(2) To perform duties of a full-time continuing position.

(3) To avoid competitive civil service employment procedures.

(4) To avoid statutory pay limitations.

(5) To avoid agency manpower ceilings.

(b) The personal services of experts or consultants shall be furnished only on a temporary or intermittent basis, as defined in EPA Order 3110.

(c) The requirements of EPA Order 3110, which concern confidential statements of employment and financial interests, dual employment, and dual compensation, and political activity restrictions shall be complied with with regard to each individual who performs personal services.

(d) Compensation of individuals who contract with the Government to furnish personal expert or consultant services shall not exceed the compensation that would be allowable were such individuals appointed pursuant to EPA personnel procedures. See EPA Order 3110.___.

(e) Contracts with nonprofit or profitmaking organizations under which experts or consultants will furnish personal services to the Government shall provide that compensation (salary) paid to any individuals (including subcontractor personnel, etc.) who actually furnish personal services to the Government shall not exceed the per diem equivalent of the highest rate fixed by the Classification Act pay schedule for Grade GS–18. This limitation prevails regardless of

the type of contract used and regardless of whether the contract provides for such compensation as a direct charge, an indirect charge, or part of a composite rate.

§ 15-55.207 Management consultant services.

(a) EPA Order 1900.2 prescribes that all proposals to obtain management consultant services by contract must be approved by the Assistant Administrator for Planning and Management. Management consultant services is defined in EPA Order 1900.2.

(b) Any request for procurement of management consultant services not accompanied by the approval of the Assistant Administrator for Planning and Management will be returned to the initiator for compliance with EPA Order 1900.2.

[FR Doc.72-14599 Filed 8-28-72;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19539]

TELEVISION BROADCAST STATIONS

Table of Assignments, Grand Junction, Colo.; Extension of Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.606(b), *Table of Assignments*, television broadcast stations (Grand Junction, Colo.), Docket No. 19539, RM-1852.

1. The notice of proposed rule making in the above-entitled proceeding was adopted on July 6, 1972, and published in the FEDERAL REGISTER on July 15, 1972 (35 F.R. 14001). The dates specified for filing of comments and reply comments are August 22, 1972, and September 1, 1972, respectively.

2. On August 18, 1972, Woodland Broadcasting Co. (Woodland), proponent in this proceeding, filed a petition for an extension of time to file comments and reply comments. Woodland states that an opposition was filed in response to its petition for rule making but the opposition was not served on the petitioner. Woodland further states that in order for its counsel to familiarize itself fully with the facts of this case in light of the pressures of other business and the summertime vacation period, the additional time is neecessary.

3. We are of the view that the requested extension of time is warranted and would serve the public interest. *Accordingly, it is ordered,* That the time for filing comments in the above-docketed proceeding is extended to and including September 21, 1972, and to and including October 2, 1972, for the filing of reply comments.

4. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules and regulations.

Adopted: August 22, 1972.

Released: August 23, 1972.

[SEAL] HAROLD L. KASSENS,
Acting Chief, Broadcast Bureau.

[FR Doc.72-14670 Filed 8-28-72;8:51 am]

[47 CFR Part 97]

[Docket No. 19572; FCC 72-732]

RADIO CONTROL OF REMOTE MODEL CRAFT AND VEHICLES

Notice of Proposed Rule Making

In the matter of amendment of Part 97 of the rules insofar as they pertain to the radio control of remote model craft and vehicles, Docket No. 19572, RM-1951.

1. Notice is hereby given in the above-captioned matter.

2. The Commission has under consideration a petition (RM-1951) filed by the Academy of Model Aeronautics (AMA). Petitioner requests relief in the rules governing the Amateur Radio Service through amendments insofar as they pertain to the operation of model aircraft by radio remote control, and states a desire for comparability between the rules governing like-type operation in the Amateur Radio Service and the Citizens Radio Service.

3. Section 97.89 of the rules provides for the radio control of remote objects in the Amateur Radio Service. Additionally, § 97.61 provides frequency bands and emissions suitable for radio control operation. Petitioner points out how compliance with other rules applicable to all amateur radio stations can be awkward for operating model aircraft by radio remote control. These include logging requirements, station identification requirements, and notification to the Commission when in portable operation for extended periods. A concern is also expressed that transmitted control signals could be interpreted as codes or ciphers prohibited by § 97.117.

4. The Citizens Radio Service provides for the control of remote objects on six specific frequencies within the 26.995-27.255 MHz frequency segment; for the radio remote control of any model used for hobby purposes on three frequencies between 72.16-72.96 MHz; and for the radio remote control of aircraft models only, on four frequencies between 72.08-75.64 MHz. Licenses granted in the Citizens Radio Service do not authorize certain privileges related to this matter that are available to amateurs. For instance, amateurs may design, construct, and adjust their transmitters, and type acceptance by the Commission is not required as some classes of equipment in the Citizens Radio Service.

5. Petitioner reports "* * * those aircraft modelers who also hold licenses in the Amateur Radio Service operate model aircraft on frequencies in the 50 MHz and higher bands. AMA encourages the use of the amateur bands by qualified members because it relieves congestion on the heavily used Class C frequencies. However, model aircraft radio control operations on the amateur frequencies are more burdensome to the modelers than in the Citizens Radio Service because, unlike the latter service, the amateur rules are not tailored to accommodate such operations."

6. We are sympathetic to the petitioner's requests, and we propose amendments incorporating special provisions into the rules exempting certain low power amateur radio stations used only for transmitting signals for the control of remote models of all types. Station identification, logging, and portable operation would be simplified. An amateur transmitter operating under these special provisions would be required to bear a suitable identifying marker.

7. Petitioner requests relief for operation with transmitters having a final amplifier input power level of less than 3 watts. Section 95.43 of the Citizens Radio Service Rules and Regulations permit a maximum of 5 watts average input power or 4 watts average output power for similar operation. However, the transmitter power levels actually required in practice should be considerably lower since, presumably, the remote model must be in sight of the control operator at all times. For this reason we are proposing a maximum mean power output of 1 watt for transmitters qualifying for operation under these special provisions.

8. Petitioner also requests the special provisions equally apply to transmissions used for telemetering purposes, but does not furnish details and rationale for this request. Interested parties having information and suggestions in this area are requested to submit same to the Commission for consideration.

9. The specific rule changes proposed herein are set forth below. Authority for these proposed amendments is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

10. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before September 29, 1972, and reply comments on or before October 10, 1972. In accordance with the provisions of § 1.419(b) of the Commission's rules, an original and 14 copies of all statements, briefs, and comments filed shall be furnished the Commission. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken. The Commission may also take into account other relevant information before it, in addition to specific comments invited by this notice. Responses will be available for public inspection during regular business hours in the Commission's

Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

Adopted: August 16, 1972.

Released: August 18, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE,
Secretary.

Part 97 of the Commission's rules is amended as follows:

1. Section 97.99 and undesignated headnote "Special Provisions" are added to read as follows:

[1] Commissioners H. Rex Lee, Reid, and Wiley absent; Commissioner Hooks abstaining from voting.

SPECIAL PROVISIONS

§ 97.99 Stations used only for radio control of remote model crafts and vehicles.

An amateur transmitter when used for the purpose of transmitting radio signals intended only for the control of a remote model craft or vehicle and having mean output power not exceeding one watt may be operated under the special provisions of this section provided an executed Transmitter Identification Card (FCC Form 452–C) or a plate made of a durable substance indicating the station call sign and licensee's name and address is affixed to the transmitter.

(a) Station identification is not required for transmissions directed only to a remote model craft or vehicle.

(b) Transmissions containing only control signals directed only to a remote model craft or vehicle are not considered to be codes or ciphers in the context of the meaning of § 97.117.

(c) Notice of operation away from authorized location is not required where the portable or mobile operation consists entirely of transmissions directed only to a remote model craft or vehicle.

(d) Station logs need not indicate the times of commencing and terminating each transmission or series of transmissions.

2. In § 97.101, the headnote is amended to read as follows:

§ 97.101 Mobile stations aboard ships or aircraft.

* * * * *

[FR Doc.72–14671 Filed 8–28–72;8:51 am]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Aberdeen Area Office Redelegation Order 2, Amdt. 19]

ALL SUPERINTENDENTS, ABERDEEN AREA

Delegation of Authority on Rights of Way

JULY 18, 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 Director in 10 BIAM 3.

The Aberdeen Area Office Redelegation Order 2 published on page 8756 of the December 21, 1954, issue of the FEDERAL REGISTER (19 F.R. 8756), as amended, is further amended by adding a new section 2.17 under the heading "Functions Relating to Lands and Minerals" in Part 2—Authority of Superintendents and School Superintendents. The new section gives all Superintendents in the Aberdeen Area all of the authority set forth in 25 CFR Part 161, Rights of Way over Indian Lands.

Section 2.17 is added to read as follows:

SEC. 2.17 *Rights of Way.* The Superintendents, Aberdeen Area, may exercise all of the authority set forth in 25 CFR Part 161, Rights of Way over Indian Lands; provided the instrument granting the right of way or easement is on the form approved by the Field Solicitor, and all approved conveyance instruments be submitted to the Aberdeen Area Office for recordation.

DON Y. JENSEN,
Acting Area Director.

Approved: August 18, 1972.

ERNEST STEVENS,
Acting Commissioner of Indian Affairs.

[FR Doc.72-14645 Filed 8-28-72;8:49 am]

Bureau of Land Management

[Serial No. Colorado 16749]

COLORADO

Designation of Needle Rock Natural Area

AUGUST 22, 1972.

Pursuant to the Authority in 43 CFR Subpart 2070 and the authorization from the Director dated July 27, 1972, I hereby designate the public lands in the following described area as the Needle Rock Natural Area:

SIXTH PRINCIPAL MERIDIAN

T. 15 S., R. 91 W., Sec. 27, NW¼NE¼, NE¼ NW¼.

The area described aggregates 80 acres of public lands.

The Needle Rock Natural Area is a "Class IV—outstanding natural area" under the Bureau of Outdoor Recreation system of classification.

DALE R. ANDRUS,
State Director.

[FR Doc.72-14604 Filed 8-28-72;8:46 am]

[ES 10937]

[Survey Group 156]

FLORIDA

Notice of Filing of Plat of Survey

1. The plat of survey of Pavilion and Mormon Keys, accepted June 30, 1972, will be officially filed in the Eastern States Land Office, Silver Spring, Md., effective at 10 a.m. on September 27, 1972.

2. In terms of this plat, Pavilion and Mormon Keys are described as follows:

TALLAHASSEE MERIDIAN

T. 55 S., R. 30 E.,
Sec. 6, lot 1;
Sec. 7, lots 1, 2, and 3;
Sec. 14, lot 1;
Sec. 23, lot 1.

The area described aggregates 48.60 acres.

3. The acceptance and official filing of this plat will affirm only that the surveyed areas are public lands in existence when Florida entered the Union in 1845; that the surveyed areas are not swamp and overflowed lands within the meaning of the Swampland Act of September 28, 1850, 9 Stat. 519; and that the areas designated as tidelands are not public lands of the United States.

4. These islands are in the Gulf of Mexico and lie within the exterior boundaries of the Everglades National Park.

5. If protests against the survey, as shown on this plat, are received prior to the date of its official filing, the filing will be stayed pending consideration of the protests. The plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

6. The plat will be placed in the open files at the Eastern States Land Office, and will be available to the public as a matter of information only. A copy of the plat, that also includes the field notes, may be obtained from that office upon payment of $1.50.

7. A person who wishes to protest against the survey must file a notice that he wishes to protest with the Manager, Eastern States Land Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, MD 20910, prior to the proposed official filing date given above. A statement of reasons for the protest may be filed with the notice of protest to the Manager or with the Director, Bureau of Land Management, Washington, D.C. 20240, within 30 days after the proposed official filing date.

DORIS A. KOIVULA,
Manager.

AUGUST 23, 1972.

[FR Doc.72-14644 Filed 8-28-72;8:49 am]

[Serial No. I-5782]

IDAHO

Proposed Withdrawal and Reservation of Lands

AUGUST 2, 1972.

The Department of Agriculture has filed an application, Serial No. I-5782, for the withdrawal of the lands described below from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws, subject to valid existing rights.

The applicant desires the land for public purposes as scenic and recreation areas in the upper stretch of the Coeur d'Alene River, Revett and Gildden Lakes in the Coeur d'Alene National Forest.

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, Room 398, Federal Building, 550 West Fort Street, Post Office Box 042, Boise, ID 83702.

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 the negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's and to reach agreement on the concurrent management of the lands and their resources.

He 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 Department of Agriculture.

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 it, a public hearing will be held at a convenient time and place which will be announced.

The lands involved in the application are:

IDAHO

COEUR D'ALENE NATIONAL FOREST

Coeur d'Alene River-McPherson's Ranch to Jordan Campground, Boise Meridian

T. 52 N., R. 2 E.,
Sec. 1, lots 1 and 2.
T. 52 N., R. 3 E.,
Sec. 6, lots 2, 3, and 4, SW¼NE¼, and those portions of E½SE¼NW¼, NE¼SW¼ outside HES 804.
T. 53 N., R. 2 E.,
Sec. 36, S½SE¼NE¼, E½SE¼.
T. 53 N., R. 3 E.,
Sec. 16, W½NW¼,
Sec. 17, E½E½NE¼, N½NW¼NE¼NE¼, S½NW¼SE¼NE¼, SW¼SE¼NE¼, W½NE¼, E½SE¼NW¼, E½SW¼, E½SW¼SW¼, S½SW¼SW¼SW¼, NW¼SE¼, NW¼SW¼SE¼,
Sec. 19, E½NE¼, SE¼NW¼NE¼, SW¼NE¼, E½SW¼, SE¼,
Sec. 20, W½NE¼NW¼, NW¼NW¼, N½SW¼NW¼,
Sec. 30, NE¼, S½SW¼, W½SE¼, W½E½SE¼,
Sec. 31, N½NW¼NE¼, W½.

The areas described total 1,867.17 acres.

Revett Lake Recreation Area, Boise Meridian

T. 49 N., R. 5 E.,
Sec. 25, lots 1 and 2, SE¼NE¼NW¼SE¼, S½NW¼SE¼, SW¼SE¼, SE¼SE¼NE¼SW¼, NE¼NE¼SE¼SW¼, S½NE¼SE¼SW¼, and SE¼SE¼SW¼.
Sec. 36, lots 1 and 2, N½NW¼NE¼, SE¼NW¼NE¼, E½SW¼NW¼NE¼, NW¼SW¼NW¼NE¼, E½NE¼NE¼NW¼.
T. 49 N., R. 6 E.,
Sec. 30, lots 4 and 5, N½NE¼NW¼NE¼, SW¼NE¼NW¼NE¼, SE¼NW¼NW¼NE¼, SW¼NW¼NE¼, NW¼SE¼NW¼NE¼, E½SE¼NE¼NW¼, SW¼SW¼NE¼NW¼, SE¼SE¼NW¼NW¼, E½SW¼NW¼, SE¼NW¼SW¼NW¼, E½SW¼SW¼NW¼, NE¼NE¼SE¼NW¼, W½NE¼SE¼NW¼, NW¼SE¼NW¼, N½SW¼SE¼NW¼, SW¼SW¼SE¼NW¼,
Sec. 31, lot 1.

The areas described total 443.31 acres.

Glidden Lakes Recreation Area, Boise Meridian

T. 48 N., R. 6 E.,
Sec. 7, lot 1, S½NE¼SW¼SE¼, SE¼SW¼SE¼,
Sec. 8, lots 4, 5, and 6,
Sec. 17, lots 2, 3, NW¼NW¼, NW¼SW¼NW¼, W½NE¼SW¼NW¼, NW¼SW¼SW¼NW¼,
Sec. 18, lot 1, E½NW¼NE¼, NE¼SW¼NE¼, N½SE¼NE¼, N½S½SE¼NE¼.

The areas described total 368.09 acres.

The above areas aggregate approximately 2,678.57 acres in Shoshone County.

VINCENT S. STROBEL,
Chief, Branch of L&M Operations.

[FR Doc.72-14605 Filed 8-28-72;8:46 am]

Office of the Secretary

[FES 72-28]

SYNTHANE COAL GASIFICATION PILOT PLANT

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Mines, Department of the Interior, has prepared a final environmental statement concerning the construction and operation of a pilot plant to test the Bureau's Synthane process to convert coal to a clean-burning gaseous fuel that is interchangeable with natural gas.

The pilot plant would be constructed on Federal property in Bruceton, a suburb of Pittsburgh, Allegheny County, Pa. The plant would process about 70 tons of coal daily, and sufficient information would be developed to evaluate the technical and economic feasibility of the process, and to identify and resolve any potential environmental problems that would be associated with commercial development of the Synthane process.

Single copies of the final statement are available from:

Director, Bureau of Mines, Room 4614, Department of the Interior, Washington, D.C. 20240.
Acting Research Director, Pittsburgh Energy Research Center, Bureau of Mines, 4800 Forbes Avenue, Pittsburgh, PA 15213.

In requesting this document, please refer to the statement number above.

Dated: August 22, 1972.

W. W. LYONS,
Deputy Assistant Secretary of the Interior.

[FR Doc.72-14613 Filed 8-28-72;8:46 am]

National Park Service

[Order No. 2]

ADMINISTRATIVE OFFICER, CAPITOL REEF NATIONAL PARK, TORREY, UTAH

Delegation of Authority

SECTION 1. *Administrative Officer.* The Administrative Officer may issue purchase orders not in excess of $2,000 for supplies or equipment in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SEC. 2. *Revocation.* This order supersedes Order No. 1, Capitol Reef National Monument, dated July 19, 1966, and published September 14, 1966 (31 F.R. 12027, September 14, 1966).

(National Park Service Order No. 66, 36 F.R. 21218, as amended 37 F.R. 4001, dated Feb. 25, 1972. Midwest Region Order No. 5, 37 F.R. 6324 and 6875)

Dated: July 20, 1972.

WILLIAM F. WALLACE,
Superintendent, Capitol Reef National Park.

[FR Doc.72-14611 Filed 8-28-72;8:46 am]

[Order 5]

CERTAIN OFFICIALS, GREAT SMOKY MOUNTAINS NATIONAL PARK, TENN. AND N.C.

Delegation of Authority

SECTION 1. *Assistant Superintendent.* The Assistant Superintendent may execute, approve, and administer contracts not in excess of $100,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the Assistant Superintendent in behalf of any office or area administered by the Great Smoky Mountains National Park.

SEC. 2. *Administrative Officer.* The Administrative Officer may execute, approve, and administer contracts not in excess of $100,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the Administrative Officer in behalf of any office or area administered by the Great Smoky Mountains National Park.

SEC. 3. *General Supply Officer.* The General Supply Officer may execute, approve, and administer contracts not in excess of $2,500 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the General Supply Officer in behalf of any office or area administered by the Great Smoky Mountains National Park.

SEC. 4. *General Supply Specialist.* The General Supply Specialist may issue purchase orders not in excess of $300 for supplies and equipment in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SEC. 5. *Supply Clerk.* The Supply Clerk may issue purchase orders not in excess of $300 for supplies and equipment in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SEC. 6. *Oconaluftee Job Corps Conservation Center Director and Administrative Officer.* Oconaluftee Job Corps Conservation Center Director and Administrative Officer may issue purchase orders not in excess of $2,500 for supplies, materials, and equipment in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SEC. 7. *Revocation.* This order supersedes Order No. 4 issued November 4, 1967, and published in 32 F.R. 15443. (National Park Service Order No. 66 (36 F.R. 21218) dated November 4, 1971, as amended (37 F.R. 4001), dated February 25, 1972, and Order No. 5, Superin-

tendents et al., Southeast Region (37 F.R. 7721), dated April 19, 1972.)

MERRILL D. BEAL,
Acting Superintendent, Great Smoky Mountains National Park.

JUNE 13, 1972.

[FR Doc.72-14610 Filed 8-28-72;8:46 am]

LASSEN VOLCANIC NATIONAL PARK

Transfer of Administrative Jurisdiction

Paragraph (g) of section 301 of the Act of April 11, 1972 (86 Stat. 121) authorizes deletion of 482 acres from the boundaries of Lassen Volcanic National Park, Calif., such deletion to become effective upon publication in the FEDERAL REGISTER of a map or other description of the lands excluded.

Section 303 of the Act authorizes exchange or transfer to the jurisdiction of any other Federal agency or to a State or political subdivision thereof, without monetary consideration, or any lands or interests therein excluded from a park area pursuant to section 301.

Therefore, notice is hereby given that in accordance with the applicable provisions of the Act of April 11, 1972 (86 Stat. 121) the following described lands are hereby deleted from the boundary of Lassen Volcanic National Park and transferred to the jurisdiction of the United States Forest Service to be administered as a part of the Lassen National Forest, such transfer to take effect on publication of this notice in the FEDERAL REGISTER:

West one-half (W½) of section 1, also being described as Government Lot 3, Lot 4, south one-half of the northwest quarter (S½ NW¼) and the southwest quarter (SW¼) of section 1; and the northwest quarter (NW¼) of section 12, all in township 31 north, Range 5 east, Mount Diablo Meridian, Shasta County, Calif., containing 481.24 acres, more or less.

The purpose of the transfer is to facilitate management and administration of the park. In addition, the transfer to the Lassen National Forest will permit greater utilization of a lookout access road by the U.S. Forest Service in the event of a timber sale in the area.

A map of the new park boundaries entitled "Boundary Map, Lassen Volcanic National Park, Calif., Drawing No. 111/20,001A," dated 8/70, is on file and available for inspection in the office of the National Park Service, Department of the Interior.

GEORGE B. HARTZOG,
Director, National Park Service.

[FR Doc.72-14612, Filed 8-28-72;8:46 am]

[Order No. 4]

DIRECTOR, HARPERS FERRY CENTER

Delegation of Authority

SECTION 1. *Delegation.* The Director, Harpers Ferry Center may exercise all the authority now or hereafter vested in the Assistant Director Service Center Operations.

SEC. 2. *Redelegation.* The Director, Harpers Ferry Center may in writing, redelegate to his officers and employees the authority delegated in this order, except that contract and procurement authority in excess of $50,000 may not be redelegated. Each redelegation shall be published in the FEDERAL REGISTER.

(N.P.S. Order No. 73, revised (37 F.R. 6409), as amended)

Dated: Aug. 22, 1972.

J. E. N. JENSEN,
Assistant Director, Service Center Operations.

[FR Doc.72-14679 Filed 8-28-72;10:23 am]

DEPARTMENT OF COMMERCE

Office of Import Programs

HARVARD MEDICAL SCHOOL

Notice of Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes

The following is a consolidated decision on applications for duty-free entry of ultramicrotomes 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.). (See especially § 701.11(e).)

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.

Docket No. 72-00439-33-46500. Applicant: Harvard Medical School, Mallory Institute of Pathology, 784 Massachusetts Avenue, Boston, MA 02118. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in studies of biological materials during experiments on the normal, physiological behavior of cells and tissues in regard to the transport and uptake of macromolecules. In addition, the problems of normal and abnormal permeability of cell membranes will be studied. The objectives to be pursued in the course of this investigation are to reveal at the ultrastructural level the basis of normal and increased cellular permeability to enzyme tracers and thus elucidate the mechanism of elevation of serum enzymes in a variety of diseases of muscle and liver. Application received by Commissioner of Customs: March 13, 1972. Advice submitted by Department of Health, Education, and Welfare on: July 28, 1972.

Docket No. 72-00440-33-46500. Applicant: University of Nebraska—Lincoln, Lincoln, Nebr. 68508. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in studies of the eye, skin, and feathers of both adult and embryonic chickens and derivatives of these tissues as they occur in cell and/or organ culture. Mainly the pigment cells (melanocytes) will be observed as to the effect of genotype upon the ultrastructural aspects of the pigmentation process. The article will also be used to train Developmental Genetics' graduate students in the techniques of this sectioning as part of their training in electron microscopy. Application received by Commissioner of Customs: March 13, 1972. Advice submitted by Department of Health, Education, and Welfare on: July 28, 1972.

Docket No. 72-00453-33-46500. Applicant: University of Maryland, Department of Zoology, Zoology-Psychology Building, College Park, Md. 20742. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in studies of biological material, primarily protozoan of a wide variety of form structure and material, as well as metaphytan structures which may be host to the protozoa under study. The objectives to be pursued in the course of the investigations are (1) to reveal at the ultrastructural level the structural basis for various life history phenomena (e.g., the ingestion, digestion, and egestion of prey organisms while attached to animate substrates); and (2) to reveal at the ultrastructural level the structural basis for the sequential differentiation of macromolecular complices into organelles. In addition the article will be used to support the graduate research studies (Zoology 899) of students pursuing their Ph. D. graduate studies. Application received by Commissioner of Customs: March 20, 1972. Advice submitted by Department of Health, Education, and Welfare on: July 28, 1972.

Docket No. 72-00482-33-46500. Applicant: University of Texas Medical Branch, UMED 2-19720, Purchasing Department, Galveston, Tex. 77550. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended in the following research projects:

(a) Studies of mitosis of normal and cancerous cell; their mitotic apparatus chromosome structure, organization and synthetic events, microtubule behavior and function, as well as change and fate of certain other cellular organelles during the cell cycle.

(b) Study of reproductive biology of humans and experimental animals for basic science research and research related to child health and population control.

(c) Ultrastructural study of tissue culture cells derived from normal and cancerous tissue for understanding of their structural and functional features leading to the diseases and specific manifestations.

(d) The studies of the effects of drug and radiation response of cultured cells.

(e) The studies of ultrastructural, chemical, and ultracytochemical composition of the transplantable hepatoma

which was originally established in our own laboratory.

(f) Quantitative ultracytochemical studies of enzymes and other chemical substances in normal and disease tissues. The article will also be used in the following courses:

(a) Cellular biology—for graduate and medical students.

(b) Ultrastructure I—principles of electron optics and basic techniques for electron microscopy.

(c) Ultrastructure II—interpretation of biologic ultrastructure.

(d) Mitosis and Miosis.

(e) Ultracytochemistry.

Application received by Commissioner of Customs: April 6, 1972. Advice submitted by Department of Health, Education, and Welfare on: August 4, 1972.

Docket No. 72–00488–33–46500. Applicant: Wills Eye Hospital, 1601 Spring Garden Street, Philadelphia, PA 19130. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in the investigation, at the ultrastructural level, of the deposition of abnormal storage materials in certain corneal diseases and determination of the ultrastructure morphology of retinas from congenitally malformed eyes and pigmented ocular tumors, benign and malignant. Trabeculectomy specimens from glaucoma patients, will be studied for changes in the aqueous outflow channels. Application received by Commissioner of Customs: April 10, 1972. Advice submitted by Department of Health, Education, and Welfare on: August 4, 1972.

Docket oN. 72–00489–33–46500. Applicant: University of Pennsylvania School of Medicine, 36th and Spruce Streets, Philadelphia, Pa. 19104. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for examination of mammalian tissues from experimental animals and humans during a number of investigations into disease processes. Among these investigative areas are the interactions of tumor viruses with normal cells and the subsequent events leading to neoplasia, the pathogenesis of subacute bacterial endocarditis using bacterial infection of the normal heart valves of experimental animals, and the investigation of tissue changes in organ transplantation. The article will also be used in the course covering the Theory and Practice of Electron Microscopy, for graduate students and residents in pathology. Application received by commissioner of Customs: April 10, 1972. Advice submitted by Department of Health, Education, and Welfare on: August 4, 1972.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, is being manufactured in the United States. Reasons: Each of the foreign articles provides a range of cutting speeds from 0.1 to 20 millimeters per second. The most closely comparable domestic instrument is the Model MT–2B ultramicrotome which is manufactured by Ivan Sorvall, Inc. (Sorvall). The Model MT–2B has a range of cutting speeds from 0.09 to 3.2 millimeters per second. The conditions for obtaining high-quality sections that are uniform in thickness, depend to a large extent on the hardness, consistency, toughness, and other properties of the specimen materials, the properties of the embedding materials, and geometry of the block. In connection with a prior application (Docket No. 69–00665–33–46500), which relates to the duty-free entry of an article that is identical to those to which the foregoing applications relate, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned.

The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior application (Docket No. 70–00077–33–46500) which also relates to an article that is identical to those described above, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that the "production of ultrathin serial sections of specimens that have a great variation in physical properties is very difficult." Accordingly, HEW advises in its respectively cited memoranda, that cutting speeds in excess of 4 millimeters per second are pertinent to the satisfactory sectioning of the specimen materials and the relevant embedding materials that will be used by the applicants in their respective experiments. For these reasons, we find that the Sorvall Model MT–2B ultramicrotome is not of equivalent scientific value to the foreign articles to which the foregoing applications relate for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.72–14656 Filed 8–28–72;8:50 am]

WADCO CORP.

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. 72–00188–75–46040. Applicant: WADCO Corp., Subsidiary of Westinghouse Electric Corp., Post Office Box 1970, Richland, WA 99352. Article: Electron microscope, Model JEM 200A. Manufacturer: Japan Electron Optics Laboratory Co., Japan. Intended use of article: The article will be used in research, and development in nuclear technology for the analysis of materials behavior under fast breeder operating conditions and in the development of improved materials for future fast breeder reactors. Specific applications of the article include the following: (1) Post-irradiation characterization of the microstructure of irradiated stainless specimens; (2) analysis of the structure of boron carbide before and after irradiation; and (3) evaluation of the irradiation stability of candidate reflector and structural materials such as nickel-base alloys.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or appartus 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 provides a maximum accelerating voltage of 200 kilovolts. The most closely comparable domestic instrument is the Model EMU–4C manufactured by the Forgflo Corp. (Forgflo). The Model EMU–4C has a specified maximum accelerating voltage of 100 kilovolts.

We are advised by the National Bureau of Standards (NBS) in its memorandum dated July 21, 1972, that the higher accelerating voltage provides proportionately greater penetrating power and, consequently, higher resolution for a specimen of a given thickness. NBS further advises that due to the nature of the material on which research will be conducted with the use of the foreign article, relatively thick specimens must be used in the experiments and, therefore, the higher accelerating voltage of the foreign article is a pertinent characteristic. For these reasons, we find that the Model EMU–4C is not equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument being manufactured in the United States, which is of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.72–14657 Filed 8–28–72;8:50 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

DUFFY-MOTT CO., INC.

Canned Prunes Deviating from Identity Standards; Extension of 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 standards of identity promulgated pursuant to section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that the temporary permit held by Duffy-Mott Co., Inc., 370 Lexington Avenue, New York, NY 10017 to cover limited interstate marketing tests of canned prunes deviating from its standard of identity (21 CFR 27.15) is extended for 9 months. (Notice of issuance of the permit was published in the FEDERAL REGISTER of September 16, 1971 (36 F.R. 18535).)

The liquid medium in the can will be prune juice as defined by § 27.60 (21 CFR 27.60).

The principal display panel of the label on each container will bear as part of the name of the statement: "Cooked in prune juice, a water extract of dried prunes."

This permit expires either 9 months from August 18, 1972, the expiration date of the original temporary permit, or when an amendment to § 27.15 (21 CFR 27.15) permitting the use of such packing medium becomes effective, whichever is sooner.

Dated: August 22, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-14615 Filed 8-28-72;8:47 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23315, etc.; Order 72-8-95]

DELTA-NORTHEAST MERGER CASE ET AL.

Order Regarding Petitions for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 23d day of August 1972.

Various pleadings have been filed in the two above-entitled pending cases concerning the question of the consolidation of the issue of competitive nonstop service in the Miami-Los Angeles market for simultaneous consideration with the matters at issue in the remanded Houston-Miami phase of the Southern Tier case.[1] Continental has filed a petition for reconsideration in the Delta-Northeast Merger Case, uring the Board not to consolidate the two proceedings. Continental's petition was deferred by Order 72-7-74, July 21, 1972. The carrier basically argues that it is not in the public interest to delay further the resolution of the important public interest questions involved in the remanded proceeding and that consolidation would be contrary to the Court's direction that the Board reexamine the balance of factors bearing directly on the Miami-Houston route.[2] American Airlines, Inc. and Pan American World Airways, Inc., on the other hand, support consolidation of the issues involved, noting the Board's comment in Order 72-5-73. In addition, American has requested a postponement of the date for filing briefs to the Board in the Southern Tier case and Pan American has requested leave to intervene in the Southern Tier case.[3]

Upon consideration of all the matters presented, the Board has now determined, on reconsideration, not to consolidate the Miami-Los Angeles issue with the Miami-Houston question at issue in the Southern Tier case. At the time we originally considered the consolidation of the two matters, we anticipated that the combined proceeding could be heard on an expedited basis in line with our statement that we would attempt to resolve the Miami-Houston issue as rapidly as possible. See Order 71-3-34, March 5, 1971. However, the initial decision has already been issued in the Southern Tier case and the Board has granted discretionary review. Consequently, a remand and reopening of that proceeding at this point in time would entail substantial delay.[4] Nonetheless, in order to accord parties to the Southern Tier proceeding ample time to prepare their presentations, we shall extend the time for filing briefs to the Board in Docket 18257 until September 15, 1972. We shall also formally set the Miami-Los Angeles issue for hearing.

Accordingly, it is ordered, That:

1. The petition for reconsideration of Orders 72-5-73/74, filed by Continental Air Lines, Inc., Docket 23315, be and it hereby is granted;

2. The petition for reconsideration of Order 72-7-95, filed by American Airlines, Inc., Docket 18257, be and it hereby is denied;

3. Briefs to the Board in support of exceptions, or in support of the initial decision, Docket 18257, may be filed on or before September 15, 1972;

4. The motion of Pan American World Airways, Inc., for leave to file a petition for intervention and exception to the initial decision, Docket 18257, be and it hereby is granted.

5. An investigation designated as the Miami-Los Angeles Competitive Nonstop Case be and it hereby is instituted in Docket 24694, pursuant to sections 204 (a), 401(g), and 408(b) of the Federal Aviation Act of 1958, as amended, to determine whether the public convenience and necessity require (a) the alteration, amendment, or modification of any carrier certificates so as to authorize nonstop service, on a subsidy-ineligible basis, between Miami-Fort Lauderdale, Fla., and Los Angeles-Ontario-Long Beach, Calif., and (b) the alteration, amendment, or modification of Detla Air Lines' certificate for route 27 so as to suspend, terminate, or otherwise modify authority to operate over segment 7.

6. The proceeding instituted in paragraph 5 above shall be set forth expedited hearing at a time and place to be hereafter designated;

7. Motions to consolidate, applications, and motions or petitions seeking modification or reconsideration of ordering paragraph 5 of this order shall be filed no later than 20 days after the service of this order, and answers to such pleadings shall be filed no later than 10 days thereafter;

8. A copy of this order shall be served upon Delta Air Lines, which is hereby made a party to the proceeding instituted by paragraph 5 above, the Governors of the States of California and Florida, and the cities of Fort Lauderdale, Long Beach, Los Angeles, Miami, and Ontario.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-14663 Filed 8-28-72;8:52 am]

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[1] In our original opinion in the Delta-Northeast Merger Case, Order 72-5-73, fn. 35, decided Apr. 24, 1972, we announced our intention to consolidate the two issues in a single proceeding.

[2] Delta Air Lines, Inc. filed an answer supporting Continental while Pan American filed an answer in opposition.

[3] Several answers in opposition to the requests of American and Pan American have been filed. Eastern Air Lines supports American's request.

[4] There is no contention that Ashbacker requires consolidation of the two proceedings. We appreciate, nonetheless, that an award to Continental in the Southern Tier case, as recommended by the examiner, could give the carrier a one-stop routing between Miami and Los Angeles via Houston which, arguably, could make it a restricted incumbent insofar as the Miami-Los Angeles market is concerned. Such consideration is purely speculative at this stage—i.e., in advance of a Board decision in the Southern Tier case. However, consistent with Board practice, any party will remain free to urge such contentions as it wishes concerning the effect of a grant of Southern Tier authority upon the issues in the Miami-Los Angeles case. See, e.g., Order 72-3-18, Mar. 8, 1972. In addition, we shall, as a matter of discretion, grant Pan American's request for intervention in the Southern Tier case to enable the carrier to argue in favor of a restriction prohibiting one-stop service in the Los Angeles-Miami market.

[Docket No. 24180]

HAWAIIAN AIRLINES, INC.

Amended Notice of Hearing Regarding Hana Suspension Case

Pursuant to Board Order 72-8-24, August 4, 1972, the issues to be determined by the Board as a result of the hearing on August 30, 1972, at 10 a.m. (local time) in Helene Hall, Hana, Maui, Hawaii, will be limited to those related to the application of Hawaiian Airlines, Inc., for authority to temporarily suspend service at Hana on its route 33. The other issues set forth in the prior notice (37 F.R. 15531, August 3, 1972) which relate to suspension or deletion of Hawaiian's certificate authority to serve Hana were removed from the proceeding by the above-cited order.

Dated at Washington, D.C., August 23, 1972.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.72-14662 Filed 8-28-72;8:52 am]

[Docket No. 23486; Order 72-8-63]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Carrier Liability

Issued under delegated authority August 14, 1972.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the act) and Part 261 of the Board's economic regulations between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, which was adopted by mail vote, has been assigned the above-designated CAB agreement number.

The agreement would amend certain IATA recommended practices to the extent they relate to limitations on carrier liability for passengers and checked baggage. The amendments would adjust U.S. dollar equivalents for French gold francs to levels that are consistent with the devaluation of the U.S. dollar and that were specified by the Board in Order 72-6-7 of June 2, 1972.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the following resolutions, which are incorporated in Agreement CAB 23232, are adverse to the public interest or in violation of the act:

Agreement CAB 23232

100 (Mail 906) 1013.	200 (Mail 153) 1013.
300 (Mail 384) 1013.	JT12 (Mail 798) 1013.
JT23 (Mail 305) 1013.	JT31 (Mail 227) 1013.
JT123 (Mail 696) 1013.	

Accordingly, it is ordered, That:

Agreement CAB 23232 be and hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-14664 Filed 8-28-72;8:52 am]

[Docket No. 23333; Order 72-8-81]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Cargo Matters

Issued under delegated authority August 17, 1972.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the act) and Part 261 of the Board's economic regulations between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, which was adopted by mail vote, has been assigned the above-designated CAB agreement number.

The agreement would amend existing resolutions governing valuation charges on cargo shipments, and special rates for valuable cargo, by standardizing on a worldwide basis the format of the resolution governing valuation charges, and by adjusting, in both resolutions, dollar equivalents for French gold francs to levels that are consistent with the devaluation of the U.S. dollar.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the following resolutions, which are incorporated in Agrement C.A.B. 23233, R-1 and R-2, are adverse to the public interest or in violation of the Act:

Agreement CAB 23233	*IATA No.*
R-1	100 (Mail 910) 503.
	200 (Mail 159) 503.
	300 (Mail 389) 503.
	JT12 (Mail 801) 503.
	JT23 (Mail 307) 503.
	JT31 (Mail 229) 503.
	JT123 (Mail 697) 503.
R-2	100 (Mail 910) 595.
	200 (Mail 159) 595.
	300 (Mail 389) 595.
	JT12 (Mail 801) 595.
	JT23 (Mail 307) 595.
	JT31 (Mail 229) 595.
	JT123 (Mail 697) 595.

Accordingly, it is ordered, That:

Agreement C.A.B. 23233, R-1 and R-2, be and hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-14665 Filed 8-28-72;8.52 am]

[Docket No. 23333; Order 72-8-72]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Reduced Fares for Cargo Agents

Issued under delegated authority August 22, 1972.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, which was adopted by mail vote, has been assigned the above-designated CAB agreement number.

The agreement would have the effect of extending through March 31, 1973, the effectiveness of an existing IATA resolution governing the allocation of reduced-fare tickets to U.S.-based cargo agents. The resolution, which allows a total of two tickets at a 75-percent discount per agency location per year, was to have been replaced by a resolution of the Third Meeting of the Cargo Agency Committee allowing two such tickets per year from each IATA member carrier. While deferring action on the latter resolution, intended for worldwide effectiveness,[1] the Board extended its approval of the resolution governing U.S. agents to August 31, 1972. The subject agreement would have the effect of a further extension to permit the Cargo Agency Committee to reconsider the matter at its Fourth Meeting in November 1972.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the following resolutions, which are incorporated in Agreement CAB 23226, are adverse to the public interest or in violation of the Act:

IATA Resolutions

100 (Mail 912) 203a.	JT23 (Mail 308) 203a.
200 (Mail 161) 203a.	JT31 (Mail 230) 203a.
300 (Mail 391) 203a.	JT123 (Mail 698) 203a
JL12 (Mail 802) 203a.	

Accordingly, it is ordered, That:

Agreement CAB 23226 be and hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the

[1] By Order 72-5-59 of May 15, 1972, the Board conditioned its final approval so as to preclude its application to U.S. agents.

Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that is will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-14666 Filed 8-28-72;8:52 am]

[Docket No. 2333; Order 72-8-99]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Reduced Fares for Cargo Agents

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 23d day of August 1972.

By Order 72-5-59, dated May 15, 1972, the Board took final action on the above-designated agreements adopted by the carrier members of the International Air Transport Association (IATA) which proposed to alter the basis upon which tickets, at a 75-percent reduction, are allocated to cargo sales agents. In acting on the agreements, the Board considered numerous comments from interested persons and parties before approving the agreements for foreign-based agents but denying application of the agreements' provisions to U.S.-based cargo agents.[1]

Seaboard World Airlines, Inc. (Seaboard), by petition received June 5, 1972, has requested that the Board reconsider its action to the extent that the subject agreements were approved without an earlier-requested condition that would require all IATA carriers to furnish the cargo sales agents of Seaboard with reduced-fare tickets, in the same quantity and with the same discount, as furnished to the cargo agents of all IATA carriers. Seaboard recognizes that the Board's approval of the agreements extended only to foreign-based agents, and it thus desires that the condition apply to Seaboard agents which are also based abroad. In support of its request, Seaboard reiterates its earlier arguments that it is placed at a competitive disadvantage and that the shipping public is unjustly discriminated against because Seaboard's agents, who are generally also agents for the IATA carriers, will become increasingly reluctant to sell cargo services on Seaboard.

In answers received June 15, 1972, Pan American World Airways, Inc. and Trans World Airlines, Inc. (TWA) oppose the Seaboard petition for reconsideration. TWA states that it fails to see how the Board could require any carrier to furnish reduced-fare transportation on behalf of Seaboard. Pan American carries this argument further, intimating that the offer of reduced-rate transportation to IATA agents provides no legal or equitable basis for requiring an IATA carrier to extend such reductions to other persons who are in no way associated with it. Among other things, Pan American points to possible abuses that could occur were IATA to lose control over the eligibility of persons who may receive reduced-fare concessions, i.e. those agents which are not IATA-approved prior to individual appointment by Seaboard but which instead act solely on Seaboard's behalf. Pan American indicates that IATA-approved agents must meet certain professional requirements and qualifications designed to insure that cargo agents are actually legitimately engaged in the cargo agency business, and since Seaboard is not an IATA member it is no longer under any such limitation. Thus, if the Board were to grant Seaboard's request, Pan American argues that Seaboard could appoint anyone as an agent and then request IATA carriers to provide reduced-fare transportation, without IATA having the ability to police Seaboard's appointments or to insure that the transportation offered at the request of Seaboard would be used for a legitimate purpose.

On June 28, 1972, Seaboard submitted a motion for leave to file a reply to the answer of Pan American and TWA, and we will grant this motion herein. In part, Seaboard suggests that any concerns about it appointing unqualified agents could be quickly laid to rest if the requested condition were phrased so as to apply only to IATA-authorized cargo sales agents appointed by Seaboard.

The issues before us have to do with reduced-fare transportation privileges granted IATA-approved agents by IATA carriers. While we perceive no basis to require any carrier to afford reduced-fare privileges to its agents, any reduced-fare transportation program must treat all IATA-appointed agents fairly and must not discriminate against IATA agents which also serve Seaboard. This latter point, it would seem to us, is the only real issue before us.

We are unable to conclude from the pleadings before us whether any such discrimination has taken or is likely to take place.[2] For IATA carriers to deny their own IATA agents reduced-rate transportation because those agents also represent Seaboard, appears to us to be sheer folly. Such practice would constitute a patent demonstration that the basic reduced-fare program is manipulated for purposes having nothing whatever to do with the development of the air cargo market.[3] Rather, any such practice would suggest that reduced-fare travel represents a reward, which is contrary to the Board's policy on reduced-fare programs and also contrary to the stated purposes of the IATA carriers in their presentations in support of the programs. The agents' rewards come in the form of commissions on air cargo sales and profits from their agency activities.

The Board earlier examined the agreements and found no provision that would exclude or limit an IATA-approved agent from obtaining reduced-rate transportation on other IATA carriers because the agent also held an appointment from Seaboard or any non-IATA carrier. Our approval was given on that basis. On reconsideration, we have decided to condition our approval to make that understanding explicit.

Accordingly, it is ordered, That:

1. The motion of Seaboard World Airlines, Inc. for leave to file a reply to the answers of Pan American World Airways, Inc. and Trans World Airlines, Inc. is granted;

2. Except to the extent granted herein, the petition of Seaboard World Airlines, Inc. for reconsideration of Order 72-5-59 is denied; and

3. The Board's outstanding approval in Order 72-5-59 of Agreements CAB 22529, R-1, CAB 22898, and CAB 22927, R-1, is amended by the inclusion of the following condition:

(3) Notwithstanding any provision or interpretation of said resolution, IATA-approved agents shall not be precluded or limited in their obtaining reduced-fare transportation on IATA carriers because such agents act pursuant to appointments received from non-IATA carriers.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-14667 Filed 8-28-72;8:52 am]

[Docket No. 24687; Order 72-8-89]

NORTH ATLANTIC PASSENGER MARKET

Order Instituting Investigation Regarding Discounting and Other Unlawful Practices

Issued under delegated authority August 21, 1972.

It has again become necessary for the Board to direct special attention to apparently widespread unlawful passenger-fare discounting practices in the North Atlantic Market.[1] In recent months the International Air Transport Association, the Air Transport Association of Amer-

[1] This denial to U.S.-based agents came in the absence of a showing by the U.S.-flag carrier members of IATA that the agreements would comport with the Board's long-standing policy that travel allowances should be related to the needs for such travel.

[2] Very little information of a factual or substantive nature has been submitted on the issues presented. This was also the case when the Board earlier decided against application of the IATA carriers' revised cargo agents' reduced-fare program to U.S.-based agents.

[3] Such action would also appear to be violative of section 411 of the Act.

[1] For the purposes of this Investigation the North Atlantic market shall include flights between points in the United States, on the one hand, and points in Europe, Africa, and Asia as far east as and including India, on the other hand. A similar investigation was initiated by the Board by Order E-19492 (Apr. 11, 1963). That investigation will be closed by this order.

ica and several individual carriers have brought to the attention of the Board information indicating that some carriers, tour operators and ticket agents operating in this market may have resorted to unlawful sales methods and devices in order to improve their competitive positions. Some carriers may be permitting special rates or concessions to persons purchasing large blocks of seats for resale to the public. Such other persons are said to be reselling such seats at amounts less than those set forth in the carriers' applicable tariffs or to persons ineligible for the fares provided, either with or without the knowledge or consent of the carriers.

This information is of grave concern to the Board since, if substantiated the widespread unlawful practices complained of will result in significant loss of revenue to the carriers, will jeopardize the continuing existence of numerous ticket agents working within the law and will serve to unjustly enrich those ticket agents or other persons receiving unlawful payments or concessions with no commensurate benefit to the travelling public. While these rate-cutting practices seem to afford "bargain" fares to some travellers, in fact they have often led to serious financial loss and inconvenience, including overseas strandings, for such persons. In addition, they must be viewed as contributing substantially to a higher fare structure for the travelling public generally.

The Board has already exhorted the carriers, as well as IATA and the ATA, to take immediate corrective actions, which are peculiarly within their power, to eliminate these self-destructive rate-cutting practices. However, it has become increasingly clear that the Board itself must play an active role in this matter where destructive competitive practices not only pose a grave threat to the carriers themselves but also may constitute violations of Federal law. Such violations will be pursued whether they involve discounting of tickets on regularly scheduled flights or the practical equivalent, the circumvention of provisions governing group or charter flights conducted by scheduled or supplemental carriers, United States or foreign. Accordingly, while the Board expects the best self-help efforts and the continued cooperation of all interested persons, a comprehensive investigation, conducted in accord with Part 305 of the regulations, will hereby be instituted.[2]

The Board is initiating this investigation under the authority of the Federal Aviation Act of 1958, as amended, particularly sections 204(a), 403(b), 407, 415, 1001, 1002, and 1004. The Board is acting through authority delegated to the Director, Bureau of Enforcement, under subsection 385.22(b) of the Board's Procedural Regulations. The Board is acting for the purposes of:

(a) Determining the existence and extent of any rate-cutting, discounting, rebating or other unlawful practices with respect to North Atlantic Passenger Fares and the identities of any air carrier (United States or foreign, scheduled or supplemental), tour operator, ticket agent, or other person engaged in such activities;

(b) Obtaining evidence with respect to any such unlawful practices for possible use in an enforcement proceeding before the Board or for possible referral to the appropriate U.S. Attorney for use in civil or criminal actions in the Federal courts; and

(c) Gathering information to determine whether proceedings should be instituted to appropriately amend the terms, conditions or limitations of certificates of public convenience and necessity or foreign air carrier permits.

While directed to all unlawful rate-cutting practices in this market, the investigation will concentrate on:

A. *Excursion fares on scheduled carriers.* Any device used for the purpose of circumventing the time period validity provisions governing minimum/maximum stays, including:

(i) Failure of ticket issuer to indicate on tickets, or all coupons thereof, the applicable validity period;

(ii) Use of revalidation stickers to conceal, or to provide an improper, validity period;

(iii) Use of new, altered or reissued tickets or ticket coupons with an improper validity period.

B. *Affinity fares (charter and group) on scheduled or supplemental carriers.* Any device used for the purpose of:

(i) Soliciting, selling to, or operating for persons from the general public rather than from the appropriate affinity group or persons from the appropriate affinity group lacking the requisite number of participants;

(ii) Permitting individual one-way passage for persons purchasing round-trip affinity transportation and therefore required to travel as a group in both directions.

C. *Group inclusive tour fares on scheduled carriers.* Any device used to circumvent the provisions governing sale of air and land accommodations as a bona fide package tour, including:

(i) Representations of tours as group inclusive tours when they do not include the requisite land component;

(ii) Failure to collect for and/or supply bona fide land components;

(iii) Agent collecting commissions for inclusive tour when an inclusive tour is not provided.

D. *Youth and student fares on scheduled carriers.* Any device used to circumvent provisions governing age or student status.

E. *Others.* Any device used to circumvent the governing provisions of a scheduled or supplemental carrier's tariff or tour operator's lawfully established price, including:

(i) Cash "kick-backs" or discounts by carriers or tour operators to favored customers, including persons purchasing large blocks of seats for resale;

(ii) Deposits by carriers or tour operators in customers' bank accounts for later use in payment of tickets at established fares;

(iii) Payments by carriers or tour operators for nonexistent or value-inflated goods or services to favored customers, including persons purchasing large blocks of seats for resale.

If engaged in or participated in by carriers, tour operators, ticket agents or other persons, these activities may constitute violations of one or more sections of the Federal Aviation Act, particularly sections 401(a), 403(b), 404(b), 902(d), and 1002(f) and may constitute unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof within the meaning of section 411. Such activities may require the issuance of an order by the Board under section 1002(c), and/or the pursuit of civil or criminal penalties under sections 901(a) and 902 (a) and (d), of the Act.

In view of the apparent existence and extent of rate-cutting practices, as described above:

It is ordered, That:

1. An informal, nonpublic investigation under Part 305 of the Board's regulations hereby be initiated.

2. The investigation instituted by the Board in Docket 14437 hereby be terminated except for those matters which are formally before the Board or the courts as of the date of this order.

This order shall be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72—14598 Filed 8-28-72;8:45 am]

[Docket No. 24421]

SERVICE TO SAIPAN CASE

Notice of Reassignment of Place of Prehearing Conference

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a prehearing conference in the above-entitled proceeding assigned to be held on September 7, 1972, at 10 a.m. (local time) in Room 1031, Universal Building North, 1875 Connecticut Avenue NW., Washington, DC, is hereby reassigned to be held in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, at 10 a.m. before the undersigned Administrative Law Judge.

Dated at Washington, D.C., August 22, 1972.

[SEAL] MILTON H. SHAPIRO,
Administrative Law Judge.

[FR Doc.72-14597 Filed 8-28-72;8:48 am]

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[2] The North Atlantic passenger market appears to pose the gravest problems with respect to rate-cutting. This investigation will therefore be limited to practices within such market except where a carrier or ticket agent engages in a single pattern of unlawful rate-cutting going beyond this market. The Board will continue to employ its normal enforcement tools in other areas, including the Pacific passenger market and the all-cargo market worldwide, where there are indications of unlawful discounting practices. Investigations similar to this one will be instituted in these and other markets if and when interested persons come forward with information and evidence indicating that those additional investigations can be considered as in the public interest.

CIVIL SERVICE COMMISSION

MUSEUM CURATOR (SCIENCE AND TECHNOLOGY), SMITHSONIAN INSTITUTION

Manpower Shortage; Notice of Listing

Under the provisions of 5 U.S.C. 5723, the Civil Service Commission found a manpower shortage on August 3, 1972, for a single position of Museum Curator (Science and Technology), GS–1015–12, Smithsonian Institution, Washington, D.C. The finding is self-canceling when the position is filed.

Assuming other legal requirements are met, the agency may pay the travel and transportation expense to first post of duty for an appointee to this position.

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

[FR Doc.72–14659 Filed 8–28–72;8:50 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN MAURITIUS

Entry or Withdrawal from Warehouse for Consumption

AUGUST 23, 1972.

On November 2, 1971, there was published in the FEDERAL REGISTER (36 F.R. 21008), a letter dated October 23, 1971, from the Chairman, President's Cabinet Textile Advisory Committee, to the Commissioner of Customs establishing a level of restraint for cotton textile products in Category 39, produced or manufactured in Mauritius, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning August 25, 1971.

Subsequently, discussions were held between the Governments of the United States and Mauritius whereby the U.S. Government agreed to increase the aforesaid level of restraint from 21,680 dozen pairs to 30,000 dozen pairs for the 12-month period beginning August 25, 1971. The U.S. Government further agreed that shipments in excess of that level would be charged to the level of restraint which would be applicable for the second 12-month period that begins on August 25, 1972, and that the level for the period would be correspondingly reduced.

The second 12-month period begins on August 25, 1972. The restraint level for this 12-month period is 31,500 dozen pairs (the first-year level plus 5 percent) less any imports from Mauritius exported during the first restraint period in excess of the 30,000 dozen pair restraint level for that year.

Accordingly, there is published below a letter of August 23, 1972, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amount of cotton textile products in Category 39, produced or manufactured in Mauritius which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning August 25, 1972, be limited to the designated level.

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

AUGUST 23, 1972.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including Article 6(c) thereof relating to nonparticipants, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective August 25, 1972, and for the 12-month period extending through August 24, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 39, produced or manufactured in Mauritius, in excess of 31,500 dozen pairs.

In carrying out this directive, entires of cotton textile products in Category 39, produced and manufactured in Mauritius and which have been exported to the United States from Mauritius in the period August 25, 1971, through August 24, 1972, shall, to the extent they exceed a level of 30,000 dozen pairs, be deducted from the level set forth in this letter.

A detailed description of Category 39 in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on April 29, 1972 (37 F.R. 8802).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Mauritius and with respect to imports of cotton textiles and cotton textile products from Mauritius have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

[FR Doc.72–14683 Filed 8–28–72;8:51 am]

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN MEXICO

Entry or Withdrawal from Warehouse for Consumption

AUGUST 23, 1972.

On August 26, 1971, there was published in the FEDERAL REGISTER (36 F.R. 16957) a letter dated August 23, 1971, from the Chairman, President's Cabinet Textile Advisory Committee, to the Commissioner of Customs prohibiting the entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64, produced or manufactured in Mexico, and exported from Mexico 30 days after the date of said publication, for which Mexico had not issued a visa. One of the visa requirements is that the visa include the signature of one of nine Mexican officials authorized to issue a visa. The Government of Mexico has requested, and the Government of the United States has acceded to the request, that two additional Mexican officials be authorized to issue visas. Their names are: Lic. Bernardo L. Flores and Mr. Juventino Martinez Velez.

Accordingly, there is published below a letter of August 23, 1972, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs amending, effective as soon as possible, the directive of August 23, 1971 so as to add two Mexican officials to the nine officials previously authorized to issue visas. A facsimile of their signatures is published as an enclosure to that letter.

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

AUGUST 23, 1972.

DEAR MR. COMMISSIONER: This letter amends the directive of August 23, 1971, from the Chairman, President's Cabinet Textile Advisory Committee, that directed you to prohibit, effective 30 days after publication of the notice in the FEDERAL REGISTER and until further notice, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64, produced or manufactured in Mexico, and exported therefrom 30 days after said publication, for which Mexico had not issued a visa. One of the visa requirements is that the visa include the signature of one of nine Mexican officials authorized to issue a visa.

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on Febru-

ary 9, 1962, pursuant to paragraph 15 of the bilateral Cotton Textile Agreement of June 29, 1971, between the Governments of the United States and Mexico, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, the directive of August 23, 1971, is amended, effective as soon as possible, by the addition of two Mexican officials who are authorized to issue visas. Facsimiles of their signatures are enclosed for your information.

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

LIC. BERNARDO L. FLORES.
GERENTE DE LA CAMARA REGIONAL TEXTIL DEL NORTE.

SR. JUVENTINO MARTINEZ.
GERENTE DE LA CAMARA TEXTIL DE OCCIDENTE.

[FR Doc.72-14684 Filed 8-28-72;8:51 am]

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THAILAND

Entry or Withdrawal from Warehouse for Consumption

AUGUST 24, 1972.

On March 31, 1972, there was published in the FEDERAL REGISTER (37 F.R. 6605), a letter dated March 27, 1972, from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, establishing levels of restraint applicable to certain specified categories of cotton textiles and cotton textile products produced or manufactured in Thailand and exported to the United States during the 12-month period beginning April 1, 1972. As set forth in that letter, the levels of restraint are subject to adjustment pursuant to paragraph 5 of the bilateral cotton textile agreement of March 16, 1972, between the Governments of the United States and Thailand, which provides that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent. Since the applicable group limit would be exceeded by (1) a five (5) percent increase in the levels of restraint applicable to Categories 18/19, 50, and 60, and (2) planned shipments in categories not given specific ceilings, the Government of Thailand has requested that a corresponding decrease be made in the levels of restraint applicable to Categories 54 and 64.

Accordingly, at the request of the Government of Thailand and pursuant to the provisions of the bilateral agreement referred to above, there is published below a letter of August 24, 1972, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs amending the levels of restraint applicable to cotton textile products in Categories 18/19, 50, 54, 60, and 64 for the 12-month period which began on April 1, 1972.

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

AUGUST 24, 1972.

COMMISSIONER OF CUSTOMS,
Department of the Treasury, Washington, D.C. 20226.

DEAR MR. COMMISSIONER: On March 27, 1972, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of cotton textiles and cotton textile products in certain specified categories produced or manufactured in Thailand during the 12-month period beginning April 1, 1972, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraph 5 of the bilateral cotton textile agreement of March 16, 1972, between the Governments of the United States and Thailand, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to amend, effective as soon as possible, the levels of restraint established in the aforesaid directive of March 27, 1972, for cotton textile products in Categories 18/19, 50, 54, 60, and 64 produced or manufactured in Thailand, as set forth below:

Category		Amended 12-month level of restraint
18/19	square yards	1,968,750
50	dozen	26,250
54	do	5,411
60	do	39,900
64	pounds	16,304

The actions taken with respect to the Government of Thailand and with respect to imports of cotton textiles and cotton textile products from Thailand have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States.

[1] The term "adjustment" refers to those provisions of the bilateral cotton textile agreement of March 16, 1972, between the Governments of the United States and Thailand which provide in part that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent; for limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

Therefore, the directions to the Commissioner of Customs, being necessary to the implemenation of such actions fall within the foreign affairs exception to the rule making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

[FR Doc.72-14685 Filed 8-28-72;8:51 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Availability

Environmental impact statements received by the Council on Environmental Quality August 14 to August 18, 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.

AGRICULTURAL RESEARCH SERVICE

Draft, August 18

National Agricultural Research Center, Maryland. The statement considers the utilization of 1,200 tons of digested sewage sludge on 4 acres of soil at the Beltsville Center, in order to evaluate its potential as a soil amendment. Concern has been expressed over possible effects upon groundwater quality. (19 pages) Comments made by: EPA, DOI. (ELR Order No. 05126) (NTIS Order No. EIS 72 5126D)

FOREST SERVICE

Draft, August 17

FALCON Program. The statement refers to a reseach and development program for advanced logging systems. The major purpose would be to improve the ability of resource managers to predict the economic and environmental consequences associated with the use of conventional and new logging systems. Emphasis will be on new or improved aerial logging methods (balloon use, helicopters, and cable systems), with the aim of providing a larger array of timber harvesting alternatives in environmentally sensitive areas. (15 pages) (ELR Order No. 05103) (NTIS Order No. EIS 72 5103D)

Coconino National Forest, Ariz. The proposed action considers the implementation of a 10-year Timber Management Plan, beginning July 1973. The plan proposes an allowable annual cut of 70,335 MBF and 60,700 cords of pulpwood; the plan is based on a 120-year rotation period and would affect 721,000 acres of commercial forest land which comprise 40 percent of the forest's total land area. The slash left on the ground from harvesting operations will create short-term fire and safety hazards, adversely affect scenic beauty, and encourage an increase of insect pests.

Harvesting operations may contribute to air and noise pollution, increase erosion hazards, and displace various wildlife species. (76 pages) (ELR Order No. 05102) (NTIS Order No. EIS 72 5102D)

St. Joe National Forest, Idaho, County: Several. The statement considers a 3-year program (July 1, 1972 to June 30, 1975) of road construction in the forest. Approximately 520 miles of new roadway would be constructed and 100 miles of existing roadway would be reconstructed, in part to facilitate the St. Joe Working Circle Timber Management Plan. Adverse effects will include the clearance of vegetative cover from 2,730 acres (28 percent of the acreage being permanently removed from vegetative production); the disturbance of the soil mantle and the subsurface flow of water; visual impact; the increase of hunting and recreation pressures; and the loss of 90 acres of big game range. (20 pages) (ELR Order No. 05101) (NTIS Order No. EIS 72 5101D)

CONSERVATION SERVICE

Draft, August 14

Simon Run Watershed, Iowa, County: Pottawattamie. The statement refers to a proposed project consisting of land treatment measures and eight grade stabilization structures. Gully erosion would be eliminated on 904 acres and flood damage would be reduced by 52 percent. Approximately 55 acres would be permanently inundated, and an additional 48 acres would be periodically interrupted by floodwater. (12 pages) (ELR Order No. 05085) (NTIS Order No. EIS 72 5085D)

Final, August 17

Shoemaker River, Virginia Watershed, County: Rockingham. The statement refers to a watershed protection and flood prevention project on the Shoemaker River Watershed. Land treatment measures would be applied to 1,077 acres; four single purpose floodwater retarding structures would be built. Approximately 578 acres of forest, wildlife habitat, and pasture of cropland will be adversely affected by construction, sediment or detention pools, and nonproject development. (27 pages). Comments made by: EPA DOI. (ELR Order No. 05100) (NTIS Order No. EIS 72 5100F)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202—967-4335.

Final, August 18

City of Cactus, Tex. The statement refers to the development of an agri-industrial park and areawide water and system improvements near the city of Cactus. Approximately 700 acres of rangeland will be converted to industrial use; 145 acres of cropland will be taken for use by a sewage treatment plant. Additional demands will be placed upon the ground water supply of the Ogallala aquifer. The project also includes an application by American Beef Packers, Inc., of Omaha for a $4 million business development loan in order to construct and equip a packing plant within the industrial park. (129 pages) Comments made by: USDA, EPA, State and local agencies and concerned citizens (ELR Order No. 05127) (NTIS Order No. EIS 72 5127F)

DEPARTMENT OF DEFENSE

DEPARTMENT OF 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, August 17

Fort Detrick, the statement refers to the disposal of a deactivated biological anticrop agent which is stored at Fort Detrick in Maryland. The agent would be incinerated, with residue ash being spread on an approved site on Fort Detrick property and disked under the soil. No adverse impact is anticipated. (32 pages) Comments made by: EPA, HEW (ELR Order No. 05104) (NTIS Order No. EIS 72 5104F)

CORPS OF ENGINEERS

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs, Attention: DAEN-PAP, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, DC 20314, 202—693-7168.

Draft, August 14

New London Harbor and Thames River, Connecticut. The statement considers the deepening of the 600' wide channel from 33' to 40', for a distance of 3 miles; and the dredging of a 30' deep turning basin at State Pier. Approximately 3,260,000 cubic yards of spoil will be dumped at an approved offshore site. The project will provide facilities which can accommodate vessels of up to 50,000 deadweight tons. (Present limitations are at 35,000 tons.) Marine biota will be damaged at the sites of dredging and dumping. (90 pages) (ELR Order No. 05094) (NTIS Order No. EIS 72 5094D)

Draft, August 18

Savannah Harbor, Georgia, County: Chatham. The statement refers to the proposed granting of a permit to the American Cyanamid Co. for the construction of dock facilities in Savannah Harbor. The facilities would be utilized in the barging to sea of the applicant's acidic iron waste byproducts which result from the production of titanium dioxide pigment. Plankton and benthic organisms would be lost at the dumping site. (25 pages) (ELR Order No. 05128) (NTIS Order No. EIS 72 5128D)

Charles River, Massachusetts. The statement proposes a "nonstructural solution" to the problem of flood water control on the Charles River watershed. Approximately 8,422 acres would be acquired by the Corps and maintained in their natural state in perpetuity. During periods of high water level the lands will be utilized as natural flood control reservoirs, eliminating the future need to construct dikes and levees. The areas will be operated as wildlife refuges during normal periods. No adverse impact is anticipated. (56 pages) (ELR Order No. 05107) (NTIS Order No. EIS 72 5107D)

FEDERAL POWER COMMISSION

Contact: Mr. Frederick H. Warren, Advisor on Environmental Quality, 441 G Street NW., Washington, D.C. 20426, 202—386-6084.

Draft, August 14

Martin Dam Project No. 349, Alabama, County: Elmore, Tallapoosa, and Coosa. The statement considers an application by the Alabama Power Co. for a new major license for its Martin Project No. 349, located on the Tallapoosa River. The project consists of a dam across the river, a powerhouse and a 40,000 acre reservoir. Present capacity of the powerhouse is 154,200 kw. with a proposed increase ranging from 60,000 to 171,000 kw., depending on development of upstream storage. The statement mentions no additional adverse environmental impact. (175 pages) (ELR Order No. 05092) (NTIS Order No. EIS 72 5092D)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Environmental and Land Use, Planning Division, Washington, D.C. 20410, 202—755-6186.

Final, August 14

Wingate Apartments, New Hampshire, County: Belknap. The statement is concerned with the proposed construction of 18 two story apartment buildings, totalling 100 units, in the city of Laconia. Approximately 10 acres of land will be committed to the action. (26 pages) Comments made by: EPA, GSA, HEW, HUD, FPC, DOI, DOT (ELR Order No. 05093) (NTIS Order No. EIS 72 5093F)

Final, August 11

Desalinization Plants, Virgin Islands. The statement considers the construction of two 2,250,000 gpd sea water desalinization plants, one on St. Thomas, the other on St. Croix in order to provide commercial, industrial, and residential water. The statement discusses no significant adverse environmental impact. (74 pages) Comments made by: USDA, AEC, COE, DOC, EPA, GSA, HEW, DOT (ELR Order No. 05071) (NTIS Order No. EIS 72 5071F)

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 RECLAMATION

Draft, August 14

Oahe Unit, South Dakota, County: Several. The statement considers the development of the Oahe Unit of the Pick-Sloan Missouri Basin Project. Water will be diverted from Lake Oahe (on the Missouri River) and used for the irrigation of 190,000 acres, for municipal supply by 17 towns and cities, and for wildlife and recreation purposes. Approximately 444,400 acre-feet of water will be diverted from the Lake annually, reducing hydroelectric production by 172 million kw. hours. Ninety thousand acres (of which 9,420 are wetland) will be required for project facilities. (94 pages) (ELR Order No. 05088) (NTIS Order No. EIS 72 5088D)

NATIONAL PARK SERVICE

Acadia National Park, Maine, County: Hancock and Knox. The statement refers to the development of a Master Plan for the management and use of the Park. Intentions of the plan are to minimize visitor use impact and to improve the quality of visitor experiences. A firm and clearly defined park management boundary will be established. Stated adverse effects would include the possible use of eminent domain; restriction of access to some park areas; and the utilization of park lands for roads and visitor use facilities. (155 pages) (ELR Order No. 05087) (NTIS Order No. EIS 72 5087D)

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

Final, August 17

Rogers Municipal Airport, Arkansas. The statement refers to the construction of new facilities at the Airport. These would consist of the reconstruction of a section

of an existing N/S runway and the extension of it to 100' × 6,000'; the reconstruction of taxiway and aprons; the installation of medium intensity lighting and VASI; the relocation of a country road; the installation of fencing and the marking of pavement. Approximately 95 acres would be acquired for the project. The statement discusses no significant and adverse impact. (114 pages) Comments made by: DOC, COE, EPA, HEW, HUD, DOI (ELR Order No. 05106) (NTIS Order No. EIS 72 5106F)

Final, August 16

Weed Airport, California, County: Siskiyou. The statement considers the reconstruction, strengthening, lengthening (by 3,000'), of an existing runway and the installation of new lighting and VASI. It is not anticipated that the extension will have an effect upon the type of aircraft using the facility. (28 pages) Comments made by: USDA, COE, EPA, DOI (ELR Order No. 05099) (NTIS Order No. EIS 72 5099F)

Final, August 14

Jackson Municipal Airport, Mississippi, County: Jackson. The statement considers the extension of Runway 15R–33L from 6,600' to 8,500'. The project will result in increased operational capacity of the airport and a concomitant increase in noise levels from jet aircraft. (34 pages) Comments made by: USDA, EPA, DOI (ELR Order No. 05086) (NTIS Order No. EIS 72 5086F)

Final, August 11

Plymouth Municipal Airport, N.C., County: Washington. The statement refers to the proposed construction of a new general aviation airport to accommodate substantially all propeller aircraft of less than 12,000 pounds. A 3,700' x 75' runway would be constructed along with aprons, taxiways, and an access road; a medium intensity lighting system would be installed. Approximately 225 acres of land would be committed to the project. (31 pages) Comments made by: USDA, EPA, DOT (ELR Order No. 05070) (NTIS Order No. EIS 72 5070F)

FEDERAL HIGHWAY ADMINISTRATION

Draft, August 14

Western bypass for the city of Albany, Ga. The statement represents a corridor study for construction of approximately 25 miles of highway to form a western bypass for the city of Albany. The amount of land required and the number of displacements will depend upon the alternate selected. The Cooleewahee Swamp and a cluster of sinkholes used by migrating waterfowl may be disturbed. (79 pages) (ELR Order No. 05091) (NTIS Order No. EIS 72 5091D)

Draft, August 17

U.S. 69, Kansas, County: Miami. The statement considers the corridor location for the reconstruction, from two to four lanes, of 16.5 miles of highway. The number of residences to be displaced and the amount of acreage needed for right-of-way depends upon the route chosen. (73 pages) (ELR Order No. 05105) (NTIS Order No. EIS 72 5105D)

Draft, August 14

Route 40TR, Missouri, County: St. Louis. This action proposes the reconstruction and new construction of Route 40TR on fully controlled access right-of-way. Project length is 1.7 miles extending from Lower Grove Avenue in the city of St. Louis. Four businesses will be displaced by the action. (55 pages) (ELR Order No. 05090) (NTIS Order No. EIS 72 5090D)

South Platte River Bridge, Nebraska, County: Keith. The statement considers the reconstruction of approaches and the bridge spanning the South Platte River. The construction begins at the Brule Interchange on I–80 and proceeds north on U.S. 30 at the Village of Brule. Project length is approximately 0.76 miles. Temporary water pollution, soil erosion, and siltation from the proposed channel cleanout may occur (21 pages) (ELR Order No. 05089) (NTIS Order No. EIS 72 5089D)

Draft, August 15

Legislative Route 1022 (U.S. 219 Relocated), Pennsylvania, County: Somerset. The proposed action is the relocation of approximately 7 miles of existing U.S. 219 on new right-of-way. An unspecified amount of land will be committed to the project; four families will be displaced. (36 pages) (ELR Order No. 05096) (NTIS Order No. EIS 72 5096D)

Final, August 11

Cooper Canyon Section (I–17) Arizona, County: Yavapia. The statement considers the proposed construction of approximately 6.78 miles of four-lane controlled access highway to form the Cooper Canyon Section of I–17. The project, located within the boundaries of the Prescott National Forest, consists of constructing a new roadway for north bound traffic and partially reconstructing existing S.R. 79 for southbound traffic. An unspecified amount of land will be required for right-of-way. (39 pages) Comments made by: USDA, EPA, DOI (ELR Order No. 05077) (NTIS Order No. EIS 72 5077F)

Final, August 18

Lake Havasu City—I–40 Highway (S.R. 95), Ariz. County: Mohave. The statement considers the construction of 23.6 miles of four-lane highway on S.R. 95. The construction involves two projects, a cross-town leg of 8.9 miles and a 14.7-mile leg from Lake Havasu City limits to about 1 mile south of I–40. Concern has been expressed over the loss of critical wildlife habitat; grazing lands will be displaced. (53 pages) Comments made by: EPA, DOI (ELR Order No. 05118) (NTIS Order No. EIS 72 5118F)

Final, August 11

U.S. Highway 95, Idaho, County: Boundary. The statement is concerned with the improvement of approximately 15 miles of U.S. 95 along the existing alignment. An unspecified amount of agricultural and timber land will be acquired for right-of-way. The community of Eastpark would be encroached upon. (69 pages) Comments made by: USDA, COE, EPA, DOT (ELR Order No. 05075) (NTIS Order No. EIS 72 5075F).

Final, August 18

State Highway 39, Idaho, County: Birgham. The proposed project provides for the construction of a 6.1 mile segment of State Highway 39, a rural two-lane road, from Sterling Road to near Springfield, Idaho. The plan calls for the use of 3.1 miles of existing right-of-way and 3 miles of new right-of-way, which will affect some agricultural uses, including irrigation canals; 40 acres of existing upland bird habitat will be taken. One residence will be displaced. (38 pages) Comments made by: USDA, DOC, EPA, HEW, HUD, DOI (ELR Order No. 05115) (NTIS Order No. EIS 72 5115F)

Final, August 11

State Road 107, Indiana, County: Jefferson. The statement refers to the proposed construction of 2.7 miles of S.R. 107 from the intersection with old U.S. 421 to the intersection with S.R. 62. Seventy acres will be required for right-of-way; two families will be displaced; wildlife habitat will be distrubed. (31 pages) Comments made by: USDA, EPA, HEW, DOI, DOT (ELR Order No. 50576 (NTIS Order No. EIS 72 5076F)

U.S. Highway 24, Kansas, County: Jefferson. The proposed project is the reconstruction of approximately 4.2 miles of U.S. 24 from the end of the four-lane pavements near Grantsville to the Newman Corner and junction of K–237. Approximately 150 acres of agricultural land will be taken from production. Wildlife habitat will be disturbed during construction. (60 pages) Comments made by: USDA, USCG, COE, DOC, EPA, HUD, DOI, OEO (ELR Order No. 05081) (NTIS Order No. EIS 72 5081F)

Final, August 18

U.S. 60, Kentucky, County: McCracken. The statement refers to the reconstruction from two to four lanes of 2.32 miles of highway. Six residences and 2 businesses will be displaced by the action. A 4(f) statement will be filed as public park land would be taken. (61 pages) (ELR Order No. 05117) (NTIS Order No. EIS 72 5117F)

Final, August 11

Chinchuba-Covington Highway (U.S. 190), Louisiana, County: St. Tammany. The proposed project is the construction of 2.4 miles of four lane divided highway with frontage roads to the left and right of the facility. The highway begins at a point south of La. 22 and extends north along existing U.S. 190 to the Interchange with I–12. Most of the 133 acres required for right-of-way is currently committed to existing right-of-way for U.S. 190. (68 pages) Comments made by: USDA, GSA, HEW, DOI, OEO, DOT (ELR Order No. 05084) (NTIS Order No. EIS 72 5084F)

Michigan Route 59, Michigan, County: Oakland. The statement considers the proposed reconstruction of M–59 to five lanes with curb and gutter and enclosed drainage, from the proposed M–275 freeway easterly 4.4 miles to Williams Lake Road. An unspecified amount of land will be acquired for right-of-way. Water area from Pontiac Lake will be lost; the aesthetics of the area will be altered. (49 pages) Comments made by: USDA, COE, HUD, DOI, DOT (ELR Order No. 05080) (NTIS Order No. EIS 5080F)

Final, August 18

State Route 152, Mississippi, County: Platte and Clay. The statement proposes the construction of 11 miles of new roadway from I–29 east to west of I–35. Approximately 760 acres of agricultural land will be committed to the action; 46 families and one business will be displaced. (58 pages) Comments made by: EPA, DOI (ELR Order No. 05111) (NTIS Order No. EIS 72 5111F)

Final, August 11

Hardin Road, Montana. The statement encompasses two projects, the Crow Agency-Hardin Road and the Hardin-Custer Road. The purpose of the project is to provide a connection from the North Hardin Interchange to the East Hardin Interchange, through the main business area of Hardin. Project length is approximately 2 miles. (38 pages) Comments made by: COE, HEW, HUD, DOI, DOT (ELR Order No. 05078) (NTIS Order No. EIS 72 5078F)

Final, August 18

I-90 (St. Regis-East), Montana. The statement is concerned with the construction of a section of I-90, beginning 1.5 miles east of St. Regis and continuing for a distance of 3.6 miles southeast along U.S. 10. An unspecified amount of land is required for right-of-way. Temporary air and noise pollution and an increase in deer-auto collisions may occur. (33 pages) Comments made by: USDA, COE, DOI, FPC, DOT (ELR Order No. 05113) (NTIS Order No. EIS 72 5113F)

Route 60, Missouri, County: Wright. The statement refers to the reconstruction, from two to four lanes, of 12.3 miles of highway. Approximately 410 acres of land will be required for right-of-way; 7 residences, 4 barns, 2 businesses, and 1 church will be displaced. (21 pages) Comments made by: USDA, FPA, HEW, DOI (ELR Order No. 05119) (NTIS Order No. EIS 72 5119F)

State Route No. U.S.-224, Ohio, County: Seneca. The statement considers the relocation of a portion of S.R. No. U.S. 224 starting at S.R. 100. Project length is approximately 11.8 miles. One residence and one farmhouse with farm buildings will be displaced; 500 acres of agricultural land will be committed to the action. (49 pages) Comments made by: USDA, EPA, DOI (ELR Order No. 05112) (NTIS Order No. EIS 72 5112F)

Final, August 11

State Route 29, Tennessee, County: Hamilton. The project involves construction of 9.7 miles of S.R. 29 on new location east of the existing route. An unspecified amount of land is required for right-of-way. Twenty-seven families and two businesses will be displaced. Chickamauga Lake will be crossed. (53 pages) Comments made by: USDA, COE, HEW, DOI, DOT (ELR Order No. 05073) (NTIS Order No. EIS 72 5073F).

State Highway 288, Texas, County: Brozoria. The proposed project is the construction of a controlled-access freeway on new location for a distance of 15 miles from north of Angleton to existing S.H. 332 in Lake Jackson. It connects 5 miles of existing at-grade expressway (S.H. 332) to a controlled-access freeway. An unspecified amount of right-of-way is required; 21 families will be displaced. An active bald eagle nest and section 4(f) land from an area designated as a future park may be encroached upon. (61 pages) Comments made by: USDA, COE, EPA (ELR Order No. 05079) (NTIS Order No. EIS 72 5079F).

S.H. Loop 288 (U.S. 380), Texas, County: Denton. The proposed project is the construction of State Highway Loop 288 around the city of Denton. Proposed is construction of 10.5 miles of noncontrolled access, four-lane divided highway with interchanges at major intersections. An unspecified amount of land will be acquired for right-of-way. Three businesses, four single family dwellings and 30 mobile homes will be displaced. (32 pages) Comments made by: USDA, EPA, HEW, DOT (ELR Order No. 05083) (NTIS Order No. EIS 72 5083F).

BRIAN P. JENNY,
Acting General Counsel.

[FR Doc.72-14642 Filed 8-28-72;8:49 am]

FEDERAL COMMUNICATIONS COMMISSION

AMATEUR LICENSEES

Warning Against Improper Use of Stations in Handling Commercial Traffic

AUGUST 4, 1972.

The Commission has received recent evidence that a number of amateur licensees are engaged in handling business communications directly and indirectly involved in commercial operations. These communications are conducted on both the high frequency bands, and in particular, of late, the VHF bands. In the former, manually operated phone-patch equipment usually is utilized. In the latter, repeaters using "auto-patch" equipment have been used on a widespread basis for interconnection with the commercial telephone system. There has been tremendous growth of amateur repeater stations over the past few years. This has enabled amateur VHF communication from automobiles over a large area of the country. An individual in a moving vehicle capable of accessing a repeater equipped for "auto-patch" operation, may easily communicate with practically anyone having a telephone.

Use of interconnection equipment is not prohibited in Part 97 of the Rules. Automatic "auto-patch" equipment is being used increasingly by VHF repeater stations. There is evidence that this type of operation encourages the handling of commercial communications, which are not permissible in the amateur service. The Commission is greatly concerned that such operation may seriously jeopardize the evolutionary development of the amateur service in accordance with its "charter" contained in section 97.1 of the Rules. Augmentation of the value of the amateur service as a "voluntary noncommercial communication service" must not be brought into question as a result of amateurs' handling commercial traffic.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-14676 Filed 8-28-72;8:51 am]

ANSWERING DEVICES SUBCOMMITTEE

Notice of Advisory Meeting

AUGUST 25, 1972.

In accordance with Executive Order No. 11671, dated June 7, 1972, announcement is made of a public meeting of the Answering Devices Subcommittee, to be held Tuesday, August 29, 1972, and continuing through Thursday, August 31, 1972. The subcommittee will meet at 1 California Street, San Francisco, CA, Room 503 at 9 a.m.

1. *Purposes.* To prepare and submit recommended standards and procedures to the FCC, in order to permit the interconnection of answering devices to the telephone system without the need for carrier provided connecting arrangements;

2. *Membership.* The subcommittee is chaired by Fred Warden and is composed of the following: Lyle D. Abbott, M. E. Hacker, Samuel R. Buxbaum, James B. Eppes, Charles Hernandez, Anthony G. Giacoio, Thomas J. Dunleavy, Peter J. Grant, Jim Owen, F. A. Foresta, Richard W. Horton, Jerry A. Klein, Leslie N. Wilder, K. R. Parker, R. B. Brunson, Clyde W. Sautters, F. G. Splitt, Peter F. Theis, Robert E. Morgan, Lloyd Smith, Shaun Delaney, Boyd King, Ron Matteson, Gustone Perrin, Preston R. Brown, James F. Holmes, Brendan McShane, Allan MacLeod, Denis E. Lowry, Robert W. Shirley, George A. Smith, B. Edelman, Rudy C. Stiefel, John R. Mineo, Earl C. Mansfield, Louis Feldner;

3. *Activities.* As at prior meetings, subcommittee members and observers present their suggestions and recommendations regarding the various technical criteria and standards that should be considered with respect to the interconnection of answering devices to the public telephone network. Subcommittee members include representatives of the Federal government, State regulatory bodies, manufacturers, carriers, and users.

4. *Agenda.* The agenda for the August 29, 30, and 31 meetings will include:

a. Comments on criteria;
b. Delineation of the type of tests which will be used for each of the criteria items;
c. Comments on the AT&T test standard;
d. Discussion of the principles to be followed in the enforcement procedures in preparation for the September 26 joint meeting of the Dialer and Answering Devices Advisory Committee meeting.

It is suggested that those desiring more specific information about the meeting call Domestic Rates Division (202) 632-6457.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-14777 Filed 8-28-72;8:55 am]

[Dockets Nos. 18456, 18457; FCC 72-R-234]

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 construction permits for new FM broadcast stations at Williamson and Matewan, W. Va. (File Nos. BPH-6075 and BPH-6175), respectively, was designated for hearing by Commission Order, FCC 69-180, 16 FCC 2d 806. Subsequently, in response to a request by Harvit, the Review Board, by Memorandum Opinion and Order, released September 29, 1971 (31 FCC 2d 876, 22 RR 2d 1062), added several issues against Three States relating to its operation of standard broadcast station WHJC at Matewan.[1] Presently before the Board is a petition to enlarge issues, filed March 27, 1972, by Harvit[2] seeking an inquiry into the billing practices of Three States.

2. In support of its request, Harvit alleges that Three States has billed one of its advertising accounts, B & L Furniture Co. (B & L), for more spot announcements than in fact were broadcast during August 1970–February 1971, and June–October 1971 (excluding October 1970, in which there were two commercial excesses). Harvit also contends that Three States defrauded B & L when it cut B & L's spot announcements from 30 seconds to 15 seconds in September 1971, and thereafter continued to bill B & L as if no change had occurred. Attached to Harvit's petition is the affidavit of B & L's advertising manager, Charles S. West, asserting the factual allegations upon which Harvit relies. West submits that, by letter dated August 27, 1971,[3] Three States notified B & L that it intended to reduce B & L's spot announcements from 30 seconds to 15 seconds and yet continue to charge the same rate as previously arranged (i.e., 50 cents per spot). By letter dated September 1, 1971,[4] West continues, B & L rejected this proposal as a possible violation of the "wage-price freeze" and informed Three States that it expected to be billed at the old rate as long as the "freeze" remained in effect. Thereafter, on March 6, 1972, West claims that he learned that WHJC was actually running only 15-second commercial spots and had been doing so since sometime in September 1971. When West discussed the situation with George Warren, general manager of WHJC, Warren first claimed that the spots were actually 20 seconds in length. He later said the announcements were 15 seconds long and had been changed either November 13 or November 14, 1971, when the "price freeze" ended. Warren claimed that the change was made in accordance with WHJC's August 27, 1971, letter to B & L. West requested a rebate from Three States, which Warren refused. Upon further investigation of WHJC's program logs, West states that he discovered that during August 1970–October, 1971 (excluding March–May 1971), WHJC failed to broadcast 93 spot announcements bought and paid for by B & L. In conclusion, Harvit contends that B & L was defrauded because it was never notified of the above circumstances and therefore requests an issue to inquire into Three States' billing practices.

3. In its opposition, Three States contends that Harvit's petition is "tenuous and contains no basis for enlarging the issues". In an affidavit attached to the opposition pleading, Carol Warren, traffic manager at Station WHJC, states that upon reviewing the station logs for August 1970–October 1971, inclusive, she discovered that there was a shortage of 58 spot announcements totaling $29 in receipts, $23 for which restitution was made in March 1972 and $6 which will be credited on April's bill to B & L; that she did not intend to defraud B & L and that the errors made were inadvertent clerical mistakes; and that, rather than canceling advertising on WHJC, B & L has requested additional spots. In another affidavit attached to the opposition, George Warren submits that B & L's advertising rate was below not only the rate card, but also below what other advertisers were paying; that the effective rate increase announced to B & L in its August 27, 1971, letter was necessary to bring B & L's rates in line with WHJC's other customers; and that Three States does not believe there was a violation of the "price freeze". Three States argues that since there was no fraud involved and since B & L seems content with the restitution made (as evidenced by its increased advertising), the petition should be denied in its entirety.[5]

4. The Broadcast Bureau is of the opinion that there should be an issue added regarding Three States' billing practices; however, the Bureau does not believe that it has been shown that affirmative fraud was committed against B & L. In supporting an inquiry into Three States' overbilling, the Bureau points out the repetitious nature of the practice and raises the question of whether Three States has exercised the requisite diligence, contemplated by § 73.1205 of the Commission's Rules.[6] However, the Bureau does not believe that intent to deceive, or scienter (an essential element of fraud), was present. According to the Bureau, B & L was notified by WHJC of its intention to change WHJC's billing procedure with respect to B & L and although there was a dispute between the parties, the Bureau submits that this does not constitute intent to deceive sufficient to support the addition of an issue based on fraud. Therefore, the Bureau recommends the addition of an issue restricted to overbilling.

5. In reply, Harvit contends that Three States' opposition admits overbilling between August 1970 and October 1971 (although the amount is in dispute). Petitioner argues that such admission indicates the possibility of other fraudulent billing as far back as 1966 when B & L first started advertising with WHJC; and that it is clear that there has been a pattern of overbilling in violation of the Commission's rules. Regarding its allegations of fraud, Harvit submits that affirmative fraud has been shown and that it has not been denied by Three States; that length of commercials is an important element of the price charged;[7] that the misrepresentation of not informing B & L of the change constituted fraudulent billing just as much as if it were written on the invoices; and that intent to defraud B & L existed in trying to retain one of WHJC's largest advertising accounts. Harvit also attaches the affidavit of Edward Lovitch, assistant manager of B & L, indicating that B & L is now canceling its advertising on WHJC. Thus, Harvit insists that, by not keeping B & L fully informed when a dispute knowingly existed, Three States affirmatively defrauded B & L.

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[1] One of these issues was modified by the Review Board, by Memorandum Opinion and Order, released Apr. 21, 1972 (34 FCC 2d 586, 24 RR 2d 160).

[2] Also before the Board are the following related pleadings: (a) Supplement to petition to enlarge issues, filed Apr. 3, 1972, by Harvit; (b) opposition, filed Apr. 11, 1972, by Three States; (c) comment, filed Apr. 18, 1972, by the Broadcast Bureau; (d) reply, filed Apr. 21, 1972, by Harvit; (e) petition for leave to file, with supplement to petition to enlarge attached, filed May 19, 1972, by Harvit; (f) opposition to (e), filed June 1, 1972, by Three States; and (g) reply to (f), filed June 13, 1972, by Harvit. In our opinion, Harvit has not shown good cause for the filing of its second supplement almost 2 months after its original petition. The information contained in the supplement was available to Harvit at the time it filed its petition on Mar. 27, 1972. Since the supplement is otherwise unauthorized by the Commission's Rules (see sec. 1.294 of the Commission's Rules), the petition for leave to file will be denied and the supplement attached thereto will not be considered.

[3] A copy of the letter is attached to Harvit's petition.

[4] A copy of this letter is also attached to the petition.

[5] Three States also argues that the Harvit petition is "an improper attempt to use discovery for enlargement of issues." The Board has recently held, however, that, although "fishing expeditions" are not allowed, facts first revealed in proper discovery may be used as a basis for petitioning to enlarge issues. See Star Stations of Indiana, Inc., 34 FCC 2d 632, 633 n.4, 24 RR 2d 165, 167 n.4 (1972); Folkways Broadcasting Co., Inc., 33 FCC 2d 813, 816 n.16, 23 RR 2d 944, 948-9 n.16 (1972).

[6] Section 73.1205, in pertinent part, reads as follows:

"No licensee of a standard, FM, or television broadcast station shall knowingly issue to any local * * * advertiser * * * any bill, invoice, affidavit or other document which contains false information * * * or which misrepresents the nature or content of such advertising, or which misrepresents the quantity of advertising actually broadcast (number or length of advertising messages) or the time of day or date at which it was broadcast. Licensees shall exercise reasonable diligence to see that their agents and employees do not issue any documents which would violate this section if issued by the licensee."

[7] In support of this contention, Harvit cites the Commission's Public Notice on Fraudulent Billing Practices, 35 F.R. 7906, 23 FCC 2d 303 (1970):

"9. A licensee knowingly issues a bill or invoice to a local or national advertiser which shows broadcast of commercial announcements 1 minute in length, whereas in fact some of the announcements were only 30 seconds in length.

"INTERPRETATION: This is fraudulent billing, since it represents the length of the commercials, a highly important element of the price charged for them." [35 F.R. at 7907, 23 FCC 2d at 306.]

6. The Review Board will add an issue to inquire into Three States' alleged practice of overbilling. It appears from the pleadings that, for a period of at least 15 months, Three States repeatedly overbilled one of its major advertising accounts, although the exact amount involved is in dispute. In its Memorandum Opinion and Order amending what is now § 73.1205 of the rules,[8] the Commission stated that: "* * * [O]utright false billing, the knowing rendition of any bill or other document which misrepresents the number of announcements run, their character, their length, or the date and time of their broadcast [,w]hile less common than double billing * * * are certainly no less fraudulent and contrary to the public interest * * *. Any such misrepresentation certainly reflects adversely on the qualifications of a licensee * * *. "Fraudulent Billing Practices, 23 FCC 2d 70, 72, 71, 19 RR 2d 1506, 1508–9, 1508 (1970). In light of the repetitious nature of the alleged overbilling and the apparent lack of reasonable diligence on the part of Three States,[9] we are of the opinion that WHJC's billing practices raise questions of serious misconduct warranting inquiry at the hearing. Faulkner Radio, Inc., 15 FCC 2d 780, 786, 15 RR 2d 285, 292 (1968). Cf. Star Stations of Indiana, Inc., 19 FCC 2d 991, 17 RR 2d 491 (1969). The Board does not believe, however, that Harvit has shown that Three States affirmatively defrauded B & L when it cut the time and length of B & L's commercials. Fraud is "an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right; a false misrepresentation of a matter of fact, whether by words or by conduct, * * *, or by concealment of that which should have been disclosed, which deceives and is intended to deceive * * *"[10] It appears that George Warren, general manager of WHJC, notified B & L of its intention to effectuate a rate increase for B & L's account. While B & L rejected this charge as a violation of the "price freeze", it knew that Three States wanted to increase B & L's advertising rate and that as soon as the "price freeze" was over it would attempt to do so. It appears then that a contractual dispute existed. However, since Three States has never in the past issued bills to B & L indicating the time-length of its spot announcements, there is no reason to believe that its failure to do so after it reduced the time length of B & L's spots was an attempt to defraud B & L. Therefore, the issue added by the Board will be limited to an inquiry into incidents of overbilling by Three States and will not include the question of fraud.[11]

7. *Accordingly, it is ordered,* That the petition for leave to file, filed May 19, 1972, by Harvit Broadcasting Corp., is denied, and the supplement attached thereto is dismissed; and

8. *It is further ordered,* That the petition to enlarge issues, filed March 27, 1972, by Harvit Broadcasting Corp., is granted to the extent indicated herein and is denied in all other respects; and that the issues in this proceeding are enlarged by the addition of the following issue:

To determine whether Three States Broadcasting Co., Inc. has engaged in any billing practices violative of § 73.1205 of the Commission's rules, and if so, what effect, if any, its conduct has upon its basic 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 issue added herein shall be on Harvit Broadcasting Corp. and the burden of proof under such issue shall be on Three States Broadcasting Co., Inc.

Adopted: August 21, 1972.

Released: August 23, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[12]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-14675 Filed 8-28-72;8:51 am]

[Dockets Nos. 19468, etc.; FCC 72R-231]

WIOO, INC., ET AL.

Memorandum Opinion and Order Enlarging Issues

In re applications of WIOO, Inc., Carlisle, Pa., Docket No. 19468, File No. BPH-6572; Howard J. Hilton, John E. McGowan, and John E. Hilton, doing business as Hilton, McGowan & Hilton, Carlisle, Pa., Docket No. 19469, File No. BPH-6631; Alexander Contract and Sylvia Contract, doing business as Cumberland Broadcasting Co., Carlisle, Pa., Docket No. 19471, File No. BPH-7404; for construction permits.

1. The above-captioned mutually exclusive applications for a new FM broadcast station on 93.5 mHz (channel No. 228) at Carlisle, Pa., were designated for hearing in a consolidated proceeding by Commission Order, FCC 72-233, released March 24, 1972, 37 F.R. 6519. Alexander Contract and Sylvia Contract, doing business as Cumberland Broadcasting Co. (Cumberland), have petitioned the Board to enlarge the issues as follows:

(a) To determine whether WIOO, Inc., and/or any of its principals, has at any time made misrepresentations to the Commission, been lacking in candor, or failed to disclose material information.

(b) To determine whether WIOO, Inc., and/or any of its principals attempted to secure or secured false evidence of a loan commitment in order to establish its financial qualifications thereby abusing or attempting to abuse the Commission's processes.

(c) To determine whether WIOO, Inc., and/or any of its principals has the requisite character qualifications to be a licensee of the proposed frequency modulation broadcast station.

(d) To determine whether WIOO, Inc., has complied with the provisions of § 1.65 of the Commission's rules.

(e) To determine the financial qualifications of WIOO, Inc., and/or its principals to construct and operate for the first year the proposed frequency modulation broadcast station.

(f) To determine in light of the evidence adduced pursuant to the foregoing issues, the effect on the requisite and/or comparative qualifications of WIOO, Inc., and/or any of its principals.[1]

2. Cumberland bases its request on the following circumstances. The Commission found that WIOO, Inc., would require $57,150 to construct its proposed FM station and to operate it for 1 year. At the time its application was designated for hearing, WIOO relied upon a $20,000 proposed loan from Harold Swidler, a $10,000 proposed loan from Norman Swidler,[2] a loan commitment in the amount of $35,000 from the First National Bank of Shippensburg, Shippensburg, Pa., and a loan commitment in the amount of $60,000 from the National Central Bank of Harrisburg, Harrisburg, Pa.[3] Cumberland alleges that as of April 12, 1972, WIOO had no loan commitment from First National Bank of Shippensburg and in fact never had such a commitment; nor did it have a loan commitment from the National Central Bank of Harrisburg, Harrisburg, Pa., in the amount of $60,000 as of April 12, 1972. Moreover, Cumberland contends that, in view of a large number of recorded mortgages and outstanding judgments entered against the Swidler brothers jointly and individually and their various business enterprises, the balance sheets of Harold and Norman Swidler do not accurately reflect their financial condition and do not support their ability to make the loans to which they have committed themselves. These several allegations are supported by four affidavits of Mr. Alexander Contract, a 50-percent partner in Cumberland and three affidavits of Mrs. Sylvia D. Contract, also a 50-percent partner, as well as copies of lists of recorded mortgages and judgments supported by the affidavits of Mr. Henry B. Breen, recorder of deeds, Cumberland County, and Mr. Glen R. Farner, prothonotary of Cumberland County, Pa.

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[8] See note 6, supra.

[9] See § 73.1205 of the Commission's rules.

[10] Black's Law Dictionary 788 (4th Ed. 1951).

[11] *Cf. Kittyhawk Broadcasting Corp.*, 8 FCC 2d 342, 344, 10 RR 2d 189, 193 (1967).

[12] Board Member Berkemeyer absent.

[1] The Board also has before it for consideration: a supplement to Cumberland Broadcasting Co.'s petition to enlarge issues, filed Apr. 17, 1972; an opposition to petition to enlarge issues, filed by WIOO, Inc., May 15, 1972; Broadcast Bureau's comments on Cumberland Broadcast Co.'s petition to enlarge, filed May 15, 1972; supplement to comments on Cumberland petition to enlarge, filed by Broadcast Bureau, May 24, 1972; and Cumberland Broadcast Co.'s reply to the oppositions, filed May 25, 1972.

[2] The Swidlers are brothers and each owns 50 percent of the stock of WIOO.

[3] At the time WIOO submitted the above described financial proposal it stated that it did not need the $60,000 loan commitment but it was submitted to provide assurance of its financial qualifications.

3. The Contract affidavits essentially allege that Mr. and Mrs. Contract spoke to officials of the First National Bank of Shippensburg, Pa., particularly Mr. Joseph D. Hazzard who had signed the loan commitment to WIOO, Inc., and Mr. Gurdon G. Potter, president of the First National Bank of Shippensburg, Shippensburg, Pa., on April 12 and 14, 1972; that they were advised that the bank had rescinded its commitment to WIOO, Inc., and that Mr. Norman Swidler was advised by letter dated April 14, 1972, that the bank no longer considered the personal guaranty of Norman and Harold Swidler to be acceptable security. The Contracts also state that during the course of these conversations Mr. Hazzard advised them that at the time the Swidlers requested the $35,000 loan commitment, Norman Swidler told the bank officials that WIOO, Inc., really did not need the money, but wanted to show the Federal Communications Commission that the money would be available—like window dressing. The Contracts attach a very short letter addressed To Whom It May Concern, over the signature of Joseph Hazzard which states: "We regret to inform you that we find it necessary to cancel our previous commitment to Mr. Swidler due to Mr. Swidler's present position," and a letter over the signature of Mr. Gurdon Potter addressed to Cumberland Broadcasting which states that the December 22, 1971, loan commitment to WIOO, Inc., is no longer in effect and that Mr. Norman and Harold Swidler, who were to guaranty the note, had experienced severe financial reverses and their guaranty is not considered acceptable security by the bank. The list of outstanding mortgages submitted with Cumberland's petition shows mortgages recorded on five parcels of real estate, title either to Harold and Norman Swidler or Swid Brothers Discount Center for a total amount of $73,500, and the list of judgments running against Swid Brothers, Inc., or Norman Swidler, or Harold Swidler on the N–H Corp. beginning with the May term of 1968, shows 29 judgments with a face value of $161,818.96.

4. Cumberland contends that since WIOO, Inc., did not at any time have available to it the $35,000 loan commitment from the First National Bank of Shippensburg, it has misrepresented to the Commission its financial qualifications and has in fact attempted to secure false evidence of a loan commitment and thus abuse the Commission's processes. Cumberland also contends that when WIOO told the Commission that its loan commitment from National Central Bank of Harrisburg was not necessary to establish its financial qualifications, it was misrepresenting the facts. Cumberland argues that therefore its requested issues (a), (b), and (c) should be included in these proceedings. Cumberland also contends that since the loan commitment from the National Central Bank of Harrisburg was terminated by the bank as of December 17, 1971, and WIOO failed to inform the Commission of the unavailability of this loan, it has violated the requirements of § 1.65 of the Commission's Rules and therefore its proposed issue (d) should be included. Moreover, Cumberland contends that the balance sheets submitted by Norman and Harold Swidler failed to show numerous outstanding judgments and mortgages and thus it is impossible to find WIOO, Inc., financially qualified. In view of these circumstances, Cumberland requests its proposed issue (e) and its conclusory issue (f) in view of all of the foregoing.

5. WIOO, Inc., opposes the addition of these issues. It contends that it did in fact have a loan commitment from the First National Bank of Shippensburg in the amount of $35,000, as evidenced by the letter of Joseph Hazzard, cashier of the First National Bank, dated September 17, 1971, and submitted with its application. Moreover, WIOO contends that it was not aware of the bank's recision of its arrangement with WIOO and Norman and Harold Swidler until it received the letter dated April 12 from Hazzard, and that prior to that time the Swidlers had continued to rely upon the letter originally written by the bank. Moreover, WIOO contends that its loan commitment from the National Central Bank of Harrisburg, Harrisburg, Pa., had been arranged to provide a 90-day commitment letter dated September 17, 1971, which was to be renewable up to three times for a possible total of 1 year. The Swidlers allege that they were not aware that the September 17 letter had not been extended until Cumberland filed its petition to enlarge. To support its contentions, WIOO attaches a letter from Albert W. Case, vice president of North Central Bank of Harrisburg, which states there was a meeting between the Swidlers and officers of the bank and it was agreed that since there was a misunderstanding as to the collateral to be required, the commitment would not be extended; and that this action under no circumstances is to be construed as a reflection on the honesty or integrity of either Henry Swidler, who has long dealt with the bank, or Harold Swidler, who is held in high regard by the bank. WIOO concedes that there was a meeting between Mr. Case, vice president of the bank, and Mr. Harold Swidler and his father, Henry Swidler, and that there was some discussion concerning the required collateral; however, neither Harold Swidler nor his father, Henry Swidler, understood that the commitment would not be renewed on December 17, 1971, and again 3 months later as proposed in the initial letter agreement. In view of these circumstances, WIOO contends there is no justification for Cumberland's proposed issues (a), (b), (c), and (d). Furthermore, WIOO notes that it is submitting an amendment which provides for a new plan of financing.[4]

6. According to the amendment WIOO is no longer relying on loan commitments, either from the Shippensburg bank or the Harrisburg bank, but now relies upon a commitment of Harold and Norman Swidler to lend WIOO, Inc., whatever funds are necessary for the construction and operation of the proposed FM station. This commitment is supported by their respective balance sheets, dated April 21, 1972, and submitted as part of its amendment, and a loan commitment, dated April 21, 1972, from the Farmers Trust Co. of Carlisle, Pa., to lend Harold Swidler $50,000 to be devoted to the construction and operation of the proposed FM station. This letter of commitment requires a first lien mortgage on a warehouse building located at 876 Harrisburg Pike, Carlisle, PA. That property is shown to be unencumbered. In addition to these commitments there is a letter of commitment, dated April 21, 1972, signed by Henry Swidler in which he agrees to lend WIOO, Inc. $30,000 to be used for the construction and operation of a proposed FM broadcast station in Carlisle, Pa., with the notation that no collateral will be required for this loan. Henry Swidler's ability to make the loan is evidenced by his balance sheet dated April 21, 1972, and a loan commitment of $10,000 from the Harrisburg National Bank and Trust Co., Harrisburg, Pa. WIOO argues that in view of this financial plan, there is no need for the financial qualifications issue and that since it was not aware of the bank's actions withdrawing their prior loan commitments, it had no obligation to advise the Commission of the changed circumstances. Accordingly, WIOO contends, Cumberland's petition should be denied.

7. The Broadcast Bureau takes the position that WIOO's failure to advise the Commission of outstanding mortgages and recorded judgments against its principals and their various businesses raises the possibility of misrepresentation concerning this aspect of WIOO's application. The Bureau also points out that at no place in its application did WIOO show the ownership of the N–H Corp., which was wholly owned by Norman and Harold Swidler, and which is shown by the affidavits in this proceeding to have been involved in a chapter IX of the Bankruptcy Act arrangement proceeding at the time the application was filed. The Bureau contends that these circumstances warrant inclusion of the proposed misrepresentation issue. The Bureau agrees with WIOO that the proposed abuse of process issue is not warranted since WIOO did in fact have a $35,000 loan commitment from the Shippensburg bank and the Swidlers were not advised that the bank had withdrawn its commitment until April 14, 1972. The Bureau contends that WIOO's failure to report a December 1971 judgment of $5,000 and a September 1971 judgment of $60,000 against the Swidler brothers within 30 days of their entry warrants the inclusion of a section 1.65 issue. The Bureau also supports the inclusion of a financial qualifications issue on the grounds that it is impossible to ascertain

[4] WIOO's petition to amend was granted by the Examiner by Order, FCC 72M–712, released May 31, 1972.

the exact financial status of WIOO and its principals, the Swidler brothers.

8. The Review Board will add an issue to determine whether WIOO, Inc., or any of its principals has, at any time, been lacking in candor, failed to disclose material information or made misrepresentation to the Commission. At the time this matter was designated for hearing, WIOO purported to rely on a $20,000 loan from Harold Swidler and a $10,000 loan from Norman Swidler. The balance sheets of those principals submitted to support their ability to make the proposed loans showed substantial assets; however there was no indication of outstanding mortgages on property owned by them and their respective businesses or judgments recorded against them.[6] Moreover, there was no reference to the N–H Corp. which is wholly owned by Norman and Harold Swidler and was at that time involved in a bankruptcy proceeding.[6] WIOO's failure to provide all the pertinent information concerning the financial position of the principals upon whom it relied for financial support and their wholly owned businesses raises sufficient questions to warrant the inclusion of an issue in this proceeding to determine whether WIOO has misrepresented material facts to the Commission or has been lacking in candor.

9. The Board finds no basis for Cumberland's proposed abuse of process issue. The request hinges entirely on Cumberland's allegation that WIOO did not, in fact, have a loan commitment from the First National Bank of Shippensburg. The correspondence from the bank belies this contention and even Cumberland concedes that the bank did in fact agree to lend WIOO $35,000. That requested issue will therefore be denied.

10. Nor is the Board persuaded that a financial qualifications issue is warranted in this proceeding in view of WIOO's amended financial proposal. In its most recent financial showing, WIOO relies upon a $50,000 proposed loan from the Farmers Trust Co. of Carlisle, Pa., which is supported by a letter committing the bank to make such a loan to Mr. Harold Swidler and a letter from Swidler to the effect that the proceeds of such loan will be used for the purpose of construction and operating WIOO's proposed FM station, and a loan from Mr. Henry Swidler, father of the Swidlers, in an amount of $30,000. Mr. Henry Swidler's commitment to lend WIOO $30,000 is evidenced by a letter over his signature dated April 21, 1972. He has supported his ability to make the loan by his balance sheet dated April 21, 1972, which shows a net worth of $203,000 with cash on hand, $7,000, savings bonds, $4,500 and marketable securities listed on the New York Stock Exchange and the American Exchange (these securities are not identified) valued at $9,000, and a letter of commitment from the Pennsylvania National Bank and Trust Co. at Harrisburg, Pa., to lend Mr. Henry Swidler up to $10,000. Thus, even if we disregard Mr. Henry Swidler's marketable securities because they are not identified, he would have liquid assets of $21,500 to lend WIOO. This, together with the proposed $50,000 loan from the Farmers Trust Co. of Carlisle, Pa., totals $71,500, well in excess of the $57,150 the Commission found to be necessary to construct and operate the proposed FM station for 1 year without reliance on income. A financial qualifications issue will therefore not be added to the proceeding.

11. WIOO's failure to report the $60,000 judgment entered against Norman and Harold Swidler in December of 1971[7] and the $5,000 judgment entered against Norman and Harold Swidler in February of 1972[8] raises questions under § 1.65 of the Commission's rules. For while there was no financial issue pending against WIOO, Inc., its proposed financing had in fact, been questioned by a Commission letter and since it was relying upon the ability of Harold Swidler to lend it $20,000 and Norman Swidler to lend it $10,000, any substantial changes in the financial situation of those principals were of substance and failure to report such changes raises questions concerning WIOO's compliance with § 1.65 of the Commission's rules. Since WIOO failed to report these judgments, which, despite its explanations, appear to have a substantial bearing on its financial qualifications, a § 1.65 issue will be included in the proceeding.

12. *Accordingly, it is ordered,* That the petition of Cumberland Broadcasting Co. to enlarge issues, filed April 14, 1972, is granted to the extent indicated herein and denied in all other respects and the issues in this proceeding are enlarged as follows:

(a) To determine whether WIOO, Inc., and/or any of its principals have been lacking in candor, or failed to disclose material information or made misrepresentation to the Commission.

b. To determine the facts surrounding certain judgments entered against Norman and Harold Swidler and whether WIOO's failure to report those judgments constitute violations of § 1.65 of the Commission's rules.

c. To determine in light of the evidence adduced pursuant to the foregoing issues the effect on the requisite and comparative qualifications of WIOO, Inc., to be a licensee of this Commission.

13. *It is further ordered,* That the burden of proceeding under issue a and b above, shall be on Cumberland Broadcasting Co., and the burden of proof under all of the issues added herein shall be on WIOO, Inc.

Adopted: August 18, 1972.

Released: August 20, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[9]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-14674 Filed 8-28-72;8:50 am]

[6] The Board has taken into account WIOO's statement that "voluntarily confessed judgments" are used as a security device in Pennsylvania and do not necessarily represent an adjudicated obligation or overdue account. In any event they represent an obligation of the person against whom the judgment runs and as such have a real bearing on the financial position of Norman and Harold Swidler.

[6] Norman and Harold Swidler were obliged to advise the Commission of their interest in N–H Corp. and having done so could have explained its financial situation and its relationship to the Swidler brothers as individuals.

[7] According to Gross, local counsel for the Swidlers, the $60,000 judgment entered against each of the Swidler brothers "actually represents one indebtedness and that totals approximately only $25,000, being the indebtedness on the mortgage given for property owned by the Swidlers in the Borough of Shippensburg. The mortgagee chose to exercise its option to enter judgment on the mortgage bond in the penal sum of twice the original indebtedness, or $60,000. Although the mortgage is technically in default under its original terms the Swidlers and the mortgagee have reached an understanding. Principal payments can be deferred until the Shippensburg building is rented.

[8] It is not possible to determine from the pleadings before us whether the obligations in favor of Gross in the amount of $5,000 against each of the Swidler brothers represent a single $5,000 obligation secured by both brothers or a $5,000 obligation of each brother for a joint total of $10,000. In any event, Gross stated that the judgments were security for an obligation which was not in default.

[9] Board Member Berkemeyer absent.

FEDERAL RESERVE SYSTEM

FORT WORTH NATIONAL CORP.

Acquisition of Bank

The Fort Worth National Corp., Fort Worth, 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 20 percent of the voting shares of Bank of North Texas, Hurst, Tex. 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 18, 1972.

Board of Governors of the Federal Reserve System, August 23, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-14600 Filed 8-28-72;8:45 am]

GENERAL FINANCIAL SYSTEMS, INC.

Retention of Bank; Corrected Notice

In the notice regarding the application of General Financial Systems, Inc., Riviera Beach, Fla., published in the FEDERAL REGISTER on June 28, 1972 (37 F.R. 12754), to retain 12,450 shares of Tri-City Bank, Palm Beach Gardens, Fla., it was not stated that the 12,450 shares of Tri-City Bank were acquired

during 1971 without prior Board approval. By order dated June 22, 1971 (36 F.R. 12331), the Board has provided a procedure whereby any company which, between December 31, 1970, and June 22, 1971, has acquired an interest in a bank without obtaining prior Board approval may apply to the Board for subsequent approval of that action if certain conditions are present. Whether these conditions are met in this case is currently under study.

Any person wishing to comment on the application, specifically in the light of this additional consideration, may submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 12, 1972.

Board of Governors of the Federal Reserve System, August 22, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-14614 Filed 8-28-72;8:46 am]

LITCO CORP. OF NEW YORK

Formation of One-Bank Holding Company

Litco Corp. of New York, Garden City, N.Y., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares of Long Island Trust Co., Garden City, N.Y. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than September 18, 1972.

Board of Governors of the Federal Reserve System, August 23, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-14601 Filed 8-28-72;8:45 am]

NORTHERN STATES FINANCIAL CORP. AND TWIN GATES CORP.

Order Approving Transactions Under Bank Holding Company Act

Northern States Financial Corp., Detroit, Mich. (Northern States), has applied for the Board's approval, under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)), for the formation of a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to City National Bank of Detroit, Detroit, Mich. (City National). The bank into which City National is to be merged has no significance except as a means to facilitate the acquisition of all the voting shares of City National. Accordingly, the proposed acquisition of the successor organization is treated herein as the proposed acquisition of City National. As an incident to the acquisition of City National, Northern States would acquire indirectly 13.2 percent of the voting shares of National Bank of Rochester, Rochester, Mich. (Rochester Bank), which shares are held by City National's profit-sharing trust for the benefit of City National's employees; by virtue of section 2(g)(2) of the Act, Northern States would be deemed to control such shares upon its acquisition of City National.

In a related application, Twin Gates Corp., Wilmington, Del. (Twin Gates), a registered bank holding company owning directly 22.5 percent of the voting shares of City National[1] and 20 percent of the voting shares of Rochester Bank,[2] has applied to the Board for approval to exchange the interest it holds in City National for 22.5 percent of the voting shares of Northern States.

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Northern States was organized recently in order to acquire shares of City National. As a result of consummation of the proposed transaction, Twin Gates would acquire 22.5 percent of the outstanding shares of Northern States through the exchange of shares that it holds in City National for shares of Northern States; and Northern States would become a subsidiary of Twin Gates; City National would become a direct subsidiary of Northern States and an indirect subsidiary of Twin Gates; Rochester Bank would remain a subsidiary of Twin Gates; Twin Gates would continue to control, in the aggregate, approximately $539.9 million in deposits, which represents about 2.3 percent of the total commercial bank deposits in the State. (All banking data are as of December 31, 1971.)

City National ($529 million of deposits), headquartered in downtown Detroit, operates 30 offices throughout the Detroit SMSA, and holds about 4 percent of the commercial bank deposits therein. Rochester Bank ($10.9 million of deposits), located in a suburb about 24 miles from City National's main office in downtown Detroit, operates its only office in Avon township, and holds about 0.04 percent of the commercial bank deposits in the Detroit market. In the Detroit market, City National and Rochester Bank rank, respectively, as the sixth and 37th largest banking organizations among 43 banking organizations. An office of City National is located 3.3 miles south of Rochester Bank. However the banks are already subsidiaries of Twin Gates and do not appear to be in competition with each other. Rochester Bank was organized de novo in 1964 by individuals associated with City National and has been operated more or less as a branch of City National under common ownership. On the basis of the facts of record, notably the close working association of the two banks, the common ownership, and the unlikelihood that the banks would become disaffiliated in the reasonably near future, the Board concludes that consummation of the proposal would not have any adverse effects on existing or potential competition.

Northern States, having been recently organized, has no operating history; its financial condition, managerial resources, and prospects depend on those of its proposed subsidiary, City National, at least for the near future. The financial and managerial resources of Twin Gates appear satisfactory, and its prospects are considered favorable. The financial condition and managerial resources and prospects of City National and Rochester Bank are regarded as generally satisfactory and consistent with approval of the applications.

The capital position of City National is low for a subsidiary of a bank holding company and should be strengthened. The Board has previously expressed the view that a holding company should agree to strengthen the capital position of each of its subsidiaries to a desirable level as a condition to Board approval of the bank holding company formation or expansion. Northern States has committed itself to a capital improvement program that will, upon its implementation, increase the capital account of City National by $25 million. As a result of this injection of capital, the financial condition of City National would be strengthened and its prospects enhanced. The improvement expected in City National's capital account as a result of Northern States' capital improvement program and the greater access that Northern States is likely to have to capital markets than either of the two banks alone lend weight for approval of the applications.

Inasmuch as the proposed transactions involve essentially a corporate reorganization, there would be no immediate effects on the convenience and needs of the communities involved. However, considerations relating to the convenience and needs of the communities are consistent with approval of the applications. It is the Board's judgment that consummation of the proposal would be in the public interest and that the applications should be approved.

[1] In addition, 10 separate trusts established for the benefit of the shareholders of Twin Gates hold an additional 15.8 percent of the outstanding shares of City National. Control of said shares is attributed to Twin Gates by virtue of section 2(g)(2) of the Act.

[2] Rochester Bank is also a subsidiary of Twin Gates by virtue of the fact that 20 percent of Rochester Bank's voting shares are owned directly by Twin Gates, and control of an additional 13.2 percent of Rochester Bank's voting shares is attributed to Twin Gates because of control of such shares by a subsidiary (City National) of Twin Gates.

On the basis of the record, the applications are approved for the reasons summarized above. The transactions shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[3] effective August 22, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-14643 Filed 8-28-72;8:49 am]

RIDGE BANCORPORATION OF WISCONSIN

Formation of Bank Holding Company

Ridge Bancorporation of Wisconsin, Greendale, Wis., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent (less directors' qualifying shares) of the voting shares of Southridge Bank of Greendale, Greendale, Wis., and Northridge Bank, Milwaukee, Wis. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 11, 1972.

Board of Governors of the Federal Reserve System, August 21, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-14593 Filed 8-28-72;8:45 am]

SECURITY NEW YORK STATE CORP.

Acquisition of Bank

Security New York State Corp., Rochester, N.Y., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of First Trust Union Bank, Wellsville, N.Y. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 18, 1972.

Board of Governors of the Federal Reserve System, August 23, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-14602, Filed 8-28-72;8:45 am]

[3] Voting for this action: Governors Mitchell, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governors Robertson and Daane.

ST. CROIX BANCO, INC.

Formation of One-Bank Holding Company

St. Croix Banco, Inc., New Richmond, Wis., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 percent or more of the voting shares of Bank of New Richmond, New Richmond, Wis. 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 Minneapolis. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than September 18, 1972.

Board of Governors of the Federal Reserve System, August 23, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-14603, Filed 8-28-72;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[811-1799]

A. J. BUTLER FUND, INC.

Notice of Filing of Application

AUGUST 23, 1972.

Notice is hereby given that The A. J. Butler Fund, Inc. (Applicant), 50 Broadway, New York, NY 10004, registered under the Investment Company Act of 1940 (Act) as a closed-end diversified investment company, 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.

On December 26, 1968, Applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. The Fund's registration statement under the Act on Form N-8B-1 and its registration statement under the Securities Act of 1933 on Form S-4 were filed on December 11, 1968. The registration statement under the Securities Act of 1933 has never become effective nor has any offer or sale of securities been made. Applicant states that it is applying for withdrawal of that statement. Applicant further represents that it has one shareholder and proposes no public offering of its securities.

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 one hundred 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 effectiveness 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 September 18, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of 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 for hearing thereon shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Company Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-14618 Filed 8-28-72;8:47 am]

[File No. 500-1]

COMPUTER MICRODATA CORP.

Order Suspending Trading

AUGUST 22, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value, of Computer Microdata 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 August 23, 1972 through 10 a.m., e.d.t., August 28, 1972.

By the Commission.

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

[FR Doc.72-14619 Filed 8-28-72;8:47 am]

[File No. 500-1]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

AUGUST 22, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10 cents par value, of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976 being 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 August 23, 1972 through September 1, 1972.

By the Commission.

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

[FR Doc.72-14620 Filed 8-28-72;8:47 am]

[812-3172]

INVESTORS STOCK FUND, INC., ET AL. AND SILCO, INC.

Notice of Filing of Application

AUGUST, 22, 1972.

Notice is hereby given that Investors Stock Fund, Inc. (Stock), Investors Mutual, Inc. (Mutual), and IDS New Dimensions Fund, Inc. ("Dimensions", collectively Funds), 100 Roanoke Building, Minneapolis, Minn. 55402, registered open-end diversified management investment companies, and Silco, Inc. ("Silco", collectively referred to with Funds as "Applicants"), 600 Braniff Tower, Dallas, Tex. 75235, have filed an application pursuant to sections 17(b) and 17(d) and Rule 17d-1 thereunder of the Investment Company Act of 1940 (Act) for an order of the Commission approving a proposed purchase by Silco of 109,400 shares of its outstanding common stock at $3.50 per share from Stock and identical proposed purchases from Mutual and Dimensions. 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.

Applicants state that Silco, a Nevada corporation, is a financial holding company, and that on April 25, 1969, Funds each purchased from Silco 109,400 shares of its common stock which was not registered under the Securities Act of 1933. Applicants state that although they have rights under the purchase agreement to require Silco to register the shares for sale to the public under certain circumstances, as a business judgment they have determined to accept a set price from Silco rather than assume the risk of a break in the price during the registration procedure. The common stock of Silco is traded in the over-the-counter market. On January 28, 1972, the date Applicants agreed to the transaction, the market price was $3.25 bid and $3.75 asked.

Funds state that they wish to dispose of the shares because of a change in their portfolio strategies which renders the stock unsuited to their current investment objectives.

Funds, by continued holdings of the shares which amount to more than 5 percent but less than 6 percent each of the outstanding voting securities of Silco, are affiliated persons of Silco for the purposes of section 17 of the Act.

Applicants allege that the purchase of Silco stock from Funds is not a joint enterprise or arrangement and not the type of transaction intended to be covered by section 17(d) of the Act. Funds state that each of them has acted independently of all other Funds in the decision to accept Silco's offer.

Section 17(a) of the Act, as here pertinent, provides that it is unlawful for an affiliated person of a registered investment company to purchase from such investment company any security unless the Commission, upon application pursuant to section 17(b), grants of exemption from the provisions of section 17(a), after finding that the terms of the proposed transaction are fair and reasonable and do not involve any overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, and that the proposed transaction is consistent with the general purposes of the Act.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide as here pertinent, that no affiliated person of any registered investment company or any affiliated person of such a person, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which such registered company is a participant, unless an application regarding such joint enterprise or arrangement has been filed with the Commission and has been granted by order.

Applicants represent that the terms of the proposed transactions are reasonable and fair and do not involve any overreaching on the parts of any persons concerned; that the proposed transactions are consistent with the general registration statements and reports filed policies of Applicants as recited in their under the Act; and that the proposed transactions are consistent with the general purposes of the Act.

Notice is further given that any interested person may not later than September 14, 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 Applicants at the addresses 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 Investment Company Regulation, pursuant to delegated authority.

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

[FR Doc.72-14621 Filed 8-28-72;8:47 am]

[Filed No. 500-1]

MERIDIAN FAST FOOD SERVICES, INC.

Order Suspending Trading

AUGUST 23, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.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 August 24, 1972, through September 2, 1972.

By the Commission.

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

[FR Doc.72-14622 Filed 8-28-72;8:47 am]

[File No. 500-1]

NORTH AMERICAN PLANNING CORP.

Order Suspending Trading

AUGUST 22, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the class B nonvoting common stock, $.01 par value and all other securities of North American Planning 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 August 23, 1972, through September 1, 1972.

By the Commission.

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

[FR Doc.72-14623 Filed 8-28-72;8:47 am]

[70-5215]

OHIO EDISON CO.

Notice of Proposed Acquisition of Utility Assets

AUGUST 23, 1972.

Notice is hereby given that Ohio Edison Co. (Ohio Edison), 47 North Main Street, Akron, OH 44308, a registered holding company and a public-utility company, has filed an application and amendments thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 9(a) and 10 of the Act as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Ohio Edison proposes to acquire from the City of Norwalk, Ohio (Norwalk), the electric utility system owned and operated by Norwalk, which presently serves approximately 5,500 customers. Ohio Edison, pursuant to the advertisement inviting bids for the Norwalk utility system, submitted a bid which was accepted. Ohio Edison bid $5,850,000, plus an amount equal to the cost of net additions after March 1, 1970, the date of the inventory on which its offer was predicated, plus the cost to Norwalk of such materials and supplies on hand at the date of closing which Norwalk may not wish to retain. The cost of additions as of April 10, 1972, is estimated by Ohio Edison to be $371,331. Ohio Edison has no knowledge of the original cost of the system and is advised that Norwalk does not maintain such cost records of the property.

Norwalk is surrounded by an area presently being served by Ohio Edison, and it is the intention of Ohio Edison to operate the acquired property as part of Ohio Edison's integrated system. Ohio Edison is presently providing some service to Norwalk at wholesale rates. Upon consummation of the acquisition, Ohio Edison proposes to operate the generating facilities until a new 69-kilovolt substation is constructed in Norwalk and connected to Ohio Edison's 69-kilovolt loop presently under construction from Bellevue, Ohio, to Sandusky, Ohio. It is estimated that the substation and interconnection will be completed approximately 1 year after the acquisition. Ohio Edison further proposes, pursuant to the agreement with Norwalk, to operate the generating facilities for peaking purposes or cold stand-by for 3 years or more from the closing date; upon retirement of the facilities, Ohio Edison will offer to convey the generating plant building and the land on which it is stands to Norwalk. The Norwalk distribution system will continue to be used subject to the modfiications necessary to convert part of the system to Ohio Edison's distribution voltage. Part of the Norwalk system will be operated at the city's distribution voltage of 4.15 kilovolts; the remaining part of the system will be converted to 12.47 kilovolts.

Pursuant to a sale agreement between Ohio Edison and Norwalk, the property is to be conveyed to Ohio Edison free and clear of all encumbrances on a closing date to be agreed upon by both parties and is to include generators, motors, transmission lines, and all equipment used in connection therewith, including the land on which the Norwalk municipal system is located. On the closing date, Norwalk will assign or convey to Ohio Edison all its right, title and interest in agreements for joint use or ownership of poles, railroad crossings, licenses, permits and other agreements necessary for operation of the property with such consents of other parties as may be required.

The property proposed to be acquired includes five coal-fixed steam turbogenerators with a total capacity of 36,250 kilovolt-amperes and one deisel engine-generator of 1,250 kilovolt-amperes capacity, with associated buildings, three substations with a total capacity of 26,562 kilovolt-amperes, and a distribution system consisting of 104.7 circuit miles of primary lines, 55.5 circuit miles of secondary lines, 1,316 transformers ranging in capacity from 1 to 1,500 kilovolt-amperes, and 1,014 street lights.

Ohio Edison estimates, based on the present service by Norwalk and at Ohio Edison's present rates, that for the first full year of operation by Ohio Edison the operating revenues from the property will be approximately $1,800,000 on an estimated sale of 73,300,000 kilowatt hours. In 1971, Norwalk derived $1,506,563 in operating revenues based on 66,981,622 kilowatt-hour sales.

The property to be acquired will be recorded on the books of Ohio Edison on the basis of the original cost thereof (to the extent such original cost can be determined from records or estimated) and the difference, if any, between the purchase price of such property and such original cost will be treated in accordance with the accounting regulations and orders of the regulatory commissions having jurisdiction, namely, the Federal Power Commission and the Public Utilities Commission of Ohio. Except to the extent of such accounting jurisdiction, no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

The expenses incurred by Ohio Edison in connection with the proposed transactions, consisting of company payroll costs and expenses and miscellaneous expenses, are estimated at $1,700.

Notice is further given that any interested person may, not later than September 20, 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 facts 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 amended or as it may be further 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.72-14624 Filed 8-28-72;8:47 am]

[File No. 500-1]

REVENUE PROPERTIES CO. LTD.

Order Suspending Trading

AUGUST 23, 1972.

The common stock, no par value of Revenue Properties Co. Ltd., being traded on the American Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Revenue Properties Co. 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 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 19(a)(4) and 15(c)(5) 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 August 23, 1972, through September 1, 1972.

By the Commission.

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

[FR Doc.72-14625 Filed 8-28-72;8:48 am]

SELECTIVE SERVICE SYSTEM

ALLOCATION OF INDUCTIONS

Correction

In F.R. Doc. 72-3807 appearing at page 5336 in the issue for Tuesday, March 14, 1972, in Table 631-3, the first figure under the month of December reading "120" should read "129".

TARIFF COMMISSION

[332-71]

CONDITIONS OF COMPETITION BETWEEN DOMESTIC AND FOREIGN PRODUCED ASPARAGUS

Notice of Public Hearing

On August 7, 1972, the U.S. Tariff Commission announced an investigation, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), of the conditions of competition in the United States between asparagus being produced in the United States and asparagus produced in foreign countries and imported under items 137.85, 138.00, and 141.81 of the Tariff Schedules of the United States.

A hearing will be held in the courtroom of the U.S. Tax Court, Federal Office Building, 450 Golden Gate Avenue, San Francisco, CA, beginning at 10 a.m., P.s.t., on October 31, 1972. Interested parties desiring to appear and to be heard should notify the Secretary of the Commission, in writing, on or before October 24, 1972. The notification should indicate the name, address, telephone number, and organization of the person filing the request; the name and organization of the witnesses who will testify; and an estimate of the aggregate time desired for presentation of oral testimony by all witnesses for whose appearance the request is filed. The Commission reserves the right to limit the time assigned to witnesses. Witnesses may supplement their oral testimony with written statements of any desired length; these statements should be submitted when the oral testimony is presented.

Written information and views in lieu of appearance at the public hearings may be submitted by interested persons. Such statements should be submitted at the earliest practicable date, but not later than November 15, 1972.

A signed original and 19 true copies of written statements must be submitted. Business data which are deemed confidential should be submited on separate sheets, each clearly marked at the top "Business Confidential." Written statements, except for confidential business data, will be made available for inspection by interested persons.

Communications regarding the Commission's investigation should be addressed to the Secretary, U.S. Tariff Commission, Washington, D.C. 20436.

Issued: August 24, 1972.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.72-14660 Filed 8-28-72;8:52 am]

[337-L-52]

PASSENGER ENTERTAINMENT HEADSETS AND REPLACEMENT TIPS (STETHOSCOPES)

Notice of Extension of Time for Filing Written Views

On July 12, 1972, the U.S. Tariff Commission published notice of receipt of a complaint (37 F.R. 13662) under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) filed by Avid Corp., East Providence, R.I., alleging unfair methods of competition and unfair acts in the importation and sale of passenger entertainment headsets and replacement tips said to be embraced within the claims of U.S. patents Nos. 3,539,031, 3,623,571, and Des. No. 22144 owned by the complainant. Interested parties were given until August 28, 1972, to file written views pertinent to the subject matter of a preliminary inquiry into the allegations of the complaint.

The Commission has extended the time for filing written views until the close of business September 28, 1972.

Issued: August 24, 1972.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc. 72-14629 Filed 8-28-72;8:48 am]

INTERSTATE COMMERCE COMMISSION

[Notice 63]

ASSIGNMENT OF HEARINGS

AUGUST 24, 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 67996 Sub 5, Distillery Transfer Service, Inc., now assigned September 11, 1972, will be held in Room 317 Post Office and Courthouse Building, Bar and Limestone Streets, Lexington, Ky.

MC 107295 Sub 560, Pre-Fab Transit Co., now assigned September 25, 1972, at Chicago, Ill., is postponed indefinitely.

MC 1872 Sub 77, Ashworth Transfer, Inc., MC 32882 Sub 60, Mitchell Bros. Truck Lines, MC 43716 Sub 29, Bigge Drayage Co., MC 54567 Sub 11, Reliance Truck Co., MC 109236 Sub 25, Elmer L. Sims, G. Grant Sims & Elmer L. Sims (trustee for Sims Family trust), doing business as, Salt Lake Transfer Co., MC 112989 Sub 20, West Coast Truck Lines, Inc., MC 120728 Sub 2, Mojave Transportation Co., MC 123681 Sub 21, Widing Transportation, Inc., hearing continued to December 5, 1972, at San Diego, Calif., at the Sheraton Harbor Island, San Diego, Calif.

MC 134765 Sub 5, Specialty Transport, Inc., now being assigned hearing October 26, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

AB-5 Sub 1, George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees of the Property of Penn Central Transportation Co., debtor, abandonment between Williamsport, Pa., and Southport, N.Y., in Lycoming, Tioga and Bradford Counties, Pa., and Chemung County, N.Y., now assigned September 11, 1972, at Williamsport, Pa., is postponed to September 12, 1972, in Court Room No. 1, Williamsport Post Office, 245 W. Fourth Street, Williamsport, PA.

MC-C-7721, A & M Transit Lines, Inc.—Investigation and Revocation of Certificates—MC-675 Sub 4, A & M Transit Lines, Inc., now assigned September 11, 1972, MC-133305 Sub 2, Davis Airport Limousine Service, Inc., now assigned hearing September 13, 1972, will be held in the Grand Jury Room, City County Safety Building, 53 East Center Street, Akron, OH.

MC-2890 Sub 44, American Buslines, Inc., now assigned hearing September 18, 1972, will be held in Room 4, State Office Building, 65 South Front Street, Columbus, OH.

MC-F-11495, Arrow Motor Freight Line, Inc.—Control and Merger—Rite Trucking Co., Inc., assigned September 26, 1972, at Chicago, Ill., will be in Room 1630, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC-123048 Sub 209, Diamond Transportation System, Inc., assigned September 28, 1972, at Chicago, Ill., will be in Room 1992, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 74321 Sub 56, B. F. Walker, Inc., assigned September 29, 1972, at Chicago, Ill., will be in Room 204A, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 95084 Sub 88, Hove Truck Line, assigned October 2, 1972, at Chicago, Ill., will be in Room 1992, Everett McKinley Dirksen Building, 219 South Dearborn Street.

AB 18 Sub 1, Chesapeake & Ohio Railway Co., abandonment between Edmore and Remus, in Montcalm, Isabella, and Mecosta Counties, Mich., assigned October 5, 1972, at Big Rapids, Mich., will be in the Commissioner's Room, Mecosta County Building, 400 Elm Street.

FD 26847, Chicago & North Western Railway Co., abandonment between Sanborn & Wanda, in Redwood County, Minn., now

assigned September 25, 1972, at the Redwood City Courthouse Basement Meeting Room, Third and Jefferson Street, Redwood Falls, MN.

MC 5623 Sub 13, Arrow Trucking Co., MC 107993 Sub 22, J. J. Willis Trucking Co., MC 135524 Sub 4, G. F. Trucking Co., MC 135524 Sub 8, G. F. Trucking Co., now being assigned October 31, 1972 (2 days), at Dallas, Tex., in a hearing room to be later designated.

MC-F-11534, Associated Freight Lines—Control Best-Way Transportation, MC 112123 Sub 7, Best-Way Transportation, and MC-F-11602, Associated Freight Lines — Purchase (Portion) — Doudell Trucking Co., now assigned October 10, 1972, at Phoenix, Ariz., postponed to October 30, 1972 (3 weeks), at San Francisco, Calif., in a hearing room to be later designated.

MC 112123 Sub 8, Best Way Transportation, now assigned October 10, 1972, at Phoenix, Ariz., is cancelled and application is dismissed.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.72-14650 Filed 8-28-72;8:50 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 24, 1972.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42514—*Salt to Stanley, N.C.* Filed by Traffic Executive Association-Eastern Railroads, Agent (E. R. No. 3023), for interested rail carriers. Rates on salt, common (sodium chloride), in bulk, in carloads, as described in the application, from specified points in New York, Ohio, and Michigan, to Stanley, N.C.

Grounds for relief—Rate relationship.

Tariffs—Supplements 94 and 107 to Traffic Executive Association-Eastern Railroads, Agent, tariffs ICC A-907 and C-262, respectively. Rates are published to become effective on September 25, 1972.

FSA No. 42515—*Wheat, Wheat Products and Barley to Spokane, Wash.* Filed by North Pacific Coast Freight Bureau, Agent (No. 72-2), for interested rail carriers. Rates on wheat, wheat products, and barley, in carloads, as described in the application from specified points in Montana, to Spokane, Wash.

Grounds for relief—Carrier competition.

Tariff—Supplement 7 to North Pacific Coast Freight Bureau, Agent, tariff ICC 1199. Rates are published to become effective September 25, 1972.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.72-14651 Filed 8-28-72;8:50 am]

[Notice 113]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Snyopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73832. By order of August 17, 1972, the Motor Carrier Board approved the transfer to Coastal Freightways, Inc., Cambridge, Mass., of Certificate of Registration No. MC-106736 (Sub-No. 2) issued to Norman P. McKenzie, doing business as McKenzie Transportation Co., North Weymouth, Mass., authorizing the transportation of: general commodities, solely within the State of Massachusetts. Lawrence T. Sheils, attorney, 28 Hall Drive, Norwell, MA 02061.

No. MC-FC-73869. By order of August 7, 1972, the Motor Carrier Board approved the transfer to Frick Transfer, Inc., Philadelphia, Pa., of a portion of the operating rights in Certificate No. MC-17355 issued September 27, 1965 to P. F. McDade & Son, Inc., Philadelphia, Pa., authorizing the transportion of household goods between Philadelphia, Pa., and points in Pennsylvania within 25 miles of Philadelphia, on the one hand, and, on the other, points in Delaware and New Jersey.

No. MC-FC-73874. By order of August 17, 1972, the Motor Carrier Board approved the transfer to George D. Ellis, Waterview, Va., of the operating rights in Certificate No. MC-129205 issued May 13, 1968, to Coastal Hauling, Inc., Chesapeake, Va., authorizing the transportation of salt, in bulk, in dump vehicles, from Norfolk, Va., to points in that part of North Carolina on and east of U.S. Highway 15. Morton E. Kiel, registered practitioner, 140 Cedar Street, New York, NY 10006, representative for applicants.

No. MC-FC-73880. By order of August 17, 1972, the Motor Carrier Board approved the transfer to Smithville Freight Lines, Inc., Smithville, Tenn., of Certificate of Registration No. MC-98562 (Sub-No. 2), issued October 8, 1964, to Cliea Robinson, doing business as Smithville Freight Lines, Smithville, Tenn., evidencing a right to engage in transportation in interstate commerce corresponding in scope to Certificates of Convenience and Necessity Nos. 209-E dated August 30, 1954, and 1935 dated May 13, 1955, as amended May 24, 1955, issued by the Tennessee Public Service Commission. Walter Harwood, 1822, Parkway Towers, Nashville, TN 37219, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-14654 Filed 8-28-72;8:50 am]

[Notice 114]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73903. By order of August 24, 1972, the Motor Carrier Board approved the transfer to Mission Petroleum Carriers, Inc., San Antonio, Tex., of Certificate of Registration No. MC-121632 issued September 27, 1968, to Sigmor Distributing Service, Inc., San Antonio, Tex., evidencing a right to engage in transportation in interstate or foreign commerce in the State of Texas corresponding in scope to the grant of authority in certificate No. 6411 dated November 16, 1954, transferred and reissued May 28, 1968, by the Railroad Commission of Texas. Earle Cobb, Jr., attorney at law, 3643 East Commerce Street, San Antonio, TX 78220.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.72-14779 Filed 8-28-72;8:55 am]

[Notice 116]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 23, 1972.

The following are notices of filing of applications[1] for temporary authority

under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67 (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 89913 (Sub-No. 65 TA), filed August 8, 1972. Applicant: FRISCO TRANSPORTATION COMPANY, 3253 East Trafficway, Springfield, MO 65802. Off: 906 Olive Street, St. Louis, MO 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), (1) Between Seneca, Mo., and mine site of Warbonnet Mining Inc., near Peoria, Okla., serving all intermediate points; from Seneca, Mo., over Missouri State Highway No. 43 to junction Newton County Route U; thence over Route U to Missouri and Oklahoma State line; thence over Oklahoma State Highway No. 10–C, 3.4 miles, to junction unmarked road; thence over unmarked road to mine site of Warbonnet Mining, Inc., near Peoria, Okla., and return over the same route; and (2) between Miami, Okla., and mine site of Warbonnet Mining, Inc., near Peoria, Okla., serving all intermediate points; from Miami, Okla., over Oklahoma State Highway No. 10 to junction Oklahoma State Highway No. 10–C; thence over Oklahoma State Highway No. 10–C, 1 mile, to junction unmarked road, thence over unmarked road to mine site of Warbonnet Mining, Inc., near Peoria, Okla., and return over the same route, for 180 days. NOTE: Applicant intends to tack authority herein applied for to other authority held by it in its certificates in MC–89913. Supporting shipper: Warbonnet Mining, Inc., Box 153, Quapaw, Okla. 74363. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 107077 (Sub-No. 4 TA), filed August 8, 1972. Applicant: PECK'S MOVING & STORAGE CO., INC., 1719 North 8th Street, Paducah, KY 42001. Applicant's representative: Clayton R. Wagner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Telephone equipment, material and supplies*, including tools used in the construction and maintenance of telephone systems and communication, between Paducah, Ky., and points in the counties of Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, McCracken, Marshall and Trigg, Ky., for 180 days. Supporting shipper: Western Electric Co., 6701 Roswell Road, NE., Atlanta, GA 30328. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 933 Federal Office Building, 167 North Main Street, Memphis, TN 38103.

No. MC 107496 (Sub-No. 858 TA), filed August 4, 1972. Applicant RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite clay*, in bulk, in tank vehicles, from Burnett, Minn., to points in Wisconsin and the upper Peninsula of Michigan, for 180 days. Supporting shipper: Hallett Minerals Co., Post Office Box 7024, Duluth, MN 55807. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 110683 (Sub-No. 86 TA), filed August 7, 1972. Applicant: SMITH'S TRANSFER CORPORATION, Post Office Box 100, Staunton, VA 24401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Packaged frozen foods*, from Salisbury, Md., to points in Ohio, Virginia, West Virginia, and points in Pennsylvania located on and west of U.S. Highway 219. Restriction: The authority described herein is restricted to shipments originating at the facilities of the Campbell Soup Co. at Salisbury, Md., for 180 days. Supporting shipper: Campbell Soup Co., Campbell Place, Camden, N.J. 08101. Send protests to: Clatin M. Harmon, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 215 Campbell Avenue SW., Roanoke, VA 24011.

No. MC 113908 (Sub-No. 236 TA), filed August 2, 1972. Applicant: ERICKSON TRANSPORT CORPORATION, 2105 East Dale Street, Post Office Box 3180, Springfield, MO 65804. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed ingredients*, in bulk, in tank vehicles, from Verona, Mo., to Thorndike (Waldo County), Maine, for 180 days. Supporting shipper: Hoffman-Taff, Inc., subsidiary of Syntex Laboratories, Inc., 1915 West Sunshine, Springfield, MO 65805. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 114533 (Sub-No. 258 TA), filed August 7, 1972. Applicant: BANKERS DISPATCH CORPORATION, 4970 South Archer Avenue, Chicago, IL 60632. Applicant's representative: Stanley Komosa (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commercial papers, documents, and written instruments* (except coins, currency, and negotiable securities) as are used in the conduct and operation of banks and banking institutions, between Detroit, Mich., on the one hand, and, on the other, Buffalo, N.Y., for 180 days. Supporting shipper: National Bank of Detroit, Detroit, Mich. 48232. Send protests to: District Supervisor Robert G. Anderson, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 120543 (Sub-No. 74 TA), filed August 9, 1972. Applicant: FLORIDA REFRIGERATED SERVICE, INC., U.S. Highway 301 North, Post Office Box 1297, Dade City, FL 33525. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coffee and tea concentrate*, from Marietta, Ga., to U.S. Canadian boundary line in New York and Michigan for furtherance to points in Canada, for 180 days. Supporting shipper: Automated Beverage, Inc., 388–A Carruth Drive SE., Marietta, GA 30060. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 124230 (Sub-No. 17 TA), filed August 3, 1972. Applicant: C. B. JOHNSON, INC., Post Office Drawer S, Cortez, CO 81321. Applicant's representative: Leslie R. Kehl, 420 Denver Club Building, Denver, Colo. 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ore and concentrates*, from points in San Miguel County, Colo., to points in Pinay County, Ariz., for 180 days. Supporting shipper: Idarado Mining Company, Ouray, Colo. 81427. Send protests to: District Supervisor H. C. Ruoff, 2022 Interstate Commerce Commission, Bureau of Operations, Federal Building, 1961 Stout Street, Denver, CO 80202.

No. MC 124679 (Sub-No. 55 TA), filed August 1, 1972. Applicant: C. R. ENGLAND & SONS, INC., 975 West 2100 South Street, Salt Lake City, UT 84119. Applicant's representative: Daniel B. Johnson, Perpetual Building, Washing-

[1] 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.

ton, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs, advertising promotional and display materials, stationery and forms, and materials, supplies and equipment* used or useful in the manufacture and distribution of foodstuffs, when moving at the same time and in the same vehicle with foodstuffs, from Suffolk, Va., to points in Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming, for 180 days. Supporting shipper: Standard Brands, Inc., Standard Brands Building, 625 Madison Avenue, New York, NY, 10022 (James J. Walsh, Director of Traffic). Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, 125 South State Street, Salt Lake City, UT 84111.

No. MC 125080 (Sub-No. 4 TA), filed August 7, 1972. Applicant: TETON CRANE AND TRANSPORT, INC., 575 West 20th Street, Idaho Falls, ID 83401. Applicant's representative: Dennis M. Olsen, 485 "E" Street, Idaho Falls, ID. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Penstock, tunnel liners, machinery, equipment, and commodities requiring special equipment in the loading, unloading or hauling thereof*, from railroad siding at Newdale, Madison County, Idaho and from points in St. Anthony, Fremont County, Idaho, to Teton Dam site in Madison County, Idaho, for 180 days. NOTE: Applicant does not intend to tack authority or to interline with any other carrier. Supporting shipper: Morri Morrison-Knudsen-Kiewit, a joint venture, Post Office Box 368, St. Anthony, ID 83445. Send protests to: C. W. Campbell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 550 West Fort, Box 07, Boise, ID 83702.

No. MC 126222 (Sub-No. 12 TA), filed August 4, 1972. Applicant: JOSEPH A. SIEFERT AND JOSEPH J. SIEFERT doing business as SIEFERT BROS. TRUCKING CO., Post Office Box 310, Rural Route No. 2, DuQuoin, IL 62832. Applicant's representatives. Gregory M. Rebman and Aschemeyer, Suite 1230, Boatmen's Bank Building, St. Louis, Mo. 63102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe*, from the plantsite and shipping facilities of Drainage Engineering Co., at Benton, Ill., to points in Tennessee, Michigan, Indiana, Missouri, Ohio, Iowa, Arkansas, Kentucky, Wisconsin, Minnesota, Louisiana, Mississippi, Texas, and Louisiana, for 180 days. Supporting shipper: J. R. Wiewall, president, Drainage Engineering Corp., Post Office Box 519, Benton, IL 62812. Send protests to: Harold C. Jolliff, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

No. MC 129184 (Sub-No. 11TA), filed August 3, 1972. Applicant: KENNETH L. KELLAR, 810 Peace Portal Drive, Box 449, Blaine, WA 98230. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, Wash. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquor alcoholic*, from Louisville, Ky., and Lynchburg, Tenn., to Riviera Beach, Fla., Superior, Wis., and International Falls, Grand Portage, and Noyes, Minn., Pembina and Portal, N. Dak., Sweetgrass, Mont., Orobille and Blaine, Wash., and San Francisco, Calif., under a continuing contract with Exports, Inc., for 180 days. Supporting shipper: Exports, Inc., Post Office Box 449, Blaine, WA 98230. Send protests to: E. J. Casey, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 133676 (Sub-No. 8 TA), filed August 4, 1972. Applicant: COMET DISTRIBUTION SERVICES, INC., 2125 Sorrel Avenue (70802), Mailing: Post Office Box 3175, Baton Rouge, LA 70821. Applicant's representative: Clint L. Pierson, 947 Gardere Lane, Route 3, Baton Rouge, LA 70808. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Herbicides*, in containers or bags (but not in bulk), from plantsite of Geigy Chemical Plants, St. Gabriel, La., to Baton Rouge, La., and Port of Baton Rouge, Port Allen, La., and *return of empty containers*, between said points via Louisiana Highway 75 to St. Gabriel, Highway 30; St. Gabriel to Baton Rouge; I–10 Baton Rouge to Louisiana Highway 1; Louisiana Highway 1 to Port of Baton Rouge, *return shipments* to be over the same route in reverse, for 180 days. Supporting shipper: Ciba-Geigy Corp., Ardsley, N.Y. 10502. Send protests to: Paul D. Collins, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room T–9038, Federal Building, 701 Loyola Avenue, New Orleans, LA 70113.

No. MC 134063 (Sub-No. 6 TA), filed August 2, 1972. Applicant: FRANK R. CHULLINO, doing business as MIDWEST TRANSPORTATION COMPANY, 2802 Avenue B, Council Bluffs, IA 51501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages* (except malt liquors), in containers only, from Allen Park and Detroit, Mich., Lawrenceburg, Ind., Lynchburg and Tullahoma, Tenn., Chicago, Pekin, Plainfield, and Peoria, Ill., and points in Kentucky to Omaha, Nebr., for 180 days. Supporting shippers: Louis Finocchiaro, Inc., 1119 South Sixth Street, Omaha, Nebr.; Western Wine & Liquor Co., 1008 Dodge Street, Omaha, NE; Capitol Liquors, Inc., 901 Jackson, Omaha, NE. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 106 South 15th Street, 711 Federal Office Building, Omaha, NE 68102.

No. MC 134387 (Sub-No. 14 TA), filed August 8, 1972. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Street, South Gate, CA 90280. Applicant's representative: Warren N. Grossman, 825 City National Bank Building, 606 South Olive Street, Los Angeles, CA 90014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty glass containers*, from points in Alameda County, and Los Angeles County, Calif., to points in Cochise County, Ariz., for 180 days. Supporting shipper: Brockway Glass Co., Inc., 8717 "G" Street, Oakland, CA. Send protests to: John E. Nance, Officer in Charge, Interstate Commerce Commission, Bureau of Operations, Room 7708 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 135341 (Sub-No. 4 TA), filed August 10, 1972. Applicant: MAGOG EXPRESS, INC., Route 2, Post Office Box 265, Magog, Stanstead County, PQ, Canada. Applicant's representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Magazines* and *periodicals*, from ports of entry on the United States-Canada boundary line at or near Derby Line and Highgate Springs, Vt., to Boston, Mass., Green Brook and Jersey City, N.J., New York, Long Island City, and Troy, N.Y., and Philadelphia, Pa.; (2) *pallets*, from the above-described destination points to the above-described origin points; (3) *printing paper*, from New York, N.Y., to ports of entry on the United States-Canada boundary line at or near Derby Line and Highgate Springs, Vt.; and (4) *book covers*, from Holyoke and Springfield, Mass., to ports of entry on the United States-Canada boundary line at or near Derby Line and Highgate Springs, Vt. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts with Imprimerie Montreal Offset Printing, Inc., of Montreal, Quebec, Canada, for 180 days. Supporting shipper: Montreal Offset Printing, Inc., 144 Port Royal, Ouest, Montreal, 357, PQ, Canada. Send protests to: District Supervisor Martin P. Monaghan, Jr., Interstate Commerce Commission, Bureau of Operations, 52 State Street, Room 5, Montpelier, VT 05602.

No. MC 136169 (Sub-No. 4 TA), filed August 10, 1972. Applicant: CHARLIE PHILLIPS, doing business as CHARLIE PHILLIPS TRUCKING, Post Office Box 222, Alvarado, TX. 76009. Applicant's representative: Mike Cotten, Post Office Box 1148, Austin, TX 78767. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Rip rap*, from points in Choctaw County, Okla., to the jobsite of the White Oak Dam Project near Sulphur Springs, Tex., for 180 days. Supporting shipper: Jack Gillis, president, A. K. Gillis & Sons, Inc. Post Office Box

576 Sulphur Springs, TX 75482. Send protests to: H. C. Morrison, Sr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

No. MC 136273 (Sub-No. 1 TA), filed August 7, 1972. Applicant: KENNETH G. MAY AND ORVILLE L. HOWARD, doing business as CORONADO TRUCKING CO., 1315 Santiago Avenue, Santa Fe, CA 92701. Applicant's representative: Ernest D. Salm, 3846 Evans Street, Los Angeles, CA 90027. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paint, paint coatings, primers, enamels, lacquers, solvents, thinners, and varnish* restricted against the transportation of the above commodities in bulk in tank vehicles, from Edgewater, Fla., to Stockton, Calif., for 180 days. Supporting shipper: Coronado Paint Co., Post Office Box 308, 308 Old County Road, Edgewater, FL 32032. Send protests to: John E. Nance, Officer in Charge, Interstate Commerce Commission, Bureau of Operations, Room 7708 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 136887 (Sub-No. 1 TA), filed August 14, 1972. Applicant: KEE CHEM TRANSPORT, INC., Rural Route No. 1, Chalmere, IN 47929. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Building, Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Nitric acid*, from the plantsite of and storage facilities of WillChemco, Inc., at or near Henderson, Ky., to Chicago and Pekin, Ill.; Milwaukee, Wis.; South Bend, Fort Wayne, Muncie, Ind.; and Terre Haute, Ind.; Warren, Wyo.; Port Huron, Flint, and Detroit, Mich.; Elmore, Bryan, Toledo, Spencerville, and Fostoria, Ohio; St. Louis and Portageville, Mo.; Memphis, Ropley, Nashville and Union, Tenn.; and Pontotoc, Miss., for 180 days. Supporting shipper: Chemical Interchange Co., Suite 257, 9929 Manchester Road, St. Louis, MO 63122. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne Street, Room 204, Fort Wayne, IN 46802.

No. MC 136897 (Sub-No. 1 TA), filed August 3, 1972. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, Phoenix, AZ 85041. Applicant's representative: Donald E. Fernaays, 4114 A North 20th Street, Phoenix, AZ 85016. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk and hides), from Tolleson, Ariz., to points in Alabama and Tennessee, for 180 days. Supporting shipper: Swift Fresh Meats Co., a division of Swift & Co., 115 West Jackson Boulevard, Chicago, IL 60604. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 3427 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 136939 (Sub-No. 1 TA), filed August 7, 1972. Applicant: CLAYTON'S INC., Post Office Box 38, Ucon, ID 83454. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal* in bulk, from points in Emery County, Utah, to Idaho Falls, Rexburg, and Ucon, Idaho, for 180 days. NOTE: Applicant does not intend to tack authority or to interline with any other carrier. Supporting shipper: The Church of Jesus Christ of Latter-Day Saints, 115 East South Temple, Salt Lake City, UT. Send protests to: C. W. Campbell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 550 West Fort Street, Box 07, Boise, ID 83702.

No. MC 136941 (Sub-No. 1 TA), filed August 7, 1972. Applicant: CHANCE CORPORATION, General Delivery, Tse Bonito, NM. Applicant's representative: Lyn Mitton, Legal Counsel, Navajo Indian Tribe, Window Rock, Ariz. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities, foodstuff items, school supplies, and cleaning supplies*, from Gamerco, N. Mex., to Flaffstaff, Holbrook, Snowflake, and Winslow, Ariz.; Ignacio, Colo.; Brigham City, and Richfield, Utah, for 180 days. Supporting shipper: Navajo Area Office, Bureau of Indian Affairs, Department of the Interior, Post Office Box 1060, Gallup, NM 87301. Send protests to: William R. Murcoch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, NM 87101.

No. MC 136943 TA, filed August 4, 1972. Applicant: H. J. GASQUE TRUCKING SERVICE, 718 East Second Street, Sheffield, AL 35660. Applicant's representative: Thomas C. Dorsey, 1625 Eye Street, NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fresh pork bellies, hams, frozen pork, and frozen mutton*, from Cherokee and Perry, Iowa; Beardstown, Chicago, East Peoria, and East St. Louis, Ill., St. Louis, Mo., and Cudahy, Wis., to Florence, Ala.; and (2) *pork skins*, inedible, from Florence, Ala., to Woburn, Mass., and Grayslake, Ill., for 180 days. Supporting shipper: Bama Meats, Inc., Post Office Box 280, Florence, AL 35630. Send protests to: Clifford W. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 814, 2121 Building, Birmingham, Ala. 35203.

No. MC 136946 TA, filed August 9, 1972. Applicant: GLEN MAR, INC., Post Office Box 302, Centralia, WA 98531. Applicant's representative: Nick I. Goyak, 404 Oregon National Building, 610 Southwest Alder Street, Portland, OR 97205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Canned seafoods, and commodities*, the transportation of which is partially exempt pursuant to the provisions of section 203(b)(6) of the Interstate Commerce Act, from South Bend and Ocean Park, Wash., to Denver, Colo., Hutchison, Wichita, and Kansas City, Kans.; Minneapolis, Minn.; Chicago, Ill.; Indianapolis, Ind.; Detroit, Mich.; Cleveland, Ohio.; Grand Rapids, Mich.; Buffalo, N.Y.; Syracuse, N.Y., and points on the United States-Canadian boundary line at or near Blaine, Wash., for 180 days. Supporting shipper: East Point Seafood Co., Box 127, South Bend, WA 98586. Send protests to: District Supervisor, W. J. Heutig, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, 319 Southwest Pine Street, Portland, OR 97204.

No. MC 136952 TA, filed August 10, 1972. Applicant: ADAMIC TRUCKING, INC., 15522 Rider Road, Burton, OH 44021. Applicant's representative: Bernard Goldfarb, 55 Public Square, Cleveland, OH 44113. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles*, from Middlefield, Ohio to Galesburg, Ill., and return with *rejected and damaged articles and pallets*, for 180 days. Supporting shipper: Sajar Plastics, Inc., Post Office Box 37, Middlefield, OH 44062. Send protests to: Franklin D. Bail, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 136953 TA, filed August 11, 1972. Applicant: KAY'S TRUCKING, INC., 1424 Liberty Avenue, Union, NJ 07083. Applicant's representative: Bowes & Millner, 744 Broad Street, Newark, NJ. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Houseware, hardware, garden supplies, and garden hand implements, and small hand-operated electrical appliances*, from Eagle Sales Co., Inc., Warehouse, Dunellen, N.J., to points in New York, N.Y., Nassau, Rockland, Suffolk, and Westchester Counties, N.Y., for 180 days. Supporting shipper: Eagle Sales Co., Inc., 900 Magnolia Avenue, Elizabeth, NJ 07201. Send protests to: District Supervisor, Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 136954 TA, filed August 11, 1972. Applicant: GILBERTSON TRUCKING, INC., 4195 West Fourth Street, Winona, MN 55987. Applicant's representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electrical conduit pipe and supplies*, from Maspeth and Hicksville, N.Y.; Baltimore, Md.; Moundsville, W. Va.; Wheatland, Pa. and

Bellevue, Ohio, to points in Eau Claire, Marshfield, and Hudson, Wis.; Minneapolis, Hopkins, St. Louis Park, Robbinsdale, St. Paul and South St. Paul, Minn., and Watertown, S. Dak., (2) *electrical wire and cable*, from Maspeth, N.Y., to points in Eau Claire, Marshfield, and Hudson, Wis.; Minneapolis, Hopkins, St. Louis Park, Robbinsdale, St. Paul and South St. Paul, Min., and Watertown, S. Dak.; and (3) *plumbing fixtures and supplies*, from Perrysville, Ohio and Kohler, Wis., to points in Eau Claire, Marshfield and Hudson, Wis.; Minneapolis, Hopkins, St. Louis Park, Robbinsdale, St. Paul and South St. Paul, Minn. and Watertown, S. Dak., all under contract with J. H. Larson Electrical Company of Minneapolis, Minn., for 180 days. Supporting shipper: J. H. Larson Electrical Co., 530 North Third Street, Minneapolis, MN 55403. Send protents to: A. N. Spath, District Supervisor, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.72-14655 Filed 8-28-72;8:50 am]

[Notice 111]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 24, 1972.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and transfer rules, 49 CFR Part 1132:

No. MC-FC-73486. By application filed August 17, 1972, DELTA BUS COMPANY, 2901 Carrollton Road, Saginaw, MI 48604, seeks temporary authority to lease the operating rights of HENRY A. CROOKS, doing business as MIO BUS LINE, 208 South Pine Street, Onaway, MI 49765, under section 210a(b). The transfer to DELTA BUS COMPANY, of the operating rights of HENRY A. CROOKS, doing business as MIO BUS LINE, is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-14652 Filed 8-28-72;8:50 am]

[Notice 112]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 24, 1972.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and transfer rules, 49 CFR Part 1132:

No. MC-FC-73879. By application filed August 16, 1972, BETAWAYS CARGO CARRIERS, INC., 435-7 Greene Street, Buffalo, NY 14212, seeks temporary authority to lease the operating rights of HOWARD SCHAFER, doing business as HOLMES TRANSPORTATION, 435-7 Greene Street, Buffalo, NY 14212, under section 210a(b). The transfer to BETAWAYS CARGO CARRIERS, INC., of the operating rights of HOWARD SCHAFER, doing business as HOLMES TRANSPORTATION, is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-14653 Filed 8-28-72;8:50 am]

PAY BOARD

[Order 5]

SECRETARY OF THE TREASURY

Delegation of Authority

Pursuant to the authority vested in the Pay Board by Executive Order No. 11640, as amended by Executive Order No. 11660, and Cost of Living Council Order No. 3, as amended, it is hereby ordered as follows:

1. In addition to the authority delegated to the Secretary of the Treasury in sections 1(b) and 4 of Pay Board Order No. 4, for the purpose of uniformity in administration of pay controls within certain trade, industry, and other specified groups of employees, there is hereby delegated to the Secretary of the Treasury the authority to—

(a) Issue a decision on any request for exception, and

(b) Challenge, review, and issue a decision under 6 CFR 201.14(a),

in the case of any Category III pay adjustment that applies to a specified group of employees the precedent for which has been set by a Pay Board decision and order providing that all Category III pay adjustments within the particular group are appropriate for such action by the Secretary of the Treasury.

2. Where references are made in this order to specific CFR sections, such delegated authority shall extend to any subsequent renumbering of such sections. Where substantive changes are made to said enumerated CFR sections, the authority delegated in this order shall extend to such changes unless expressly stated otherwise by the Pay Board in its regulations.

3. The Secretary of the Treasury may redelegate to any agency, instrumentality, or official of the United States any authority under this order, and may, in carrying out the functions delegated by this order, utilize the services of any other agencies, Federal or State, as may be available and appropriate.

4. This delegation shall be effective as of July 12, 1972.

By direction of the Board.

GEORGE H. BOLDT,
Chairman.

[FR Doc.72-14830 Filed 8-28-72;11:54 am]

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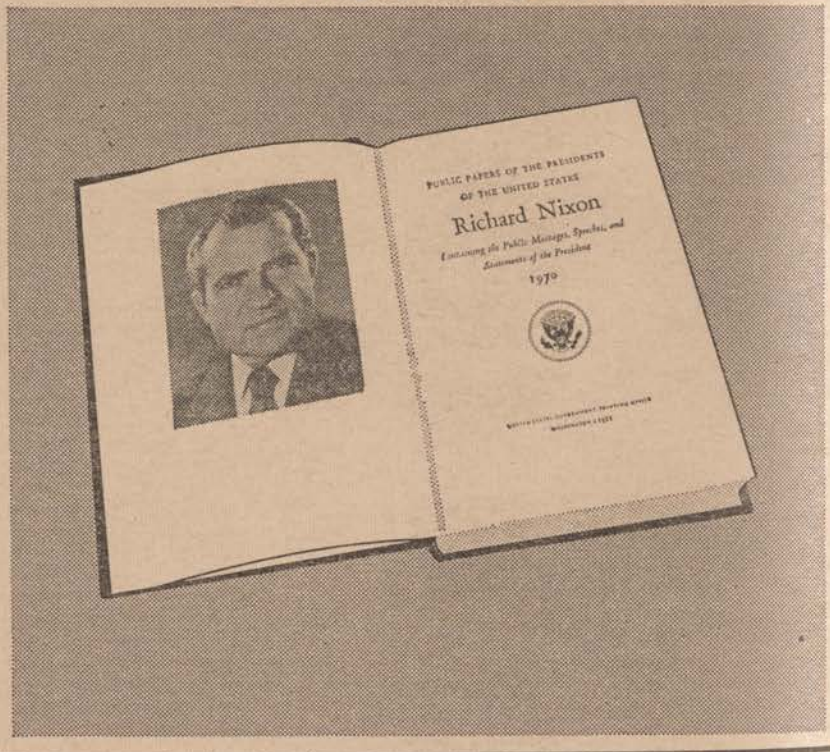

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