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SUBCHAPTER C—DRUGS

[DESI 90235]

PART 144—ANTIBIOTIC DRUGS; EXEMPTIONS FROM LABELING AND CERTIFICATION REQUIREMENTS

PART 147—ANTIBIOTICS INTENDED FOR USE IN THE LABORATORY DIAGNOSIS OF DISEASE

Antibiotic Susceptibility Discs

In a notice published in the FEDERAL REGISTER of April 10, 1971 (36 F.R. 6899), the Commissioner of Food and Drugs proposed amendments to Part 147 (21 CFR 147) regarding antibiotic susceptibility discs. Interested person were invited to submit comments in response to the notice of proposed rule making within 30 days; this time period was extended to June 9, 1971, by a notice published May 25, 1971 (36 F.R. 9446).

The proposal was based on conclusions made by the Commissioner of Food and Drugs after having considered reports from an ad hoc Advisory Committee on Anti-infective Drugs; reports from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group; and other relevant material. The notice proposed to amend the antibiotic drug regulations to provide for a standardized antibiotic disc susceptibility test; to delete provisions regarding carbomycin, dihydrostreptomycin, nystatin, ristocetin, and viomycin discs; and to delete provisions regarding certain other antibiotic discs that represent analogues and the discs containing an antibiotic, a dehydrated medium, and triphenyltetrazolium chloride.

Comments were received from the American Society for Microbiology, Center for Disease Control, College of American Pathologists, National Committee for Clinical Laboratory Standards, Pharmaceutical Manufacturers Association, nine interested manufacturers, and four universities. All comments were carefully considered. There is general agreement on the validity of single disc susceptibility testing and the need for standardized testing procedures. Most of those commenting agreed in general on the standardized method for performing antibiotic disc susceptibility tests as described in the proposal. The comments and the Commissioner's conclusions based on his evaluation of them may be summarized as follows:

1. A number of comments were received concerning the appropriateness of methicillin discs for testing susceptibility to the penicillinase-resistant family of penicillins. The Commissioner, after consideration of relevant information, concludes that methicillin is an appropriate representative of the family of penicillinase-resistant penicillins.

2. Requests were received to provide for one or more additional analogous members of certain classes of antibiotics. However, such requests for additional analogues were not supported by substantial clinical and laboratory information to show a unique advantage for a disc of any such additional analogue. Therefore, the Commissioner concludes that at this time there is a lack of data to support the additional analogues requested.

3. Several comments questioned the use of only one standardized disc testing method and recommendations were made for alternate disc testing methods. The Commissioner, having considered the advisability of recommending more than one standardized disc testing method, concludes that because the proposed standardized antibiotic disc susceptibility test offers such advantages in providing dependable testing results to physicians at the present time it is not in the best interest of good medical care to recommend alternate disc methods that have not been established to be as reliable.

4. Comments were received that susceptibility discs other than those containing antibiotic drugs should be certified in some manner by the Food and Drug Administration. The Commissioner recognizes the need for dependable results with all discs used in determining the susceptibility of pathogenic microorganism to drugs; however, the proposal is limited to those drugs, specifically antibiotics, which are subject to the certification provisions of the act (21 U.S.C. 357). FDA published in the FEDERAL REGISTER on August 17, 1972 (37 F.R. 16613), a proposal establishing a procedure directed toward assuring adequate clinical laboratory results for all diagnostic products.

5. Several comments concerned the authority under the Food, Drug, and Cosmetic Act to limit antibiotic susceptibility discs to only those deemed respresentative of the class. There was also concern that limitation to one disc, representative of a family of antibiotics, would result in a tendency to select for treatment antibiotic dosage forms which contain the same antibiotic as contained in the disc. The policy of using a representative drug of each antibiotic class is not intended to restrict therapy to only the specific antibiotic drugs used in the susceptibility testing. In the labeling of every antibiotic class, a statement is or will be included that the susceptibility of the drug is determined by the class. Physicians with knowledge that a particular class of antibiotics is effective against a pathogen can select the antibiotic from that class that best suits the individual needs of the patient. The advantages of using representative antibiotic discs include: (1) Saving of valuable laboratory time and expediting of results to physicians, because fewer individual discs are used in testing; (2) promotion of testing of a wider number of antibiotic drug classes; and (3) reduction of the possibility of an antibiotic in one class being used in treatment to the exclusion of another antibiotic or an antibiotic in another class which may be more appropriate. Based on consideration of these and other factors, and the overriding need for adequate and orderly diagnostic procedures for the use of antibiotic discs in testing the susceptibility of microorganisms to antibiotics, the Commissioner concludes that it is essential to the public interest that only those antibiotic discs representative of a class of antibiotics be certified. He further concludes that there is no provision in the law that makes it mandatory that discs be certified for the individual antibiotics in a class.

6. Comments were received that provisions should be made for antibiotic discs for use in differential isolation and identification of microorganisms. Two such discs are currently in use: (1) A disc containing 0.04 unit of bacitracin for presumptive identification of Group A streptococci, and (2) a disc containing 100 units of nystatin for suppression of overgrowth of molds and yeasts in the primary isolation of mixed bacterial cultures. The Commissioner considers this comment to be appropriate, and a new section has been added listing those antibiotic discs used in isolation of microorganisms or in determining their taxonomy and for exempting them from batch certification.

7. A comment was filed with data demonstrating a need for separate interpretations when using a clindamycin disc to simultaneously predict susceptibility to both clindamycin and lincomycin. The Commissioner concludes that separate interpretations are appropriate and such a statement has been added in § 147.2 (c) (2) in the Standardized Antibiotic Disc Susceptibility Test under *E. Interpretation of Zone Sizes.*

8. Responses were receiving questioning the need for both polymyxin B and colistin discs as representative of the same polymyxin class of antibiotics. The Commissioner finds that further studies are needed to develop a common susceptibility disc for this class, and notes that some such studies are in progress. The Commissioner, therefore, concludes that until a suitable single disc is developed, the listing of both polymyxin B and colistin is necessary.

9. Requests were received to shorten the required vial label statement for antibiotic susceptibility discs to read "For laboratory use only". The Commissioner considers the statement "For laboratory use only" as adequate to reflect the intended use of these discs and § 147.2(c)(1)(iv) has been revised to provide for the shorter statement.

10. Data were presented to show that the 30 microgram cephalothin disc cannot be relied upon to detect resistance of methicillin-resistant staphylococci to cephalosporin class antibiotics. The Commissioner finds that a statement in the labeling is necessary to make known the limitations of the cephalothin disc. Therefore, such information is included in footnote (2) following the table in the section entitled: *E. Interpretation of Zone Sizes* of § 147.2(c)(2).

11. Comment has been received that the proposed regulation appears to preclude the use of other procedures to determine antibiotic susceptibility. As outlined in the proposal, promulgation of this regulation is intended to help assure proper use of certified antibiotic discs. It is not intended to restrict the selection of methods or equipment used to test antibiotic susceptibility. Other methods (e.g., dilution techniques utilizing antibiotic powders) are recognized by the scientific community and the Food and Drug Administration. However, if modification of the disc method or if other methods are used, the results should be comparable to those obtained by the standardized method described in these regulations.

12. A number of comments concerned recommendations for a variety of technical changes in the Standardized Antibiotic Disc Susceptibility Test. All such recommendations were carefully considered and many have been incorporated in the order.

The Commissioner of Food and Drugs, having considered the comments received and other relevant material including recommendations from the Advisory Committee on Anti-infective Drugs, concludes the following:

1. The following named antibiotic and antibiotic-class discs are effective for use in susceptibility testing:

Name of Disc	*Content of antibiotic in micrograms (mcg.) or units per disc*
Ampicillin-class disc.[1]	10 mcg. ampicillin.
Bacitracin disc	10 units bacitracin.
Carbenicillin disc.	50 mcg. carbenicillin.
Cephalosporin-class disc.[2]	30 mcg. cephalothin.
Chloramphenicol disc.	30 mcg. chloramphenicol.
Colistin disc	10 mcg. colistin.
Erythromycin disc.	15 mcg. erythromycin.
Gentamicin disc.	10 mcg. gentamicin.
Kanamycin disc.	30 mcg. kanamycin.
Lincomycin-class disc.[3]	2 mcg. clindamycin.
Neomycin disc.	30 mcg. neomycin.
Novobiocin disc.	30 mcg. novobiocin.
Oleandomycin disc.[4]	15 mcg. oleandomycin.
Penicillin-class disc.[5]	10 units penicillin G.
Penicillinase-resistant penicillin class disc.[6]	5 mcg. methicillin.
Polymyxin B disc.	300 units polymyxin B.
Rifampin disc	5 mcg. rifampin.
Streptomycin-class disc.	10 mcg. streptomycin.
Tetracycline-class disc.[7]	30 mcg. tetracycline.
Vancomycin disc.	30 mcg. vancomycin.

[1] For determining susceptibility to ampicillin and hetacillin.

[2] For determining susceptibility to cephalothin, cephaloridine, cephaloglycin, and cephalexin.

[3] For determining susceptibility to lincomycin and clindamycin.

[4] For determining susceptibility to oleandomycin and troleandomycin.

[5] For determining susceptibility to penicillin G, phenoxymethyl penicillin, and phenethicillin.

[6] For determining susceptibility to methicillin, oxacillin, nafcillin, cloxacillin, and dicloxacillin.

[7] For determining susceptibility to tetracycline, oxytetracycline, methacycline, doxycycline, demeclocycline, minocycline, rolitetracycline, and chlortetracycline.

2. The rifampin disc, having been found effective since the proposal was published and now being certified, is included in this order.

3. Data have been received regarding the expected zone sizes produced by the clindamycin disc for the two control cultures. Accordingly, the table under *F. Reference Organisms* of the Standardized Disc Susceptibility Test (§ 147.2(c)(2)) is amended to include clindamycin.

4. There is a need for a standardized antibiotic disc susceptibility test. A description of such method is required as part of the labeling of all antibiotic susceptibility discs subject to certification.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 144 and 147 are amended as follows:

1. Part 144 is amended by adding the following new section:

§ 144.17 Antibiotic drugs for isolation and differentiation of microorganisms in clinical use.

Antibiotic drugs subject to section 507 of the act shall be exempt from section 502(1) if such drugs are:

(a) Paper discs impregnated with antibiotics in the amounts listed in the following table:

Antibiotic	*Content per Disc*
Bacitracin	0.04 unit.
Nystatin	100 units.

(b) Packaged in a container bearing on its label or labeling the following:

(1) On the outside wrapper or container and the immediate container:

(i) The batch mark.

(ii) The potency of each disc in the batch.

(iii) The expiration date as prescribed under § 148.3(a)(3) of this chapter.

(iv) The statement: Not for Susceptibility Testing.

(2) On the labeling within or attached to the package: Adequate directions for use.

2. Part 147 is amended in § 147.1 as follows:

§ 147.1 [Amended]

a. In § 147.1:

i. By revising the section heading to read as follows: § 147.1 *Antibiotic susceptibility discs; tests and methods of assay; potency.*

ii. By deleting the following items from the table in paragraph (c)(3): Carbomycin (hydrochloride), chlortetracycline (hydrochloride), cloxacillin, demeclocycline (hydrochloride), dicloxacillin, dihydrostreptomycin (sulfate), doxycycline, lincomycin (hydrochloride), methacycline (hydrochloride), nystatin, oxytetracycline (hydrochloride), phenethicillin potassium, ristocetin, sodium cephalothin, sodium nafcillin, sodium oxacillin, and viomycin (sulfate).

iii. By deleting the following items from the table in paragraph (d): Carbomycin (hydrochloride), chlortetracycline (hydrochloride), cloxacillin, demeclocycline (hydrochloride), dicloxacillin, dihydrostreptomycin, doxycycline, linomycin (hydrochloride), methacycline cline (hydrochloride), nystatin, oxytetracycline (hydrochloride), phenethicillin potassuim, ristocetin, sodium cephalothin, sodium nafcillin, sodium oxacillin, and viomycin (sulfate).

iv. By alphabetically inserting a new item in the table in paragraph (c)(3), as follows:

Antibiotic	Volume of suspension added to each 100 ml. of seed agar used for test	Suspension number	Medium	
			Base layer	Seed layer
	Ml.			
* * *	* * *	* * *	* * *	* * *
Cephalothin	1.0	10	E	A
* * *	* * *	* * *	* * *	* * *

v. By alphabetically inserting a new item in the table in paragraph (d), as follows:

Antibiotic	Solvent	Standard curve (antibiotic concentration per disc)
* * *	* * *	* * *
Cephalothin	50 percent methyl alcohol	15.0, 21.2, 30.0, 42.4, 60.0 μg.
* * *	* * *	* * *

vi. By changing the fourth sentence of paragraph (e)(1) to read "Incubate the plates overnight at 32°–35° C., except if it is cephalothin, colistin, novobiocin, or polymyxin, the incubation temperature is 37° C."

vii. By changing the heading of subparagraph (3) in paragraph (e) to read "*Individual discs with diameters larger than one-fourth inch but no larger than three-eighths inch for use in impregnating culture media*".

viii. By deleting paragraph (e)(4).

b. By revising the section heading and text of § 147.2 to read as follows:

§ 147.2 Antibiotic susceptibility discs; certification procedure.

(a) *Standards of identity, strength, quality, and purity.* Antibiotic susceptibility discs are round flat discs that have a diameter of one-fourth inch and are made of clear absorbent paper containing antibiotic compounds. They are capable of absorbing moisture rapidly and the antibiotic is evenly distributed. The thickness is sufficient to assure rigidity and to have permitted the complete absorption of an adequate volume of antibiotic solution (approximately 0.02 milliliter). The identity of each disc is signified either by a color or by means of an identifying sign. The absorbent paper and dye or ink used must not affect either bacterial growth or the antibiotic. Each disc shall have a uniform potency that is equivalent to that contained in a standard disc prepared with one of the following quantities of antibiotic drugs:

Ampicillin: 10 mcg.
Bacitracin: 10 units.
Carbenicillin: 50 mcg.
Cephalothin: 30 mcg.
Chloramphenicol: 30 mcg.
Clindamycin: 2 mcg.
Colistin: 10 mcg.
Erythromycin: 15 mcg.
Gentamicin: 10 mcg.
Kanamycin: 30 mcg.
Methicillin: 5 mcg.
Neomycin: 30 mcg.
Novobiocin: 30 mcg.
Oleandomycin: 15 mcg.
Penicillin G: 10 units.
Polymyxin B: 300 units.
Rifampin: 5 mcg.
Streptomycin: 10 mcg.
Tetracycline: 30 mcg.
Vancomycin: 30 mcg.

The standard discs used to determine the potency shall be made of paper as described in § 147.1(d). Each antibiotic compound used to impregnate such standard discs shall be equilibrated in terms of the working standard designated by the Commissioner for use in determining the potency or purity of such antibiotic.

(b) *Packaging.* The immediate container shall be a tight container as defined by the U.S.P. and shall be of such composition as will not cause any change in the strength, quality, or purity of the contents beyond any limit therefor in applicable standards, except that minor changes so caused that are normal and unavoidable in good packaging, storage, and distribution practice shall be disregarded. Each immediate container may contain a desiccant, and each may be packaged in combination with containers of suitable discs of drugs other than those described in paragraph (a) of this section. Such other discs shall be suitable only if the manufacturer and packer have submitted to the Commissioner information of the kind described in § 146.10 of this chapter, and such information has been accepted by the Commissioner.

(c) *Labeling.* Each package of discs shall bear on its label or labeling, as hereinafter indicated, the following:

(1) On the outside wrapper or container and the immediate container:

(i) The batch mark.

(ii) The name and potency of each disc in the batch according to the following:

Name of Disc	*Content of antibiotic in micrograms or units per disc*
Ampicillin-class disc.	10 mcg. ampicillin.
Bacitracin disc	10 units bacitracin.
Carbenicillin disc.	50 mcg. carbenicillin.
Cephalosporin-class disc.	30 mcg. cephalothin.
Chloramphenicol disc.	30 mcg. chloramphenicol.
Colistin disc	10 mcg. colistin.
Erythromycin disc.	15 mcg. erythromycin.
Gentamicin disc.	10 mcg. gentamicin.
Kanamycin disc	30 mcg. kanamycin.
Lincomycin-class disc.	2 mcg. clindamycin.
Neomycin disc	30 mcg. neomycin.
Novobiocin disc	30 mcg. novobiocin.
Oleandomycin disc.	15 mcg. oleandomycin.
Penicillin-class disc.	10 units penicillin G.
Penicillinase-resistant penicillin-class disc.	5 mcg. methicillin.
Polymyxin B disc	300 units polymyxin B.
Rifampin disc	5 mcg. rifampin.
Streptomycin-class disc.	10 mcg. streptomycin.
Tetracycline-class disc.	30 mcg. tetracycline.
Vancomycin disc.	30 mcg. vancomycin.

(iii) The statement "Expiration date _____," the blank being filled in with the date that is 6 months after the month during which the batch was certified, except that the blank may be filled in with a date that is 12, 18, 24, 30, 36, 42, 48, 54, or 60 months after the month during which the batch was certified if the person who requests certification has submitted to the Commissioner results of tests and assays showing that such drug as prepared by him is stable for such longer period of time. If it is a packaged combination of discs of two or more drugs, its outside wrapper shall bear only one expiration date, and that date shall be the date that is required for the shortest dated discs contained in the package.

(iv) The statement "For laboratory use only."

(2) On the circular or other labeling within or attached to the package, adequate directions for the use of such discs, including the following recommended method:

STANDARDIZED DISC SUSCEPTIBILITY TEST

DIRECTIONS FOR USE

Quantitative methods that require the measurement of zone sizes give the most precise estimates of antibiotic susceptibilities. The following outline describes such a procedure. Minor variations from this procedure may be used if the resulting procedure is standardized according to the results obtained in the laboratory from adequate studies with control cultures.

A. PREPARATION OF CULTURE MEDIUM AND PLATES

1. Melt previously prepared and sterilized Mueller-Hinton agar medium and cool to 45°–50° C.

2. For the purpose of testing certain fastidious organisms such as streptococci and *Haemophilus* species, 5 percent defibrinated human, horse, or sheep blood may be added to the above medium which is "chocolatized" when indicated.

3. To prepare the plates, pour the melted medium into Petri dishes on a level surface to a depth of 4 millimeters.

4. Let the medium harden and allow to stand long enough for excess moisture to evaporate. (For this purpose plates may be placed in an incubator at 35°–37° C. for 15–30 minutes or allowed to stand somewhat longer at room temperature.) There should be no moisture droplets on the surface of the medium or on the petri dish covers. The pH of the solidified medium should be 7.2–7.4. Satisfactory plates may be used immediately or refrigerated. Plates may be used as long as the surface is moist and there is no sign of deterioration.

NOTE: Commercially prepared agar plates meeting the above specifications may be used.

B. PREPARATION OF INOCULUM

1. Select four or five similar colonies.

2. Transfer these colonies (obtained by touching the top of each colony in turn with a wire loop) in turn to a test tube containing about 5 milliliters of a suitable liquid medium such as soybean-casein digest broth, U.S.P.

3. Incubate the tube at 35°–37° C. long enough (2 to 8 hours) to produce an organism suspension with moderate cloudiness. At that point the inoculum density of the suspension should be controlled by diluting it, or a portion of it, with sterile saline to obtain a turbidity equivalent to that of a freshly prepared turbidity standard obtained by adding 0.5 milliliter of 1.175 percent barium chloride dihydrate ($BaCl_2 2H_2O$) solution to 99.5 milliliters of 0.36 N (1.0 percent) sulfuric acid. Other suitable methods for standardizing inoculum density may be used; for example, a photometric method. In some cases it may be possible to get an adequate inoculum density in the tube even without incubation.

NOTE: Extremes in inoculum density should be avoided. Undiluted overnight broth culture should never be used for streaking plates.

C. INOCULATING THE PLATES

1. Dip a sterile cotton swab on a wooden applicator into the properly diluted inoculum. Remove excess inoculum from the swab by rotating it several times with firm pressure on the inside wall of the test tube above the fluid level.

2. Streak the swab over the entire sterile agar surface of a plate. Streaking successively in three different directions is recommended to obtain an even inoculum.

3. Replace the plate top and allow the inoculum to dry for 3 to 5 minutes.

4. Place the susceptibility discs on the inoculated agar surface and with sterile forceps, or needle tip flamed and cooled between each use, gently press down each disc to insure even contact. Space the discs evenly so that they are no closer than 10 to 15 millimeters to the edge of the petri dish and sufficiently separated from each other to avoid overlapping zones of inhibition. (Spacing may be accomplished by using a disc dispenser or by putting the plate over a pattern to guide the placement of discs.) Within 30 minutes, place the plate in an incubator under aerobic conditions at a constant temperature in the range of 35°–37° C.

5. Read the plate after overnight incubation or, if rapid results are desired, the diameters of the zone of inhibition may be readable after 6 to 8 hours incubation. In the latter case, the results should be confirmed by also reading the results after overnight incubation.

NOTE: Microbial growth on the plate should be just or almost confluent. If only isolated colonies are present the inoculum was too light and the test should be repeated.

Modifications of the inoculation procedure described in 1–3 above, such as the use of the agar overlay method described in Barry, A. L., Garcia, F., and Thrupp, L. D.: "An Improved Single-disk Method for Testing the Antibiotic Susceptibility of Rapidly-growing Pathogens." Amer. J. Clin. Pathol. 53: 149–58, 1970, a copy of which is on file with the Office of the Federal Register, may be used if the procedure is standardized to produce results with the control cultures that are equivalent to those obtained with the recommended cotton swab streak method.

D. READING THE PLATES

Measure and record the diameter of each zone (including the diameter of the disc) to the closest millimeter, reading to the point of complete inhibition as judged by the unaided eye. Preferably, read from the underside of the plate without removing the cover, using a ruler, calipers, transparent plastic gage, or other device. A mechanical zone reader may be used. If blood agar is used, measure the zones from the surface with the cover removed from the plate.

E. INTERPRETATION OF ZONE SIZES

Interpret the susceptibility according to the following table:

Antibiotic	Disc content	Diameter (millimeters) of zone of inhibition		
		Resistant	Intermediate	Susceptible
Ampicillin [1] when testing gram-negative micro-organisms and enterococci.	10 mcg	11 or less	12–13	14 or more.
Ampicillin [1] when testing staphylococci and penicillin G—susceptible micro-organisms.	10 mcg	20 or less	21–28	29 or more.
Ampicillin [1] when testing *Haemophilus* species	10 mcg	19 or less		20 or more.
Bacitracin	10 units	8 or less	9–12	13 or more.
Carbenicillin when testing *Proteus* species and *Escherichia coli*.	50 mcg	17 or less	18–22	23 or more.
Carbenicillin when testing *Pseudomonas aeruginosa*	50 mcg	12 or less	13–14	15 or more.
Cephalothin when reporting susceptibility to cephalothin, cephaloridine, and cephalexin.	30 mcg	14 or less	15–17	18 or more.[2]
Cephalothin when reporting susceptibility to cephaloglycin.	30 mcg	14 or less		15 or more.
Chloramphenicol	30 mcg	12 or less	13–17	18 or more.
Clindamycin [3] when reporting susceptibility to clindamycin.	2 mcg	14 or less	15–16	17 or more.
Clindamycin when reporting susceptibility to lincomycin.	2 mcg	16 or less	17–20	21 or more.
Colistin	10 mcg	8 or less	9–10	11 or more.[4]
Erythromycin	15 mcg	13 or less	14–17	18 or more.
Gentamicin	10 mcg	12 or less		13 or more.
Kanamycin	30 mcg	13 or less	14–17	18 or more.
Methicillin [5]	5 mcg	9 or less	10–13	14 or more.
Neomycin	30 mcg	12 or less	13–16	17 or more.
Novobiocin	30 mcg	17 or less	18–21	22 or more.[6]
Oleandomycin [7]	15 mcg	11 or less	12–16	17 or more.
Penicillin G when testing staphylococci [8]	10 units	20 or less		21 or more.
Penicillin G when testing other micro-organisms [8]	10 units	11 or less	[9] 12–21	22 or more.
Polymyxin B	300 units	8 or less	9–11	12 or more.[4]
Rifampin when testing *Neisseria meningitidis* susceptibility only.	5 mcg	24 or less		25 or more.
Streptomycin	10 mcg	11 or less	12–14	15 or more.
Tetracycline [10]	30 mcg	14 or less	15–18	19 or more.
Vancomycin	30 mcg	9 or less	10–11	12 or more.

[1] The ampicillin disc is used for testing susceptibility to both ampicillin and hetacillin.

[2] Staphylococci exhibiting resistance to the penicillinase-resistant penicillin class discs should be reported as resistant to cephalosporin class antibiotics. The 30 mcg. cephalothin disc cannot be relied upon to detect resistance of methicillin-resistant staphylococci to cephalosporin class antibiotics.

[3] The clindamycin disc is used for testing susceptibility to both clindamycin and lincomycin.

[4] Colistin and polymyxin B diffuse poorly in agar and the accuracy of the diffusion method is thus less than with other antibiotics. Resistance is always significant, but when treatment of systemic infections due to susceptible strains is considered, it is wise to confirm the results of a diffusion test with a dilution method.

[5] The methicillin disc is used for testing susceptibility to all penicillinase-resistant penicillins; that is, methicillin, cloxacillin, dicloxacillin, oxacillin, and nafcillin.

[6] Not applicable to medium that contains blood.

[7] The oleandomycin disc is used for testing susceptibility to oleandomycin and troleandomycin.

[8] The penicillin G disc is used for testing susceptibility to all penicillinase-susceptible penicillins except ampicillin and carbenicillin; that is, penicillin G, phenoxymethyl penicillin, and phenethicillin.

[9] This category includes some organisms such as enterococci and gram-negative bacilli that may cause systemic infections treatable with high doses of penicillin G. Such organisms should only be reported susceptible to penicillin G and not to phenoxymethyl penicillin or phenethicillin.

[10] The tetracycline disc is used for testing susceptibility to all tetracyclines; that is, chlortetracycline, demeclocycline, doxycycline, methacycline, oxytetracycline, rolitetracycline, minocycline, and tetracycline.

F. REFERENCE ORGANISMS

1. Maintain stock cultures of *Staphylococcus aureus* (ATCC 25923) and *Escherichia coli* (ATCC 25922).

2. Test these reference organisms daily by the above procedure using antibiotic discs representative of those to be used in the testing of clinical isolates.

3. The individual values of zone sizes for the control organisms can be expected to fall in the ranges indicated in the following table:

Antibiotic	Disc content	Individual tests: Zone diameter in millimeters: With *S. aureus* ATTC 25923	Individual tests: Zone diameter in millimeters: With *E. coli* ATCC 25922	Individual tests: Permitted millimeter difference ATCC 25923-ATCC 25922
Ampicillin	10 mcg	24–35	15–20	7–17
Bacitracin	10 units	17–22		
Cephalothin	30 mcg	25–37	18–23	5–16
Chloramphenicol	30 mcg	19–26	21–27	−4–1
Clindamycin	2 mcg	23–29		
Colistin	10 mcg		11–15	
Erythromycin	15 mcg	22–30	8–14	10–19
Gentamicin	10 mcg	19–27	19–26	−2–3
Kanamycin	30 mcg	19–26	17–25	−1–4
Methicillin	5 mcg	17–22		
Neomycin	30 mcg	18–26	17–23	0–3
Novobiocin	30 mcg	22–31		
Oleandomycin	15 mcg	19–28		
Penicillin G	10 units	26–37		
Polymyxin B	300 units	7–13	12–16	−7–−2
Streptomycin	10 mcg	14–22	12–20	−1–5
Tetracycline	30 mcg	19–28	18–25	0–6
Vancomycin	30 mcg	15–19		

G. LIMITATIONS OF THE METHOD

The method of interpretation described in E above applies to rapidly growing pathogens and should not be applied to slowly growing organisms. The latter show larger zones of inhibition than those given in the table. Susceptibility of gonococci to penicillin, and of slow-growing strains, e.g., *Bacteroides* species and fastidious anaerobes to any antibiotic, should be determined by the broth-dilution or agar-dilution method unless specifically standardized diffusion tests are used.

§§ 147.3, 147.4 [Revoked]

C. By revoking § 147.3 *Antibiotic-dehydrated media-triphenyltetrazolium chloride sensitivity discs; tests and methods of assay* and § 147.4 *Antibiotic-dehydrated media-triphenyltetrazolium chloride sensitivity discs; certification procedure.*

Any person who will be adversely affected by the removal of any such drugs from the market may file objections to this order and request a hearing, showing reasonable grounds therefor. The statement of reasonable grounds and request for a hearing shall be submitted in writing within 30 days after publication hereof in the FEDERAL REGISTER, shall state the reasons why the antibiotic drug regulations should not be so amended, and shall include a well organized and full factual analysis of the clinical and other investigational data the objector is prepared to present in support of his objections.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing. When it clearly appears from the data incorporated into or referred to by the objections and from the factual analysis in the request for a hearing that no genuine issue of fact precludes the action taken by this order, the Commissioner will enter an order stating his findings and conclusions on such data.

If a hearing is requested and justified by the objections, the issues will be defined and a hearing examiner named to conduct the hearing. The provisions of Subpart F of 21 CFR Part 2 shall apply to such hearing, except as modified by 21 CFR 146.1(f), and to judicial review in accordance with section 701 (f) and (g) of the Federal Food, Drug, and Cosmetic Act (35 F.R. 7250, May 8, 1970).

Objections and requests for a hearing should be filed (preferably in quintuplicate) with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, Md. 20852. Received objections and requests for a hearing may be seen in the above office during regular business hours, Monday through Friday.

Effective date. This order shall become effective 40 days after its date of publication in the FEDERAL REGISTER. If objections are filed, the effective date will be extended for ruling thereon. In so ruling, the Commissioner will specify another effective date.

(Secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357)

Dated: September 22, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-16571 Filed 9-29-72;8:45 am]

SUBCHAPTER D—HAZARDOUS SUBSTANCES

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

Confirmation of Effective Date of Order Classifying Asbestos-Containing Garments for General Use as Banned Hazardous Substances

In the matter of classifying general-use garments containing asbestos as banned hazardous substances because inhalation of asbestos fibers can cause lung cancer, mesothelioma, and lung fibrosis:

Pursuant to provisions of the Federal Hazardous Substances Act (sec. 2(q)(1)(B), (2), 74 Stat. 374, as amended, 80 Stat. 1304–05; 15 U.S.C. 1261) and of the Federal Food, Drug, and Cosmetic Act (sec. 701(e), 52 Stat. 1055, as amended; 21 U.S.C. 371(e)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the order in the above-identified matter published in the FEDERAL REGISTER of July 26, 1972 (37 F.R. 14872). Accordingly, the regulation promulgated thereby (21 CFR 191.9(a)(7)) shall become effective September 24, 1972.

Dated: September 25, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-16653 Filed 9-29-72;8:46 am]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

U.S. Government Printing Office

Section 213.3152 is amended to show that positions in the printing trades, when filled by students majoring in printing technology employed under a cooperative education agreement with the Washington Technical Institute, are excepted under Schedule A.

Effective on publication in the FEDERAL REGISTER (9–30–72), § 213.3152(b) is added as set out below.

§ 213.3152 U.S. Government Printing Office.

* * * * *

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the Washington Technical Institute.

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

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

[FR Doc.72-16696 Filed 9-29-72;8:49 am]

PART 213—EXCEPTED SERVICE

Department of Defense

Section 213.3306 is amended to reflect the following title change: From Private Secretary to the Deputy Director, Defense Research and Engineering (Strategic and Space Systems), to Private Secretary to the Deputy Director, Defense Research and Engineering (Strategic Systems).

Effective on publication in the FEDERAL REGISTER (9–30–72), § 213.3306(a)(2) is amended as set out below.

§ 213.3306 Department of Defense.

(a) *Office of the Secretary.* * * *

(2) One Private Secretary to the Deputy Secretary of Defense and one Private Secretary to each of the following: the Director of Defense Research and Engineering; the Principal Deputy Director of Defense Research and Engineering;

the Deputy Directors of Defense Research and Engineering (Tactical Warfare Programs), (Strategic Systems), (Research and Technology), (Electronics and Information Systems); the Director, Advanced Research Projects Agency; the Assistant Secretaries of Defense (Manpower and Reserve Affairs), (International Security Affairs), (Public Affairs), (Installations and Logistics), (Comptroller), (Systems Analysis), (Intelligence), and (Telecommunications); the General Counsel; the Deputy General Counsel; the Assistant to the Secretary of Defense (Atomic Energy); and the Military Assistants to the Secretary of Defense.

* * * * *

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

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

[FR Doc.72-16694 Filed 9-29-72;8:49 am]

PART 213—EXCEPTED SERVICE

Environmental Protection Agency

Section 213.3318 is amended to show that two positions of Special Assistant to the Administrator are no longer excepted under Schedule C. This section is further amended to show that the title of the Staff Assistant to the Special Assistant to the Administrator has been changed to Staff Assistant to the Assistant to the Administrator.

Effective on publication in the FEDERAL REGISTER (9–30–72) subparagraphs (1) and (2) of paragraph (a) of § 213.3318 are amended as set out below.

§ 213.3318 Environmental Protection Agency.

(a) *Office of the Administrator.* (1) Three Special Assistants to the Administrator.

(2) One Staff Assistant to the Assistant to the Administrator.

* * * * *

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

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

[FR Doc.72-16695 Filed 9-29-72;8:49 am]

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

Agency Administrative Appeals; Correction

In the first sentence of § 294.801(a) the reference to § 771.208 should be changed to read "§ 771.204".

(5 U.S.C. secs. 552, 1105)

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

[FR Doc.72-16693 Filed 9-29-72;8:49 am]

Title 6—ECONOMIC STABLIZATION

Chapter II—Pay Board

PART 201—STABILIZATION OF WAGES AND SALARIES

PART 202—PRENOTIFICATION AND REPORTING

Regulations Applicable to State and Local Governments

The purpose of the amendments to Part 201 set forth below is to incorporate the provisions of Pay Board policy decisions regarding pay adjustments for employees of State and local governmental units or instrumentalities of such units, including certain decisions announced in Pay Board News Release PB–108, dated July 18, 1972. The regulations incorporating these policy decisions are contained in a new Subpart F of Part 201 which exclusively provides rules concerning State and local governmental pay adjustments. Amendments are also made to Part 202 of the regulations to reflect new procedures for the certification of governmental pay adjustments and to implement action taken by the Cost of Living Council, 37 F. R. 19797 (1972), with respect to removal of certain State mandated pay adjustments from the scope of the Small Business Exemption. Since such amendments are essential to the expeditious implementation of the Economic Stabilization Act of 1970, as amended, and Executive Order No. 11640, as amended, the Board finds that the time for submission of written comments by interested persons in accordance with the usual making procedures is impracticable and that good cause exists for promulgating them in less than 30 days. Interested persons may submit written comments regarding these amendments. Communications should be addressed to the Office of the General Counsel, Pay Board, Washington, D.C. 20508.

Effective date. These amendments are effective on and after September 30, 1972.

GEORGE H. BOLDT,
Chairman.

PARAGRAPH 1. Part 201 is amended by adding immediately after Subpart E and before the appendix a new Subpart F to read as follows:

Subpart F—State and Local Governments

AUTHORITY: The previsions of this Subpart F issued pursuant to the authority vested in the Pay Board by the Economic Stabilization Act of 1970, as amended (Public Law 92–210, 85 Stat. 743), Executive Order No. 11640, 37 F.R. 1213 (1972), as amended by Executive Order No. 11660, 37 F.R. 6175 (1972), and Cost of Living Council Order No. 3, 36 F.R. 20202 (1971), as amended.

Subpart F—State and Local Government

§ 201.91 Scope.

(a) *Purpose.* The purpose of this subpart is to provide rules and standards for this stabilization of wages and salaries payable to employees of States, local governments, the District of Columbia, and units and instrumentalities thereof. For purposes of this subpart, such employees are referred to as governmental employees.

(b) *Conflict with other provisions.* To the extent that any provision of this chapter is inconsistent with the provisions of this subpart, the provisions of this subpart shall control.

(c) *Exclusion.* Pay adjsutments which affect appropriate employee units of governmental employes and which are not expressly within the terms of any provision of this subpart are subject to the general wage and salary standard, criteria for exceptions to the standard, and all other provisions of this part.

§ 201.92 Definitions.

For purposes of this subpart, the term—

"Fiscal year" means an employer's customary 12-month fiscal accounting period.

"Government" means a State, a local government, the District of Columbia, or a unit or instrumentality thereof.

§ 201.93 Certification of pay adjustments.

(a) *In general.* For purposes of the special rules applicable to State and local governments in §§ 202.10(b)(1), 202.20(b)(1), and 202.30(b)(7) of this chapter, any certification elected by a government pursuant thereto shall be made in the manner and subject to the rules set forth in this section.

(b) *Manner of certification*—(1) *Election.* An employer which is a government may submit to the Pay Board a certification that all pay adjustments not requiring prior approval in each of the appropriate employee units with respect to which certification is made will not exceed the maximum permissible annual aggregate wage and salary increase for a control year. Such certification shall be made each 6 months on forms and pursuant to instructions prescribed by the Board or, in the absence of such forms and instructions, in the language substantially as set forth in subparagraph (2) of this paragraph. Such certification shall be submitted on or before the last day of the first and seventh months of the employer's fiscal year. At the option of the employer, such certification may by its terms apply—

(i) To specifically identified appropriate employee units of the employer;

(ii) To all appropriate employee units of the employer; or

(iii) To all appropriate employee units of the employer, except specifically identified units.

(2) *Certification language.* Until such time as specific forms and instructions are issued by the Pay Board, the certification elected pursuant to subparagraph (1) of this paragraph shall be made

in the form of a sworn statement, executed by a duly authorized official of the employer. Such sworn statement shall contain substantially the following language:

This is to certify that all pay adjustments which apply to or affect employees of (name of governmental unit or instrumentality) in each of the appropriate employee units designated below will, during the (first) (second) half of the fiscal year ending (date), not exceed the maximum permissible annual aggregate wage and salary increase for the control year.

It is understood that no pay adjustment in excess of such maximum permissible increase may be implemented without the prior approval of the Pay Board or the Internal Revenue Service.

This certification applies to (the following appropriate employee units:) (all appropriate employee units.) (all appropriate employee units with the following exceptions:)

Signed this _____ day of _____ 19____; under the penalties of perjury.

(c) *Noncertified pay adjustments.* Any pay adjustment affecting an appropriate employee unit of governmental employees not covered by a certification shall be subject to the applicable prenotification and reporting provisions of Part 202 of this chapter.

(d) *Applications for exception.* The submission of a certification pursuant to the provisions of paragraph (b) of this section with respect to a particular appropriate employee unit shall not preclude the submission of an application for an exception to the general wage and salary standard with respect to a pay adjustment which applies to or affects such unit during the portion of a fiscal year covered by such certification. However, once such application has been submitted, the employer may no longer certify with respect to such unit during any portion of the fiscal year in which the pay adjustment sought by exception would be effective.

(e) *Computation of adjustments.* Any certification made under this section shall be pursuant to the methods of computation with respect to increases in wages and salaries set forth in Subpart C of this part. Accordingly, increases in wages and salaries are computed with respect to the control year of the applicable appropriate employee unit whereas certification is made with respect to an employer's fiscal year.

§ 201.94 Certain public officials.

(a) *General rule.* Subject to the provisions of this section, an employer which is a government may, during a control year, pay an increase in wages and salaries to an individual governmental employee in excess of the general wage and salary standard, if—

(1) Such employee is an elected or appointed official of a government;

(2) Such employee is not included in any other appropriate employee unit for purposes of determining the maximum permissible annual aggregate wage and salary increase applicable to such unit, but is treated as a separate appropriate employee unit;

(3) The law of the jurisdiction has prohibited any increase in the wages and salaries paid to such employee (other than an increase in fringe benefits) for a period of more than 12 months immediately preceding the effective date of an increase in wages and salaries paid pursuant to the provisions of this section; and

(4) The wages and salaries paid to such employee (other than fringe benefits) have not been increased during such period.

(b) *Limitation on pay adjustments.* The maximum permissible increase in wages and salaries which may be paid to an individual governmental employee under the provisions of this section shall be determined by computing an amount (expressed in dollars and cents) equal to the excess, if any, of—

(1) The product of the total of wages and salaries paid to such employee, determined with respect to the first payroll period following the beginning of the prohibition period (determined pursuant to paragraph (d)(2) of this section), and the multiple standard (determined pursuant to paragraph (d)(3) of this section), over

(2) The total of increases in fringe benefits which have been put into effect with respect to such employee during such prohibition period.

(c) *Manner of computation.* For purposes of this section, the amount of wages and salaries paid to an individual governmental employee may be computed and expressed in terms consistent with the employer's customary practice, e.g., on an annual or monthly basis, and not necessarily in terms of hourly compensation.

(d) *Definitions*—(1) *Fringe benefits.* For purposes of this section, the term "fringe benefits" means, with respect to an individual employee, compensation of the types which are included in determining the average hourly benefit rate under the provisions of § 201.56. Thus, for example, nonaccountable expense allowances are fringe benefits.

(2) *Prohibition period.* For purposes of this section, the term "prohibition period" means a period of time (expressed in years and fractions thereof) immediately preceding the effective date of an increase in wages and salaries paid to an individual governmental employee, during which the law of the jurisdiction has prohibited any increase in wages and salaries (other than fringe benefits) applicable to such individual governmental employee. For purposes of the preceding sentence, a pay adjustment shall be considered to be prohibited by the law of the jurisdiction only if the employer is prevented by superior legal authority (e.g., constitution, charter, or legislation enacted by a higher level of government) from paying any wage and salary increase to an individual governmental employee (or any person occupying the position held by such employee) during a term of office or other ascertainable period of time. A pay adjustment shall not be considered to be prohibited by the law of the jurisdiction solely because a pay adjustment has not been approved, funds to make a pay adjustment have not been appropriated by the governing body of the jurisdiction, or the governing body of the jurisdiction has not met.

(3) *Multiple standard.* For purposes of this section, the term "multiple standard" means, with respect to an individual governmental employee, a percentage which is the product of:

(i) The general wage and salary standard established in § 201.10, and

(ii) The prohibition period as defined in subparagraph (2) of this paragraph.

(e) *Reporting.* A wage and salary increase may be paid under the provisions of this section without prior approval. However, a report of any such increase shall be made to the appropriate district director of Internal Revenue within 20 days after such pay adjustment is put into effect.

§ 201.95 Qualified public employee benefit plans.

(a) *In general.* Subject to the provisions of this section, contributions made by an employer which is a government to a qualified public employee benefit plan may be treated as excluded contributions to the extent provided in §§ 201.57(g) and 201.58.

(b) *Qualified public employee benefit plans defined.* For purposes of this section, the term "qualified public employee benefit plan" means a bona fide plan of deferred compensation established by a government for the exclusive benefit of its employees or their beneficiaries with respect to which contributions of the employer are, pursuant to the law of the jurisdiction—

(1) Made to a trust,

(2) Otherwise permanently set aside for such deferred compensation (but not necessarily in the custody of an independent third party), or

(3) Used as premiums to purchase annuity or retirement insurance contracts or used to purchase retirement bonds.

For purposes of this paragraph, the phrase "otherwise permanently set aside for such deferred compensation" includes funding in any manner other than funding on a pay-as-you-go basis. Such bona fide plan need not meet the technical requirements for qualification under section 401(a), section 403(b), or section 404(a)(2) of the Code.

(c) *Limitation.* For purposes of paragraph (a) of this section, employer contributions to qualified public employee benefit plans shall be added to other employer contributions to plans described in § 201.58(b)(2) and (3) in determining contributions which may be excluded pursuant to the provisions of § 201.58 (c) and (d).

PAR. 2. Section 202.2 is amended by revising paragraph (a)(1) to read as follows:

§ 202.2 Classification and reclassification.

(a) For purposes of the regulations in this chapter—

(1) *Category I.* A Category I pay adjustment means a pay adjustment which—

(i) Applies to or affects an appropriate employee unit containing 5,000 or more employees;

(ii) Applies to or affects any number of employees who are engaged in construction and is pursuant to a collective bargaining agreement; or

(iii) Applies to or affects any number of employees of units or instrumentalities of local government and is mandated by the action of a legislative or administrative body of a State government.

* * * * *

PAR. 3. Section 202.10 is amended by revising paragraph (b)(1) to read as follows:

§ 202.10 Prenotification and reporting requirements.

* * * * *

(b) *Special rules*—(1) *State and local governments*—(i) *Waiver of prenotification.* Prenotification of a Category I pay adjustment need not be submitted to the Pay Board if such pay adjustment—

(*a*) Applies to or affects an appropriate employee unit consisting of employees of a State, a local government, the District of Columbia, or any unit or instrumentality thereof,

(*b*) Does not exceed the general wage and salary standard, and

(*c*) Is not a mandated pay adjustment within the meaning of § 202.2(a)(1)(iii).

(ii) *Reporting.* A report of a pay adjustment referred to in subdivision (i) of this subparagraph shall be made to the Pay Board within 10 days after the pay adjustment has been put into effect, unless such pay adjustment is covered by a certification submitted by the employer in the manner prescribed by § 201.93 of this chapter.

* * * * *

PAR. 4. Section 202.20 is amended by revising paragraph (b)(1) to read as follows:

§ 202.20 Prenotification and reporting requirements.

* * * * *

(b) *Special rules*—(1) *State and local governments.* Notwithstanding any other provision of this paragraph, a Category II pay adjustment which applies to or affects an appropriate employee unit consisting of employees of a State, a local government, the District of Columbia, or any unit or instrumentality thereof, and does not exceed the general wage and salary standard or any exceptions thereto which do not require prior approval within the meaning of paragraph (c) of this section, need not be reported to the Pay Board, provided that such pay adjustment is covered by a certification submitted by the employer in the manner prescribed by § 201.93 of this chapter.

* * * * *

PAR. 5. Section 202.30 is amended by adding a new subparagraph (7) to paragraph (b) to read as follows:

§ 202.30 Prenotification and reporting requirements.

* * * * *

(b) *Special rules.* * * *

(7) *State and local governments.* Notwithstanding any other provision of this paragraph, a Category III pay adjustment which applies to or affects an appropriate employee unit consisting of employees of a State, a local government, the District of Columbia, or any unit or instrumentality thereof, and which is put into effect pursuant to the terms of § 201.11(a)(3), (4), or (5) of this chapter, need not be reported to the Internal Revenue Service, providing that such pay adjustment is covered by a certification submitted by the employer in the manner prescribed by § 201.93 of this chapter.

* * * * *

[FR Doc.72-16904 Filed 9-29-72;12:10 pm]

Chapter III—Price Commission

[Special Reg. 3]

PART 300—PRICE STABILIZATION

Volatile Costs; Manufacturers of Meat Products

The purpose of this special regulation is to provide a temporary method for determining certain aspects of the volatile costs and price program authorized by § 300.51 (f) through (i) of the regulations of the Price Commission.

Under the provisions of § 300.51 (f) through (i) of those regulations, prenotification firms that customarily price an item in a manner immediately responsive to frequent and customary market price fluctuations of the raw materials or partially processed products which it uses in that item, may be authorized by the Price Commission to continue such a pricing practice without meeting prenotification requirements otherwise imposed under paragraphs (a) through (d) of § 300.51 of Price Commission regulations. In so using these relief provisions, however, a firm is also required to decrease its price for such an item when the market price of the frequently fluctuating raw materials or partially processed products used in that item decreases.

In addition to the requirements of § 300.51, § 300.12 of Price Commission regulations requires that any increase in price on any item must be justified by the firm on the basis of "increases in allowable costs that it incurred since the last price increase in the item concerned, or that it incurred after January 1, 1971, whichever is later" and must be accomplished in a manner which does not result in an increase in that firm's profit margin over the level that prevailed during the base period.

It has been brought to the attention of the Commission that when the provisions of § 300.51 (f) through (i) are applied in conjunction with the above-quoted requirements of § 300.12 a firm which is authorized to use § 300.51(f) through (i) but which does not pass through the entire amount of any cost increases on an item because of competitive or market conditions, is unable to recapture those costs at any later time. On the other hand, a firm is required to decrease its price on an item in a manner immediately responsive to decreases in costs of the raw materials or partially processed products used in that item, regardless of any previous loss of those costs as price increase justification.

It is the Commission's intent to prescribe, in the near future, revised and more detailed regulations relating to firms authorized to price items under the provisions of § 300.51 (f) through (i) and clarifying acceptable methods of applying those provisions. However, the Commission considers that immediate measures are necessary with respect to the use of volatile pricing by manufacturers of meat products who come within the Standard Industrial Classification 201 and who are authorized to use the provisions of § 300.51 (f) through (i) for that purpose. Therefore, the Price Commission will, effective on September 30, 1972, permit a firm that is a manufacturer of meat products (SIC 201), and that has received authorization to use the provisions of § 300.51 (f) through (i), to price items in accordance with this special regulation and will require such a firm to keep such records of its pricing practice as are required herein until the Commission publishes further regulations relating to this subject.

Since the purpose of this amendment is to provide specific procedures with respect to the use of volatile pricing procedures for a particular industry in cases in which adherence to the general rules could possibly be disruptive of general marketing procedures, notice and public procedure thereon are impractical and good cause exists for making it effective 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; Economic Stabilization Act Amendments of 1971, Public Law 92-210; Executive Order No. 11640, 37 F.R. 1213, Jan. 27, 1972; Cost of Living Council Order No. 4, 36 F.R. 20202, Oct. 16, 1971)

In consideration of the foregoing, the following special regulation of the Price Commission is adopted to become effective on September 30, 1972.

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

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

(a) *General.* Notwithstanding the provisions of § 300.12 of the regulations of the Price Commission relating to increases in costs incurred since the last price increase in the item concerned, a prenotification firm

that is a manufacturer of meat products within the Standard Industrial Classification 201 may, if it has been authorized by the Commission to set prices in accordance with § 300.51 (f) through (i) of those regulations, price that item to reflect net cost increases incurred on or after September 30, 1972, as provided herein.

(b) *Method of increase in prices.* Without regard to paragraphs (a) through (d) of § 300.51 of those regulations, a prenotification firm that is a manufacturer of meat products (SIC 201) may increase a price on an item to the extent of any net cost increase of its raw materials or partially processed products used in that item which the Price Commission has determined to be volatile which is incurred on or after September 30, 1972, but only to the extent of that net cost increase.

(c) *Reduction of prices.* Each firm that increases a price on an item pursuant to this regulation shall reduce that price, as provided in paragraph (d), to the extent of any later net decrease in the cost of the raw material or partially processed product upon which the price increase was based, but is not required to decrease the price of the item concerned below its base price.

(d) *Method of decrease in prices.* If, in accordance with paragraphs (a) and (b) of this regulation, a firm has increased its price on any item, but has not increased its price to the full extent of the net cost increase allocable to that item, then in decreasing the price on that item in accordance with paragraph (c) of this regulation, the reduction may be offset by an amount not to exceed the net unused cost increase incurred since the effective date of this regulation.

(e) *Recordkeeping requirements.* A firm that sets prices under this special regulation shall maintain such records as will reflect an accurate accounting of its weighted average cost increases and its weighted average price increases regarding items to which this regulation applies. Such accounting records shall be kept in accordance with the firm's customary accounting procedures for these items, consistently applied. Further, such accounting records shall be so maintained as to exclude existing inventory, which inventory shall be netted out of those records on the basis of the cost of those inventory items. The records required to be maintained by this paragraph shall be maintained in such manner that, upon the request of the Price Commission or its delegate, those records can be applied to any reasonable accounting period beginning on September 30, 1972.

(f) *Limitation.* This special regulation supercedes § 300.51 (f) through (i) only to the extent inconsistent therewith. Specifically, it does not supercede paragraphs (g) and (h) thereof.

[FR Doc.72-16765 Filed 9-29-72;8:54 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. U]

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

Exempt Credit to Specialists, OTC Market Makers, Third-Market Makers and Block Positioners; Correction

In the document amending Part 221 (Regulation U) appearing at page 18711 of the FEDERAL REGISTER of September 15, 1972, the following correction is made:

In line 16 of § 221.3(a) the reference to paragraph (x) should be deleted.

Board of Governors of the Federal Reserve System, September 22, 1972.

[SEAL] ELIZABETH L. CARMICHAEL,
Assistant Secretary of the Board.

[FR Doc.72-16656 Filed 9-29-72;8:46 am]

[Reg. U]

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

Exempt Credit to Specialists, OTC Market Makers, Third-Market Makers and Block Positioners

Correction

In F.R. Doc. 72-15702 appearing at page 18711 of the issue for Friday, September 15, 1972, in § 221.3(z)(2), the 12th line of subdivision (ii), the reference to "a convertible security", should read "a convertible debt security".

Title 20—EMPLOYEES' BENEFITS

Chapter VI—Employment Standards Administration, Department of Labor

SUBCHAPTER A—LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT AND RELATED STATUTES

PART 701—FUNCTIONS OF OFFICE OF WORKMEN'S COMPENSATION PROGRAMS

Chapter VI of Title 20 of the Code of Federal Regulations is hereby amended by adding thereto a new Part 701 as set forth below.

The provisions of 5 U.S.C. 553 which require notice of proposed rule making, opportunity for public participation, and delay in the effective date are not applicable because these rules related exclusively to internal agency organization. Accordingly, this amendment shall become effective immediately.

The new Part 701 reads as follows:

Sec.
701.101 Establishment of Office of Workmen's Compensation Programs.
701.102 Transfer of functions.

AUTHORITY: The provisions of this Part 701 are issued under 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 F.R. 3174, 64 Stat. 1263; 33 U.S.C. 939; 36 D.C. Code 501; 42 U.S.C. 1651; 43 U.S.C. 1331; 5 U.S.C. 8171; Secretary's Order No. 13-71, 36 F.R. 8755.

§ 701.101 Establishment of Office of Workmen's Compensation Programs.

The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order No. 13-71, 36 F.R. 8755, has established in the Employment Standards Administration (ESA) an Office of Workmen's Compensation Programs (OWCP). The Assistant Secretary has further designated as the head thereof a Director who, under the general supervision of the Deputy Assistant Secretary for Employment Standards/Wage-Hour Administrator and the Deputy Administrator, shall administer the programs assigned to that Office by the Assistant Secretary.

§ 701.102 Transfer of functions.

Pursuant to the authority vested in him by the Secretary of Labor, the Assistant Secretary for Employment Standards has transferred from the Bureau of Employees' Compensation to the Office of Workmen's Compensation Programs all functions of the Department of Labor with respect to the administration of benefits programs under the following statutes:

(a) The Longshoremen's and Harbor Workers' Compensation Act, as amended and extended, 33 U.S.C. 901 et seq.;
(b) Defense Base Act, 42 U.S.C. 1651 et seq.;
(c) District of Columbia Workmen's Compensation Act, 36 D.C. Code 501 et seq.;
(d) Outer Continental Shelf Lands Act, 43 U.S.C. 1331;
(e) Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171 et seq.;
(f) Title IV of the Federal Coal Mine Health and Safety Act, 83 Stat. 742, as amended by the Black Lung Benefits Act of 1972, 86 Stat. 150.

Signed at Washington, D.C., this 27th day of September 1972.

RICHARD J. GRUNEWALD,
Assistant Secretary for Employment Standards.

[FR Doc.72-16704 Filed 9-29-72;8:51 am]

Title 24—HOUSING AND URBAN DEVELOPMENT

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Arizona	Maricopa	Mesa				Sept. 29, 1972. Emergency.
California	Ventura	Camarillo	I 06 111 0538 05 through I 06 111 0538 11	Department of Water Resources, Post Office Box 388, Sacramento, CA 95802. California Insurance Department, 107 South Broadway, Los Angeles, CA 90012, and 1407 Market St., San Francisco, CA 94103.	Office of the Planning Director, 67 Palm Dr., Post Office Box 248, Camarillo, CA 93010.	Feb. 17, 1971. Emergency Sept. 29, 1972. Regular.
Florida	Brevard	Cape Canaveral	I 12 009 0454 01 I 12 009 0454 02	Department of Community Affairs, 309 Office Plaza, Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304.	Building Official's Office, City Hall, 105 Polk Ave., Cape Canaveral, Fla. 32920.	Mar. 24, 1971. Emergency. Sept. 29, 1972. Regular.
Do	Dade		I 12 025 0000 02 through I 12 025 0000 55	do	Public Works Department, 1351 Northwest 12th St., Miami, FL 33125.	Aug. 14, 1970. Emergency. Sept. 29, 1972. Regular.
Do	St. Johns	St. Augustine Beach.	I 12 109 2691 02	do	Office of the Town Clerk, Town Bldg. No. 7, St. Augustine Beach, Fla. 32084.	Sept. 25, 1970. Emergency. Sept. 29, 1972. Regular.
Do	Hendry	Clewiston				Sept. 29, 1972. Emergency.
Massachusetts	Plymouth	Duxbury				Do.
Do	Essex	Swampscott				Do.
Minnesota	Nicollet	St. Peter				Do.
Missouri	Clay	Avondale				Do.
Do	Randolph	Moberly				Do.
Do	Franklin	Pacific				Do.
New Jersey	Monmouth	Little Silver Borough.				Do.
North Carolina	Beaufort	Washington Park				Do.
Ohio	Trumbull	Warren				Do.
Pennsylvania	Chester	Pennsbury Township.				Do.
Do	Cumberland	West Fairview Borough.				Do.
Do	Lehigh	Lower Macungie Township.				

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

Issued: September 21, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-16585 Filed 9-29-72;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

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

§ 1915.3 List of communities with special hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Arizona	Maricopa	Mesa				Sept. 29, 1972.
California	Ventura	Camarillo	H 06 111 0538 05 through H 06 111 0538 11	Department of Water Resources, Post Office Box 388, Sacramento, CA 95802. California Insurance Department, 107 South Broadway, Los Angeles, CA 90012, and 1407 Market St., San Francisco, CA 94103.	Office of the Planning Director, 67 Palm Dr., Post Office Box 248, Camarillo, CA 93010.	Feb. 17, 1971.
Florida	Brevard	Cape Canaveral	H 12 009 0454 01 H 12 009 0454 02	Department of Community Affairs, 309 Office Plaza, Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304.	Building Official's Office, City Hall, 105 Polk Ave., Cape Canaveral, FL 32920.	Mar. 24, 1971.
Do.	Dade		H 12 025 0000 02 through H 12 025 0000 55	do	Public Works Department, 1351 Northwest 12th St., Miami, FL 33125.	Aug. 14, 1970.
Do.	St. Johns	St. Augustine Beach.	H 12 109 2691 02	do	Office of the Town Clerk, Town Bldg., No. 7, St. Augustine Beach, Fla. 32084.	Sept. 25, 1970.
Do.	Hendry	Clewiston				Sept. 29, 1972.
Massachusetts	Plymouth	Duxbury				Do.
Do.	Essex	Swampscott				Do.
Minnesota	Nicollet	St. Peter				Do.
Missouri	Clay	Avondale				Do.
Do.	Randolph	Moberly				Do.
Do.	Franklin	Pacific				Do.
New Jersey	Monmouth	Little Silver Borough.				Do.
North Carolina	Beaufort	Washington Park				Do.
Ohio	Trumbull	Warren				Do.
Pennsylvania	Chester	Pennsbury Township.				Do.
Do.	Cumberland	West Fairview Borough.				Do.
Do.	Lehigh	Lower Macungie Township.				Do.

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

Issued: September 21, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-16586 Filed 9-29-72;8:45 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

[AECPR Temporary Reg. 2]

PART 9–1—GENERAL

PART 9–59—ADMINISTRATION OF COST-TYPE CONTRACTOR PROCUREMENT ACTIVITIES

Stabilization of Prices, Rents, Wages, and Salaries

SEPTEMBER 22, 1972.

1. *Purpose.* This regulation implements FPR Temporary Regulations 22, 23, 24, 26, and 28 which provide procedures designed to facilitate the stabilization of prices, rents, wages, and salaries.

2. *Effective date.* This regulation is effective upon publication in the FEDERAL REGISTER (9–30–72).

3. *Expiration date.* This regulation will remain in effect until canceled or until the requirements of Executive Order 11615, August 15, 1971, as superseded by Executive Order 11627, October 14, 1971, which in turn was superseded by Executive Order 11640, January 26, 1972, expire.

4. *Explanation of changes.*

a. In Subpart 9–1.3 *General Policies,* § 9–1.321 is added as follows:

§ 9–1.321–1 [Reserved]

§ 9–1.321–2 Notification to contractors.

AEC operating contractors financed under the letter of credit procedure normally do not "accept" payments for property, goods, and services in the usual sense. Accordingly, the alternate notice to contractors set forth in paragraph (b) of FPR 1–1.321–2 may be rephrased, as necessary, to accommodate this situation, provided the intent and substance of this notification is retained.

§ 9–1.321–3 [Reserved]

§ 9–1.321–4 Violations.

Reported and suspected violations pursuant to FPR 1–1.321–4 are to be reported directly to the Internal Revenue Service.

§ 9–1.321–5 Payments.

Where the alternate notice to contractors prescribed in paragraph (b) of FPR 1–1.321–2 is employed, payment shall not be made until the notice has been acknowledged in writing by the contractor.

§ 9–1.321–6 Imprest funds.

Pursuant to FPR 1–1.321–6, known violations shall be reported directly to the Internal Revenue Service.

b. Part 9–59 is amended as follows:

§ 9–59.004 [Amended]

FPR 1–1.321 and § 9–1.321 are added.

JOSEPH L. SMITH,
Director, Division of Contracts.

[FR Doc.72-16685 Filed 9-29-72;8:51 am]

Chapter 60—Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

On March 23, 1972, notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 5957) with regard to amending Chapter 60 of Title 41 of the Code of Federal Regulations by amending 41 CFR § 60–1.26(b) and adding a new Part 60–30 for the establishment of hearing rules for sanction proceedings under Executive Order 11246, as amended. Interested persons were given 30 days in which to submit written comments, suggestions, or objections, regarding the proposed amendments.

After consideration of all comments received, Chapter 60 of Title 41 of the Code of Federal Regulations is amended by amending 41 CFR 60–1.26(b), amending 41 CFR 60–2.2(c)(1) to conform to amended 41 CFR 60–1.26(b), and adding a new Part 60–30, as set forth below.

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

1. 41 CFR 60–1.26(b) is amended to read as follows:

§ 60–1.26 Hearings.

* * * * *

(b) *Formal hearings*—(1) *General procedure.* In accordance with procedures prescribed by the Secretary or other agency head, the Director or an appropriate official of any agency, with the approval of the Director, may convene formal hearings pursuant to Subpart B of this part for the purpose of determining whether the sanctions set forth in section 209(a) (5) and (6) of the order shall be invoked against any prime contractor or subcontractor. Reasonable notice of a hearing shall be sent by registered mail, return receipt requested, to the last known address of the prime contractor or subcontractor complained against. Such notice shall contain the time, place, and nature of the hearing and a statement of the legal authority pursuant to which the hearing is to be held. Copies of such notice shall be sent to all agencies. Hearings shall be held before a hearing officer designated by or under the direction of the Secretary or other agency head. Each party shall have the right to counsel; a fair opportunity to present evidence and argument and to cross-examine. Whenever a formal hearing is based in whole or in part on matters subject to the collective bargaining agreement and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party. Any other person or organization shall be permitted to participate upon a showing that such person or organization has an interest in the proceedings and may contribute materially to the proper disposition thereof. The hearing officer shall make his proposed findings and conclusions upon the basis of the record before him.

(2) *Cancellation, termination, and debarment.* No order for cancellation or termination of existing contracts or subcontracts or for debarment from further contracts or subcontracts pursuant to section 209 of the order shall be made without affording the prime contractor or subcontractor an opportunity for a hearing. When cancellation, termination, or debarment is proposed, the following procedure shall be observed:

(i) *Notice of proposed cancellation or termination.* Whenever the Director or his designee, or an appropriate official of any agency, upon prior notification to the Director, proposes to request the Secretary or other agency head to cancel or terminate, or cause to be canceled or terminated, in whole or in part, a contract or contracts, or to require cancellation or termination of a subcontract or subcontracts, a notice of the proposed action, in writing and signed by the Director or his designee, or an appropriate agency official, shall be sent to the last known address of the prime contractor or subcontractor. A copy of such notice shall be published in the FEDERAL REGISTER. The notice shall contain a concise jurisdictional statement, a short and plain statement of the matters furnishing a basis for the imposition of sanctions, an enumeration of the sanctions being requested, and a citation of the provisions of the order and regulations pursuant to which the requested action may be taken.

(ii) *Notice of proposed ineligibility.* Whenever the Director or his designee, or an appropriate official of any agency, upon prior notification to the Director, proposes to request the Secretary or other agency head to declare a prime contractor or subcontractor ineligible for further contracts or subcontracts under section 209 of the order, a notice of the proposed action, in writing and signed by the Director or his designee, or appropriate agency official, shall be sent to the last known address of the prime contractor or subcontractor. A copy of such notice shall be published in the FEDERAL REGISTER. The notice shall contain a concise jurisdictional statement, a short and plain statement of the matters furnishing a basis for the imposition of sanctions, a citation of the provisions of the order and regulations pursuant to which the requested action may be taken, and a statement that the debarment sanction is being sought.

(iii) *Answer and hearing request.* The prime contractor or subcontractor shall be afforded at least 14 days from receipt of the notice of proposed cancellation, termination, or ineligibility in which to file an answer to the notice and a request for a hearing with the Director or his designee, or the agency. The answer shall admit or deny specifically, and in detail, matters set forth in each allegation of the notice unless the prime contractor or subcontractor is without knowledge, in which case the answer shall so state, and the statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. The hearing request shall be included as a separate paragraph of the answer.

(iv) *Suspension during pendency of hearing.* Whenever the prime contractor or subcontractor requests a hearing in accordance with these provisions, his contracts or subcontracts may be suspended, in the discretion of the Director, during the pendency of the hearing. However, no Government contract, or portion thereof, with any employer, shall be suspended where such employer has an affirmative action plan which has previously been accepted by the Government for the facility at issue within the past 12 months without first according such employer full hearing and adjudication unless such employer has deviated substantially from such previously agreed to affirmative action plan: *Provided,* That for the purposes of this sentence an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within 45 days thereafter the Office of Federal Contract Compliance has disapproved such plan.

(v) *Imposition of sanctions without a hearing.* If at the end of the 14-day period referred to in subdivision (iii) of this subparagraph, no answer including a hearing request has been filed, or the answer does not raise issues of fact or law, the Secretary or other agency head may cancel, suspend or terminate or cause to be canceled, suspended or terminated any one or more contracts or subcontracts, or parts thereof, held by the prime contractor or subcontractor complained against, or enter an order declaring such contractor or subcontractor ineligible for further contracts, subcontracts, or extensions or other modifications of existing contracts, until the contractor or subcontractor has satisfied the Secretary that he has established and will carry out personnel and employment policies and practices in compliance with the provisions of the equal opportunity clause and the order.

(vi) *Decision following hearing.* When the hearing is conducted by an agency, the hearing officer shall make recommendations to the head of the agency who shall make a decision whether sanctions will be invoked against the contractor or subcontractor. No decision by the head of the agency, or his representative, shall be final without the prior approval of the Director. When the hearing is conducted by a hearing officer appointed by or under the direction of the Secretary the hearing officer shall make recommendations to the Secretary, who shall make the final decision whether sanctions will be invoked against the contractor or subcontractor. Parties shall be furnished with copies of the hearing officer's recommendations, and shall be given an opportunity to submit their views.

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

2. Section 60–2.2(c)(1) is amended to read as follows:

§ 60–2.2 Agency action.

* * * * *

(c) * * *

(1) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the compliance agency, upon the approval of the Director, shall immediately issue a notice of proposed cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts pursuant to § 60–1.26(b), giving the contractor 14 days to request a hearing. If a request for hearing has not been received within 14 days from such notice, such contractor will be declared ineligible for future contracts and current contracts will be terminated for default.

* * * * *

PART 60–30—HEARING RULES FOR SANCTION PROCEEDINGS

3. The new 41 CFR Part 60–30 reads as follows:

Subpart A—General Information

Subpart B—Form and Filing of Documents and Pleadings

Subpart C—Prehearing Procedures

Subpart D—Designation and Responsibilities of Hearing Examiner

Subpart E—Hearing and Related Matters

Subpart F—Post Hearing Procedures

Subpart G—Miscellaneous

AUTHORITY: The provisions of this Part 60–30 issued pursuant to secs. 201, 205, 208, 209, 301, 302(b), and 303(a) of Executive Order 11246, as amended, 30 F.R. 12319; 32 F.R., 14303; § 60–1.26 of Part 60–1 of this chapter (41 CFR Part 60–1).

Subpart A—General Information

§ 60–30.1 Applicability of rules, waiver, modification.

(a) *Applicability of rules.* These rules of procedure supplement the provisions of §60–1.26(b) of this chapter. The rules govern the practice and procedure for hearings conducted by the Office of Federal Contract Compliance with respect to the imposition of sanctions under sections 208(b), 209(a) (5) and (6) of Executive Order No. 11246, as amended.

(b) *Waiver, modification.* Upon notice to all parties, the hearing examiner or the Secretary may, with respect to matters pending before him modify or waiver any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.

§ 60–30.2 Definitions.

As used in these rules:

(a) "Associate Solicitor" means the Associate Solicitor for Labor Relations and Civil Rights, U.S. Department of Labor, Washington, D.C. 20210, who has been designated to prosecute all actions under this part and § 60–1.26(b) of this chapter in the name of the Director.

(b) "Chief Hearing Examiner" means the Chief Hearing Examiner, U.S. Department of Labor, Washington, D.C. 20210.

(c) "Department" means the Department of Labor.

(d) "Director" means the Director of the Office of Federal Contract Compliance of the Department of Labor.

(e) "Hearing Examiner" means the hearing officer designated by the Chief Hearing Examiner, pursuant to section 208(b) of Executive Order 11246, as amended, and § 60–1.26(b) of this chapter to conduct hearings under section 209 of the order.

(f) "Notice" means, unless the context clearly indicates otherwise, the Notice of Proposed Cancellation, Termination, or Ineligibility.

(g) "The order" means Executive Order 11246 of September 24, 1965 (30 F.R. 12319), as amended (32 F.R. 14303).

(h) "Party" means a respondent; the Director of the Office of Federal Contract Compliance of the Department of Labor; and any person or organization participating in a proceeding pursuant to § 60–30.11(a).

(i) "Respondent" means a person or organization against whom sanctions are proposed because of alleged violations of Executive Order 11246, and the rules, regulations, and orders thereunder.

(j) "Secretary" means Secretary of the Department of Labor.

§ 60–30.3 Computation of time.

In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day.

Subpart B—Form and Filing of Documents and Pleadings

§ 60–30.4 Form.

Documents and pleadings filed pursuant to a proceeding herein shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed, but the name of the person signing the original shall be reproduced.

§ 60–30.5 Filing; service.

(a) *Manner of service.* Service upon any party shall be made by the party filing the document or pleading by delivering a copy or mailing a copy to the last known address: *Provided, however,* That the notice of hearing shall be sent by registered mail, return receipt requested, pursuant to § 60–1.26(b)(1) of this chapter.

(b) *Upon whom served.* All papers shall be served upon counsel of record and upon parties not represented by counsel, and upon the Associate Solicitor or his designee.

(c) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be prima facie proof of service.

(d) *Number of copies.* An original and 3 copies of all documents and pleadings shall be filed.

Subpart C—Prehearing Procedures

§ 60–30.6 Notice of proposed cancellation, termination or ineligibility.

Actions shall be commenced under this part and § 60–1.26(b)(2) of this chapter by service of a written notice signed by the Director, or by the Associate Solicitor in the name of the Director, on the contractor or subcontractor against whom the Director seeks the imposition of sanctions. The notice shall indicate whether the Director proposes to request the Secretary to cancel or terminate, or cause to be canceled or terminated, in whole or in part, any one or more contracts or subcontracts,

or to declare the prime contractor or subcontractor ineligible for further contracts or subcontracts under section 209 of the order. The notice shall contain a concise jurisdictional statement, a short and plain statement of the matter furnishing a basis for the imposition of sanctions, an enumeration of the sanctions being proposed, and a citation of the provisions of the order regulations pursuant to which the requested action may be taken.

§ 60–30.7 Answer.

(a) *Filing and service.* Within 14 days after receipt of the notice of proposed cancellation, termination, or ineligibility, Respondent shall file an answer and a hearing request with the hearing examiner or, if no hearing examiner has been designated, with the Chief Hearing Examiner.

(b) *Contents; failure to file.* The answer shall admit or deny specifically, and in detail, matters set forth in each allegation of the notice. Unless Respondent is without knowledge, in which case the answer shall so state, and the statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure to file an answer shall constitute an admission of all facts recited in the notice.

(c) *Hearing request.* The request for a hearing shall be included as a separate paragraph of the answer.

§ 60–30.8 Amendments.

The Director may amend the notice once as a matter of course before an answer is filed, and Respondent may amend its answer once as a matter of course not later than 10 days after the filing of the original answer. Other amendments of the notice or of the answer to the notice shall be made only by leave of the hearing examiner. An amended notice shall be answered within 7 days of its service, or within the time for filing an answer to the original notice, whichever period is longer.

§ 60–30.9 Notice of hearing.

In response to Respondent's request for a hearing, a notice of hearing shall be served on the Respondent pursuant to § 60–1.26(b)(1) of this chapter. Such notice shall contain the time, place, and nature of the hearing and the legal authority under which the proceedings are to be held.

§ 60–30.10 Motions; disposition of motions.

(a) *Motions.* Motions shall state the relief sought, the authority relied upon and the facts alleged, and shall be filed with the hearing examiner, or with the Chief Hearing Examiner, if no hearing examiner has been designated. If made before or after the hearing itself, these matters shall be in writing. If made at the hearing, they may be stated orally; but the hearing examiner may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Within 7 days after a written motion is served, or such other time period as may be fixed, any party may file a response to a motion.

(b) *Disposition of motions.* The hearing examiner, or Secretary, may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing thereon, but may overrule or deny such motion without awaiting response: *Provided, however,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions. Rulings by the hearing examiner shall not be appealed prior to the transfer of the case to the Secretary, but shall be considered by the Secretary when the case is transferred to him for decision.

§ 60–30.11 Participation by interested persons.

(a) (1) To the extent that proceedings hereunder involve employment of persons covered by a collective bargaining agreement, and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party.

(2) Other persons or organizations shall have the right to participate as parties if the final decision of the Secretary could adversely affect them or the class they represent and such participation may contribute materially to the proper disposition of the proceedings.

(3) Any person or organization wishing to participate as a party under this paragraph shall file and serve upon the hearing examiner, or upon the Chief Hearing Examiner, if no hearing examiner has been designated, and all parties a petition within 7 days after the commencement of the action. Such petition shall concisely state (i) petitioner's interest in the proceedings, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(4) The hearing examiner shall determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the hearing examiner may request all such petitioners to designate a single representative to represent all such petitioners: *Provided,* That the representative of a labor organization qualifying to participate under subparagraph (1) of this paragraph must be permitted to participate in the proceeding. The hearing examiner shall give each petitioner written notice of the decision on his petition; and if the petition is denied, he shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae. The hearing examiner shall give written notice to each party of each petition granted.

(b) (1) Any other interested person or organization wishing to participate as amicus curiae shall file a petition before the commencement of the final hearing with the hearing examiner. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The hearing examiner may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, and that such participation may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the hearing examiner. He may submit a written statement of position to the hearing examiner prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs and exceptions, and shall serve a copy on each party.

§ 60–30.12 Admissions as to facts and documents.

Not later than 14 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the hearing examiner may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in, and exhibited with, the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within a period designated in the request (not less than 7 days, and not more than 10 days, after service thereof) the party to whom the request is directed serves upon the requesting party a sworn statement either (a) denying specifically the matter as to which an admission is requested, or (b) setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

§ 60–30.13 Production of documents and things and entry upon land for inspection and other purposes.

(a) After commencement of the action, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any unprivileged documents, phonorecords, and other compilations which contain or may lead to relevant information and which are in the possession, custody, or control of the party upon whom the request is served. If necessary, translation of data compilations shall be done by the party furnishing the information.

(b) After commencement of the action, any party may serve on any other party a request to permit entry upon designated property which may be relevant to the issues in the proceeding and

which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object or area.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time and place for making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 7 days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection shall be stated. The party submitting the request may move for an order with respect to any objection or to other failure to respond.

§ 60–30.14 Depositions upon oral examination.

(a) *Depositions; notice of examination.* After commencement of the action, any party may take the testimony of any person, including a party, having personal or expert knowledge of the matters in issue, by deposition upon oral examination for the purposes of discovery and/or the perpetuation of testimony. A party desiring to take a deposition shall give reasonable notice in writing to every other party to the proceeding. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice shall also set forth the categories of documents the witness is to bring with him to the deposition, if any. A copy of the notice shall be furnished to the person to be examined unless his name is unknown.

(b) *Production of witnesses; obligation of parties; objections.* It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Depositions shall be held within the county in which the witness resides or works. The party or prospective witness may file with the hearing examiner, or with the Chief Hearing Examiner, if no hearing examiner has been assigned, an objection within 3 days after the identity of such witness first becomes known, stating with particularity the reasons why the party cannot or ought not to produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness. All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or, with due diligence, might have been ascertained.

(c) *Before whom taken; scope of examination; failure to answer.* Depositions may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the deposition is held. At the time and place specified in the notice, the officer designated to take the deposition shall permit each party to examine and cross-examine the witness under oath upon any unprivileged matter which is relevant to the subject matter of the proceeding, or which is reasonably calculated to lead to the production of relevant and otherwise admissible evidence. All objections to questions, except as to the form thereof, and all objections to evidence are reserved until the hearing. A refusal or failure on the part of any person under the control of a party to answer a question shall operate to create a presumption that the answer, if given, would be unfavorable to the controlling party, unless the question is subsequently ruled improper by the hearing examiner or the hearing examiner rules that there was valid justification for the witness' failure or refusal to answer the question: *Provided,* That the examining party shall note on the record during the deposition the question which the deponent has failed, or refused to answer, and state his intention to invoke the presumption if no answer is forthcoming.

(d) *Subscription; certification; filing.* The testimony shall be reduced to typewriting by the officer taking the deposition or under his direction, and shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him and that the deposition is a true record of the testimony and exhibits given by the witness, and that said officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be noted in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver any original copy of the transcript, together with his certificate, in person or by mail to the hearing examiner, or to the Chief Hearing Examiner, if no hearing examiner has been assigned. Copies of the transcript and certificate shall be furnished to all persons desiring them, upon payment of reasonable charges therefor, unless distribution is restricted by order of the hearing examiner for good cause shown.

(e) *Rulings on admissibility; use of deposition.* Subject to the provisions of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying. Any part or all of a deposition, so far as admissible in the discretion of the hearing examiner, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or was designated to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by the adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing examiner finds: (i) That the witness is dead; or (ii) that the witness is unable to attend or testify becasue of age, illness, infirmity, or imprisonment; or (iii) that the party offering the deposition has been unable to procure the attendance of the witness by notice; or (iv) upon application and notice, that such exceptional circumstances exist as to make it desirible to allow the deposition to be used.

(4) If only part of a deposition is introduced in evidence by a party, any party may introduce any other parts by way of rebuttal and otherwise.

(f) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

§ 60–30.15 Prehearing conferences.

(a) Within 14 days after the answer has been filed, the hearing examiner shall establish a date for the prehearing conference to include all parties and petitioners for status as a party whose petition has not yet been ruled on. Written notice of the prehearing conference shall be sent to all participants in the conference. At the prehearing conference the following matters shall be considered:

(1) Simplification and delineation of the issues to be heard;

(2) Stipulations, admissions of fact and of contents and authenticity of documents;

(3) Limitation of number of witnesses particularly the avoidance of duplicate expert witnesses, and exchange of expert witness lists;

(4) Scheduling dates for the exchange of witness lists (except as provided in subparagraph (3) of this paragraph) and exhibits;

(5) Offers of settlement;

(6) Scheduling of such additional prehearing conferences as may be considered necessary; and

(7) Such other matters as may tend to expedite the disposition of the proceedings.

(b) The record shall show the matters disposed of by order and/or the matters disposed of by agreement in the prehearing conference. The subsequent course of

the proceeding shall be controlled by such action.

Subpart D—Designation and Responsibilities of Hearing Examiner

§ 60–30.16 Designation.

Hearings shall be held before a hearing examiner designated by the Chief Hearing Examiner under the direction of the Secretary. After service of an order designating a hearing examiner to preside, and until such examiner makes his decision, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification, or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.

§ 60–30.17 Authority and responsibilities.

The hearing examiner shall propose findings and conclusions to the Secretary on the basis of the record before him. In order to do so, he shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to those ends, including, but not limited to, the power to:

(a) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding by consent of the parties or upon his own motion;

(b) Require parties to state their position with respect to the various issues in the proceeding;

(c) Require parties to produce for examination those relevant witnesses and documents under their control;

(d) Administer oaths;

(e) Rule on motions, and other procedural items on matters pending before him;

(f) Regulate the course of the hearing and conduct of participants therein;

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

(h) Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial or unduly repetitious;

(i) Fix time limits for submission of written documents in matters before him and extend any time limits established by this part upon a determination that no party will be prejudiced and that the ends of justice will be served thereby;

(j) Impose appropriate sanctions against any party or person failing to obey an order under these rules which may include:

(1) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(2) Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be unfavorable to the party having control over him; and

(3) Expelling any party or person from further participation in the hearing;

(k) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice;

(l) Recommend whether the Respondent is in current violation of Executive Order 11246, as amended, and applicable rules, regulations, and orders, as well as the nature of whatever corrective action may be necessary to bring the Respondent into compliance with the equal employment opportunity clause;

(m) Recommend to the Secretary the adoption of a consent order agreed to by the parties in settlement of the issues in a proceeding; and

(n) Take any action authorized by these rules.

Subpart E—Hearings and Related Matters

§ 60–30.18 Appearances.

(a) *Representation.* The parties or other persons or organizations participating pursuant to § 60–30.11 have the right to be represented by counsel.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the hearing examiner. Failure to appear at the hearing shall not be deemed to be a waiver of the right to be served with a copy of the hearing examiner's recommended decision and to file exceptions to it.

§ 60–30.19 Appearance of witnesses.

(a) A party wishing to procure the appearance at the hearing of any person having personal or expert knowledge of the matters in issue shall serve on the prospective witness a notice setting forth the time, date and place at which he is to appear for the purpose of giving testimony. The notice shall also set forth the categories of documents the witness is to bring with him to the hearing, if any. A copy of the notice shall be filed with the hearing examiner and additional copies shall be served upon the opposing parties.

(b) It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Due regard shall be given to the convenience of witnesses in scheduling their testimony so that they will be detained no longer than reasonably necessary.

(c) The party or prospective witness may file an objection within 3 days after the identity of such witness first becomes known, stating with particularity the reasons why the party cannot produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness.

§ 60–30.20 Evidence; testimony.

Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied, as the hearing examiner directs. Testimony shall be given orally by witnesses at the hearing, but may, in the discretion of the hearing examiner, be prepared in writing and served on all parties within 10 days prior to the hearing. A witness shall be available for cross-examination, and, at the discretion of the hearing examiner, may be cross-examined without regard to the scope of direct examination as to any matter which is relevant and material to the proceeding. The hearing examiner may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

§ 60–30.21 Objections; exceptions.

(a) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the hearing examiner may be relied upon subsequently in the proceedings.

(b) *Exceptions.* Formal exception to an adverse ruling is not required. Rulings by the hearing examiner shall not be appealed prior to the transfer of the case to the Secretary, but shall be considered by the Secretary upon filing exceptions to the hearing examiner's recommendations and conclusions.

§ 60–30.22 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the hearing examiner excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 60–30.23 Public documents.

Whenever a party offers a public document, or part thereof, in evidence, and such document, or part thereof, has been shown by the offeror to be reasonably available to the public, such documents need not be produced or marked for identification, but may be offered for official notice as a public document item by specifying the document or relevant part thereof.

§ 60–30.24 Ex parte communications.

The hearing examiner shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. No employee or agent of the Federal Government engaged in the investigation and prosecution of this case shall participate

or advise in the rendering of the recommended or final decision, except as witness or counsel in the proceeding.

§ 60–30.25 Oral argument.

Any party shall be entitled upon request to a reasonable period between the close of evidence and termination of the hearing for oral argument. Oral arguments shall be included in the official transcript of the hearing.

§ 60–30.26 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the Department. Transcripts of testimony may be obtained from the official reporter by the parties and the public at rates not to exceed the applicable rates fixed by the contract between the Department and the reporter unless distribution is limited by order of the hearing examiner for good cause shown. Upon notice to all parties, the hearing examiner may authorize such corrections to the transcript as are necessary to reflect accurately the testimony.

§ 60–30.27 Summary judgment.

(a) *For Director.* At any time after the expiration of 14 days from the commencement of the action or after service of a motion for summary judgment by the Respondent, the Director may move the hearing examiner with or without supporting affidavits for a summary judgment in his favor upon all claims or any part thereof.

(b) *For Respondent.* The Respondent may, at any time after commencement of the action, move the hearing examiner with or without supporting affidavits for a summary judgment in his favor as to all claims or any part thereof.

(c) *Other parties.* Any other party to a formal proceeding under this part may support or oppose motions for summary judgment made by the Director or Respondent, in accordance with this section, but may not move for a summary judgment in his own behalf.

(d) *Motion and proceedings thereon.* The motion shall be served upon all parties and the hearing examiner or, if no hearing examiner has been designated, upon the Chief Hearing Examiner, at least 15 days before the time fixed for the hearing on the motion. The adverse party or parties may serve opposing affidavits prior to the day of hearing. The judgment sought shall be rendered forthwith if the notice and answer, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment rendered for or against the Director or the Respondent shall constitute the hearing examiner's findings and recommendations to the Secretary on the issues involved. Hearings on motions made under this section shall be scheduled by the hearing examiner, or the Chief Hearing Examiner, and may be postponed until the date established in the notice for the final hearing on the merits.

(e) *Case not fully adjudicated on motion.* If on motion under this section judgment is not rendered upon the whole case or for all the relief asked and a final hearing is necessary, the hearing examiner at the hearing of the motion, by examining the notice and answer and the evidence before him and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which relief is not in controversy, and directing such further proceedings as are just. At the hearing on the merits, the facts so specified shall be deemed established, and the final hearing shall be conducted accordingly.

(f) *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The hearing examiner may permit affidavits to be supplemented or opposed by depositions or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials in his notice or answer, but his response, by affidavit or as otherwise provided in this section, must set forth specific facts showing there is a genuine issue for final hearing. If he does not so respond, summary judgment, if appropriate, shall be rendered against him.

(g) *When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion that he cannot for the reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may refuse the application for summary judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other orders as are just.

(h) *Affidavits made in bad faith.* Should it appear to the satisfaction of the hearing examiner at any time that any of the affidavits presented pursuant to this section are presented in bad faith or solely for the purpose of delay, the hearing examiner may make such orders and impose such sanctions as may be appropriate against the offending party.

Subpart F—Post Hearing Procedures

§ 60–30.28 Proposed findings of fact and conclusions.

Within 20 days after receipt of the transcript of the testimony, each party and amicus may file a brief with the hearing examiner. Such briefs shall be served simultaneously on all parties and amici, and a certificate of service shall be furnished to the hearing examiner. Requests for additional time in which to file a brief shall be made to the hearing examiner, in writing, and copies shall be served simultaneously on the other parties. Requests for extensions shall be received not later than 3 days before the date such briefs are due. No reply brief may be filed except by special permission of the hearing examiner.

§ 60–30.29 Record for recommended decision.

The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, including briefs, but excepting the correspondence section of the docket, shall constitute the record for decision.

§ 60–30.30 Recommended decision.

Within 20 days after the filing of briefs, or, if the parties elect not to file such documents, not more than 20 days after the close of the hearing, the hearing examiner shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record for recommended decision, to the Secretary for his decision. The recommended findings, conclusions, and decisions shall be served on all parties and amici to the proceeding.

§ 60–30.31 Exceptions to recommended decisions.

Within 14 days after receipt of the hearing examiner's recommended findings, conclusions, and decision, any party may submit exceptions to said recommendation. These exceptions may be responded to by other parties within 10 days of their receipt by said parties. All exceptions and responses shall be filed with the Secretary. Service of such briefs or exceptions and responses thereto shall be made simultaneously on all parties to the proceeding, and a certificate of service shall be furnished to the Secretary. Requests to the Secretary for additional time in which to file exceptions and responses thereto shall be in writing and copies thereof shall be served simultaneously on other parties. Requests for extensions must be received no later than 3 days before the exceptions are due.

§ 60–30.32 Record.

After expiration of the time for filing briefs and exceptions, the Secretary shall make a final decision on the basis of the record before him. The record shall consist of the record for recommended decision, the rulings and recommended decision of the hearing examiner, and the exceptions and briefs filed subsequent to the hearing examiner's decision.

§ 60–30.33 Final decision.

After expiration of the time for filing, the Secretary shall make a final decision on the basis of the record for decision, and upon consideration of any exceptions and briefs filed subsequent to the hearing. A copy of the decision of the

Secretary shall be served on all parties and amici to the proceeding.

Subpart G—Miscellaneous

§ 60–30.34 Cooperation by agencies.

All agencies are directed to cooperate with the Director and his representatives in the prosecution of any matter under this part. Such cooperation shall include, but not be limited to, the furnishing of information and other assistance in hearing preparation, and the production of witnesses and documents upon request for participation or use in the conduct of hearings.

§ 60–30.35 Effect of this part on other rules and regulations.

All orders, instructions, regulations, and memoranda of the Secretary of Labor and other officials of the Department of Labor and the agencies are hereby superseded to the extent they are inconsistent herewith.

Effective date. These regulations shall be effective upon publication in the FEDERAL REGISTER (9–30–72).

Signed at Washington, D.C., this 26th day of September 1972.

J. D. HODGSON,
Secretary of Labor.

R. J. GRUNEWALD,
Assistant Secretary for Employment Standards.

PHILIP J. DAVIS,
Acting Director, Office of Federal Contract Compliance.

[FR Doc.72–16699 Filed 9–29–72;8:51 am]

Chapter 101—Federal Property Management Regulations

SUBCHAPTER A—GENERAL

PART 101–6—MISCELLANEOUS REGULATIONS

Acquisition of Real Property in Excess of $100,000

Part 101–6 in amended by the addition of new Subpart 101–6.3 to implement sections 13.5(e) and 24.6(g) of Office of Management and Budget Circular No. A–11, Revised, dated June 12, 1972, and new Subpart 101–6.49 to illustrate the format of the certification required of Federal agencies by section 24.6(g).

The table of contents for Part 101–6 is amended to provide for the following new entries:

Subpart 101–6.3—Acquisition of Real Property in Excess of $100,000

Sec.
101–6.300 Scope of subpart.
101–6.301 Applicability.
101–6.302 Procedures.

AUTHORITY: The provisions of this Subpart 101–6.3 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subparts 101–6.4—101–6.48 [Reserved]

Subpart 101–6.49—Illustrations

Sec.
101–6.4900 Scope of subpart.
101–6.4901 [Reserved]
101–6.4902 Format of certification required for budget submissions of estimates of obligations in excess of $100,000 for acquisitions of real and related personal property.

AUTHORITY: The provisions of this Subpart 101–6.49 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Part 101–6 is amended by adding new Subpart 101–6.3, reserving Subparts 101–6.4—101–6.48, and adding new Subpart 101–6.49, as follows:

Subpart 101–6.3—Acquisition of Real Property in Excess of $100,000

§ 101–6.300 Scope of subpart.

This subpart implements sections 13.5(e) and 24.6(g) of Office of Management and Budget (OMB) Circular No. A–11, Revised, dated June 12, 1972.

(a) Section 13.5(e) requires that agency estimates for the acquisition of real and related personal property shall be included in the budget submission only when the (1) property cannot be obtained by other means not requiring expenditure of funds, (2) property will be put to optimum use consistent with the policies of Executive Order 11508 of February 10, 1970, as amended, and (3) agency has complied with the provisions of OMB Circular No. A–2, Revised.

(b) Section 24.6(g) requires that estimates of obligations in excess of $100,000 for purchase (including purchase contracts), condemnation, or construction (including lease construction) of any real property, other than in specified cases exempt under subparagraph 5(c) of OMB Circular No. A–2, Revised, shall be accompanied by a statement from GSA providing GSA's findings concerning the availability of existing Federal property holdings and the optimum use of the property consistent with the policies of Executive Order 11508, as amended.

§ 101–6.301 Applicability.

The regulations in this subpart apply to all Federal agencies that desire to acquire real and related personal property in excess of $100,000 within the United States, the District of Columbia, Puerto Rico, and the Virgin Islands.

§ 101–6.302 Procedures.

(a) When budget submissions contain estimates of obligations in excess of $100,000 for purchase (including purchase contracts), condemnation, or construction (including lease construction) of any real property, other than in specified cases exempt under subparagraph 5(c) of OMB Circular No. A–2, Revised, the agency shall certify that:

(1) The requirement cannot be satisfied by better use of the agency's existing property;

(2) Unreserved public domain land is not available; and

(3) The proposed land use constitutes optimum use of the property consistent with Executive Order 11508 of February 10, 1970, as amended. The certification shall be prepared in accordance with the format illustrated in § 101–6.4902 and shall be submitted to the General Services Administration (DR), Washington, D.C. 20405, by July 15 of each year.

(b) GSA will review the proposed acquisition(s) and indicate its findings concerning the availability of existing Federal property holdings and the optimum use of the property consistent with the policies of Executive Order 11508, as amended. GSA will code and enter its findings on the agency's certification as prescribed in the format illustrated in § 101–6.4902 and return the certification to the agency for inclusion in its budget estimate.

Subparts 101–6.4—101–6.48 [Reserved]

Subpart 101–6.49—Illustrations

§ 101–6.4900 Scope of subpart.

This subpart contains illustrations prescribed for use in connection with the subject matter covered in Part 101–6.

§ 101–6.4901 [Reserved]

§ 101–6.4902 Format of certification required for budget submissions of estimates of obligations in excess of $100,000 for acquisitions of real and related personal property.

NOTE: The illustration in § 101–6.4902 is filed as part of the original document.

Effective date. This amendment is effective upon publication in the FEDERAL REGISTER (9–30–72).

Dated: September 26, 1972.

ARTHUR F. SAMPSON,
Acting Administrator of General Services.

[FR Doc.72–16698 Filed 9–29–72;8:51 am]

Chapter 114—Department of the Interior

PART 114–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Subpart 114–47.6—Delegations

DELEGATION TO THE DEPARTMENT OF THE INTERIOR

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, Subpart 114–47.6 of Chapter 114, Title 41 of the Code of Federal Regulations, is amended as set forth below.

These changes will become effective on the date of publication in the FEDERAL REGISTER (9–30–72).

CHARLES G. EMLEY,
Deputy Assistant Secretary of the Interior.

SEPTEMBER 25, 1972.

The table of contents for Subpart 114–47.6 is revised to read as follows:

Sec.
114–47.603 Deletion to the Department of the Interior Section 114–47.603 is revised to read as follows:

§ 114–47.603 Delegation to the Department of the Interior.

(a) The authority conferred in the Secretary by FPMR 101–47.603 has been delegated to the heads of Bureaus and Offices in 205 DM 10.

(b) Available real property having an estimated fair market value of less than $1,000 shall be screened in accordance with the provisions of IPMR 114–47.203–1(b) before a determination of excess or surplus is made.

§ 114–47.604 [Deleted]

Section 114–47.604 is deleted in its entirety.

[FR Doc.72–16692 Filed 9–29–72;8:49 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

[CGD 72–191RC]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Milwaukee, Menomonee, and Kinnickinnic Rivers, Wis.; Correction

This corrects the regulations for the Chicago and North Western, and the Chicago, Milwaukee, St. Paul and Pacific railroad bridges across the Milwaukee, Menomonee, and Kinnickinnic Rivers within the city limits of Milwaukee contained in 33 CFR 117.655(c)(2) to read as follows:

§ 117.655 Milwaukee, Menomonee, and Kinnickinnic Rivers, and South Menomonee Canal, Milwaukee, Wis.; bridges.

* * * * *

(c) * * *

(2) When the above signals are given, the draws of each bridge shall open as soon as practical for all other vessels which cannot pass the closed draw, however no vessel shall be delayed for more than 15 minutes except as provided in subparagraph (4) of this paragraph.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(c)(4))

Effective date. This revision shall become effective on the date of publication in the FEDERAL REGISTER (9–30–72).

Dated: September 21, 1972.

J. D. McCANN,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.72–16701 Filed 9–29–72;8:49 am]

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER E—PESTICIDES PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Methomyl

Correction

In F.R. Doc. 72–16197, appearing at page 20026, in the issue of Saturday, September 23, 1972, the first line under § 180.253, should be deleted.

Title 42—PUBLIC HEALTH

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

SUBCHAPTER D—GRANTS

PART 57—GRANTS FOR CONSTRUCTION OF HEALTH RESEARCH FACILITIES (INCLUDING MENTAL RETARDATION FACILITIES), TEACHING FACILITIES, STUDENT LOANS, EDUCATIONAL IMPROVEMENT AND SCHOLARSHIPS

Grants for Construction of Teaching Facilities for Health Professions Personnel

Notice of proposed rule making, public rule making procedures and postponement of effective date have been omitted in the issuance of the following Subpart B of Part 57 which relates to the awarding of grants to assist in the construction of teaching facilities for health personnel, because for good cause it has been found that such procedures would be contrary to the public interest in light of the delay in the passage of the amending legislation (Comprehensive Health Manpower Training Act of 1971, P.L. 92–157), and the need to provide adequate lead time for the development of proposals. The major changes in these regulations are (1) expanding of grantee eligibility to include affiliated outpatient facilities as well as combinations of schools; (2) expansion of eligible projects to include the acquisition of existing buildings and both the acquisition and construction of interim facilities; and (3) an increase in the maximum Federal share available. There are also included several technical and clarifying changes.

Written comments concerning the regulations are invited from interested persons. Inquiries may be addressed, and data, views, and arguments relating to the regulations may be presented in writing, in triplicate, to Associate Director (Program Implementation), Bureau of Health Manpower Education, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 5C–12, Bethesda, MD 20014. All comments received in response to this publication will be available for public inspection and copying at the Office of Grants Policy, Bureau of Health Manpower Education, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 5C–36, Bethesda, MD 20014, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. All relevant material received not later than 30 days after publication of these regulations in the FEDERAL REGISTER will be considered.

The following regulations shall become effective on the date of publication in the FEDERAL REGISTER (9–30–72).

Dated: August 9, 1972.

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

Approved: September 25, 1972.

ELLIOT L. RICHARDSON,
Secretary.

NOTE: Incorporation by reference provisions approved by the Director of the Federal Register July 13, 1972.

1. Subpart B of the table of contents of Part 57 is hereby revised to read as follows:

Subpart B—Grants for Construction of Teaching Facilities for Health Professions Personnel

AUTHORITY: The provisions of this Subpart B issued under section 727, 77 Stat. 170, as amended; 42 U.S.C. 293g.

Subpart B—Grants for Construction of Teaching Facilities for Health Professions Personnel

2. Subpart B is hereby revised to read as follows:

§ 57.101 Applicability.

The regulations in this part are applicable to the award of grants under part B of title VII of the Public Health Service Act for construction of teaching facilities for medical, dental, and

other health personnel (42 U.S.C. 293 et seq.).

§ 57.102 Definitions.

As used in this subpart:

(a) All terms not defined herein shall have the same meaning as given them in section 724 of the Act.

(b) "Act" means the Public Health Service Act, as amended.

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(d) "Council" means the National Advisory Council on Health Professions Education (established pursuant to section 725 of the Act).

(e) "Construction grant" and "grant" mean a grant of funds for the construction of an approved project as authorized under part B of title VII of the Act, and in accordance with these regulations.

(f) "Affiliated hospital" or "affiliated outpatient facility" means a hospital or outpatient facility (as defined in section 645 of the Act) which, although not owned by such school, has a written agreement with a school of medicine, osteopathy or dentistry eligible for assistance under this subpart, providing for effective control by the school of the teaching in the hospital or outpatient facility.

(g) "New school" means a school which, at the time of filing an application for a construction grant under this subpart, has not graduated a class because of an insufficient period of operation.

(h) "Equipment" includes those items which are necessary for the functioning of the facility or portion thereof with respect to which the grant is made, but does not include items of current operating expense or consumed in use such as glassware, chemicals, food, fuel, drugs, paper, printed forms, books, pamphlets, periodicals and disposable housekeeping items.

(i) "Advanced education" means training in the health sciences beyond the first professional degree or equivalent degree, and such training related thereto. Such training may include internships and residencies, and work toward masters and Ph. D. degrees.

(j) "Continuing education" means training for which no degree is awarded and in which health professions personnel participate in order to enhance their skills, and may include refresher courses, seminars, and the like.

(k) "Multipurpose facilities" means facilities which are primarily for teaching purposes, but which are also for research, or research and related purposes, in the sciences related to health (within the meaning of part A of title VII of the Act) or for medical library purposes (within the meaning of part J of title III). The Secretary may determine "to be primarily for teaching purposes" any facilities with respect to which he determines that the health professions teaching portions of such facilities, including research and library space essential for teaching purposes, will substantially exceed the total of the research and library portions which are not essential for teaching taken together.

(l) "Completion of construction" means that date on which the Secretary determines, on the basis of certification by the grantee, that the project is completed: *Provided, however,* In the event the grantee occupies the project prior to the date of such certification, the Secretary shall be immediately notified of such occupancy, and "completion of construction" shall be deemed to have occurred with respect to the project as of the date of such occupancy.

§ 57.103 Eligibility.

In order to be eligible for a construction grant under part B of the Act, the applicant shall:

(a) Meet the applicable requirements of section 721(b) of the Act;

(b) Be a public or nonprofit private school of medicine, dentistry, osteopathy, pharmacy, optometry, podiatry, veterinary medicine, public health, or any combination thereof, or an affiliated hospital or affiliated outpatient facility;

(c) Be located in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, American Samoa, the Trust Territories of the Pacific Islands or Guam;

(d) Except in the case of an application with respect to an affiliated hospital or affiliated outpatient facility, be accredited by a recognized body or bodies approved for such purpose by the Commissioner of Education, except that a new school which (by reason of no, or an insufficient period of, operation) is not, at the time of making application for the construction grant, eligible for accreditation by such recognized body or bodies shall be deemed accredited for purposes of receiving a grant if the Commissioner finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school, after completion of the facility and at or prior to the time of graduation of the first class to use such facility, will have met the accreditation standards of such body or bodies: *Provided,* That, in the case of an application from a combination of schools, each constituent school must meet the requirements of this paragraph;

(e) In the case of an application with respect to an affiliated hospital or outpatient facility, have its application approved by the school of medicine, osteopathy, or dentistry with which the hospital or outpatient facility is affiliated;

(f) In the case of an application with respect to the construction of multipurpose facilities, provide evidence satisfactory to the Secretary that such facilities will be used primarily for teaching purposes, and that such facilities are otherwise eligible under Part B of title VII of the Act;

(g) In the case of a project for the construction of a facility intended, at least in part, for the provision of health services, provide an opportunity for comment with respect to such project to (1) the State agency administering or supervising the administration of the State plan approved under section 314(a), and (2) the public or nonprofit private agency or organization responsible for the plan or plans referred to in section 314(b) and covering the area in which such project is to be located or if there is no such agency, such other public or nonprofit private agency or organization (if any) as performs, as determined in accordance with criteria of the Secretary, similar functions;

(h) In the case of an application with respect to interim facilities, provide assurance satisfactory to the Secretary that such facilities are designed to provide teaching space on a short-term (less than 10 years) basis while facilities of a more permanent nature are being planned and constructed;

(i) Provide its assessment of the environmental impact of the project as called for by section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(c));

(j) Furnish its evaluation of the project site in accordance with the terms and provisions of E.O. 11296, 31 F.R. 10663 (August 10, 1966) relating to the evaluation of flood hazards in locating federally owned or financed facilities.

§ 57.104 Priority.

(a) Priority in approving applications for construction grants shall be determined in accordance with the factors specified in section 721(d) of the Act, and the following: (1) The relative need for increased enrollment and the availability of students; (2) the relative effectiveness of the project in accomplishing the purposes of the Act at the least relative cost to the Federal Government; (3) the relative ability of the applicant to make efficient and productive use of the facility constructed; and (4) such other pertinent factors as the Secretary may specify;

(b) The Secretary shall give special consideration to grant applications to assist in the construction of new schools of medicine, osteopathy, and dentistry, where such applications contain or are reasonably supported by assurances that, because of use by such school of existing facilities (including Federal medical or dental facilities), the school will be able to accelerate the date on which it will begin its teaching program.

§ 57.105 Percentage of participation; amount of construction grant.

(a) *Percentage of maximum participation.* (1) The amount of any construction grant made under Part B of title VII of the Act and pursuant to this subpart may not exceed 70 percent of the necessary cost of construction of a project as determined by the Secretary, except: (i) In the case of a project with respect to a school of public health, the amount of such grant may not exceed 75 percent of the necessary cost of construction; and (ii) in the case of (*a*) a project with respect to a new school; (*b*) a project constituting new facilities which will result in a major expansion

of training capacity at an existing school in accordance with subparagraph (2) of this paragraph; (c) all or so much of a project constituting a major remodeling or renovation of an existing facility which is required by a school to meet an increase in student enrollment; or (d) any other project where the Secretary determines that unusual circumstances require a larger percent of participation in order to carry out the intent of Part B of title VII of the Act the amount of such grant may not exceed 80 percent of the necessary cost of construction.

(2) For purposes of subparagraph (1) of this paragraph: (i) A major expansion of training capacity at an existing school shall be construed to mean that the full-time first-year enrollment at such school, upon completion of construction, will exceed the highest full-time first-year enrollment at such school for any of the 5 full school years preceding the year in which the application for a construction grant is made by not less than 40 students or 40 percent, whichever is greater: *Provided, however,* That where the Secretary determines with respect to a particular school that such increased enrollment cannot be achieved until the second or third full school year after completion of construction, he may determine that the requirements for a major expansion of training capacity are met for each of the first or second full school years after completion of construction, if during such first or second full school year the increase in first-year enrollment will equal such amount in excess of 5 percent or five students, whichever is greater, as the Secretary may specify; (ii) a major remodeling or renovation of a facility shall include only that portion of remodeling or renovation which is necessary to meet an increase in student enrollment, which increase shall be construed to mean that, during the first full school year after completion of construction and for each of the 9 school years thereafter the first-year enrollment will exceed the highest first-year enrollment at such school for any of the 5 full school years preceding the year in which the application is made by not less than the mandatory increase as provided for under section 770(f)(1)(A) of the Act; (iii) unusual circumstances may be determined by the Secretary to exist: (*a*) Where a school is located in a geographical area of the United States with a critical shortage of health profession manpower (as determined by the Secretary with the advice of Council); (*b*) where the project is found to be necessary to prevent the curtailment of enrollment at a school; (*c*) where the project is essential to the securing or maintenance of a school's accreditation; or (*d*) where there are other relevant factors consistent with this subpart and the purposes of Part B of title VII of the Act.

(b) *Amount of construction grant—less than maximum.* In determining the amount of a construction grant within the percentage limitations as set forth in paragraph (a) of this section, the Secretary shall take into consideration the most effective use of available Federal funds to further the purposes of Part B of title VII of the Act, and the needs of the applicant.

§ 57.106 Nondiscrimination.

(a) *Executive Order 11246.* Each construction contract under this subpart is subject to the condition that the applicant shall comply with the requirements of Executive Order 11246, 30 F.R. 12319 (September 24, 1965), as amended, relating to nondiscrimination in construction contract employment, and the applicable rules, regulations, and procedures prescribed pursuant thereto.

(b) *Civil Rights Act of 1964.* Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.), which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI, which is applicable to grants made under this part, has been issued by the Secretary with the approval of the President (45 CFR Part 80).

(c) *Discrimination on the basis of sex prohibited.* Attention is called to the requirements of section 799A of the Act, and to 45 CFR Part 83 which together provide that the Secretary may not make a grant, loan guarantee, or interest subsidy payment under title VII of the Act to, or for the benefit of, any school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, or public health, or any training center for allied health personnel or to any other entity unless the application for the grant, loan guarantee, or interest subsidy payment contains assurances satisfactory to the Secretary that the school, training center or other entity will not discriminate on the basis of sex in the admission of individuals to its training programs.

§ 57.107 Terms and conditions.

In addition to any other requirements imposed by law or determined by the Secretary to be reasonably necessary with respect to particular projects to fulfill the purpose of the grant, each construction grant shall be subject to the condition that the applicant shall furnish and comply with the following assurances:

(a) *Title.* That applicant has a fee simple or such other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure for a period of not less than 20 years (or in the case of interim facilities for the period constituting the estimated useful life of such facilities) undisturbed use and possession for the purpose of the construction and operation of the facility;

(b) *Competitive bids.* (1) That the approval of the Secretary shall be obtained before the project is advertised or placed on the market for bidding and that such approval shall include a determination by the Secretary that the final plans and specifications conform to the minimum standards of construction and equipment as set forth in Appendix A of these regulations.

(2) That, except as otherwise provided by State or local law, all contracting for construction (including the purchase and installation of built-in equipment) shall, except as provided in subparagraph (3) of this paragraph, be on a lump sum fixed-price basis, and contracts will be awarded on the basis of competitive bidding obtained by public advertising with award of the contract to the lowest responsive and responsible bidder. The provision for exceptions based on State or local law shall not be invoked to give local contractors or suppliers a percentage preference over nonlocal contractors bidding for the same contract. Such practices are precluded by this paragraph.

(3) A substitute bidding procedure of selective solicitation with response from three or more bidders may be used if: (i) The applicant requests and justifies the use of the procedure; (ii) the procedure is consistent with State and local laws; and (iii) the Secretary determines that it is necessary to limit bidding to contractors of proven competence due to the complexity or specialty of the project or that the time element is of primary consideration. When this bidding procedure is used, the applicant shall establish reasonable bid prequalification standards for contractors. The applicant shall then accept and consider bids from any contractor who requests permission to bid and who is determined by the applicant to meet these prequalification standards. Adequate time (normally 30 days) shall be allowed for contractors to prepare bids, and award of construction contracts shall be made to the lowest qualified and responsible bidder whose bid is considered fully responsive to the bid invitation;

(c) *Approval of estimated cost.* That applicant will enter into no construction contract or contracts with respect to the project or any portion thereof where the costs exceed estimates in the application for such work, without prior approval of the Secretary.

(d) *Relocation assistance.* That in the case of a public applicant with an approved project which involves the displacement of persons or businesses, on and after January 2, 1971, whose real property has or will be taken, the applicant will comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91–646) and the applicable regulations issued thereunder; (45 CFR Part 15, as added by 36 F.R. 18838 (Sept. 22, 1971));

(e) *Cost in excess of approved costs.* That applicant will finance all costs in excess of the estimated costs approved in the application and submit to the Secretary for prior approval any changes that substantially alter the scope of its

education program, or of the work, functions, utilities, or safety of the facility;

(f) *Completion responsibility.* That applicant will construct the project, or cause it to be constructed, to final completion in accordance with the grant application and the plans and specifications;

(g) *Records and accounts.* That applicant will maintain adequate and separate accounting and fiscal records and accounts for all funds provided from any source to pay the cost of the project, and permit audit of such records and accounts at any reasonable time. All records will be retained for 3 years after the close of the fiscal year in which the construction is completed. Such records may be destroyed at the end of such 3-year period if the applicant has been notified of the completion of the Federal audit by such time. If the applicant has not been so notified by the end of such 3-year period, such records will be retained (1) for 5 years after the close of the fiscal year in which the construction is completed or (2) until the grantee is notified of the completion of the Federal audit, whichever is earlier. In all cases where audit questions have arisen before the expiration of such 5-year period, records shall be retained until resolution of such questions;

(h) *Progress reports.* That applicant shall furnish progress reports and such other information as the Secretary may require;

(i) *Construction supervision.* That applicant shall provide and maintain competent and adequate architectural or engineering supervision and inspection at the construction site to insure that the completed work conforms with the plans and specifications;

(j) *Non-Federal share.* That sufficient funds will be available to meet the non-Federal share of the cost of constructing the facility;

(k) *Funds for operation.* That sufficient funds will be available after construction is completed for effective use of the facility for the purposes for which it is being constructed;

(l) *Authorized uses.* That the facility is intended to be used for the purposes for which the application has been made;

(m) *Prohibition against religious use.* That no portion of the facility constructed with funds under Part B of title VII of the Act will be used for sectarian instruction or as a place for religious worship for so long as such facility has substantial value;

(n) *Expansion of training capacity.* That in the case of any application (including an application with respect to continuing education or advanced training) to expand the training capacity of an existing school, the first-year enrollment at such school during the first full year after the completion of the construction and for each of the nine school years thereafter will exceed the highest first-year enrollment at such school for any of the 5 full years preceding the year in which the application is made by at least 5 percent of such highest first-year enrollment, or by five students, whichever is greater. This increase shall be in addition to any increase assured pursuant to section 770(f)(1)(A) of the Act: *Provided, however,* That if such school is not required to meet in the fiscal year in which the application is made the enrollment increase prescribed under section 770(f)(1)(A) of the Act because of limitations of physical facilities available to the school for training, the Secretary may, after consultation with the Council, waive all or any portion of such requirements provided for in this paragraph, if the application contains or is supported by reasonable assurances satisfactory to the Secretary that the number of first-year students enrolled at such school during the first full school year after the completion of such project and for each of the next nine school years thereafter shall be not less than the number of first-year students that such school would be required to enroll for a grant under section 770(f) of the Act (without regard to paragraph (2) thereof) for a grant under section 770(a) of the Act;

(o) *New school construction.* That in the case of a project for the construction of a new school, (1) the first-year enrollment at such school during the third full school year after completion of construction and for each of the seven school years thereafter shall be that number which is set forth in the application as the projected total first-year enrollment of the school and which is determined by the Secretary to be adequate in relation to the amount of the grant, taking into consideration the most effective use of the total amount of Federal funds available, the amount of funds requested by the applicant, the nature and the quality of training to be provided in the facility, and other relevant factors; and (2) the first-year enrollment at such school during the first full school year after completion of construction will be at least one-third of the number determined pursuant to subparagraph (1) of this paragraph;

(p) *Wage rate standards.* That any laborer or mechanic employed by any contractor or subcontractor in the performance of work on the construction of the facility shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined under the Davis-Bacon Act (40 U.S.C. 276 et seq.) and shall receive compensation at a rate not less than 1½ times his basic rate of pay for all hours worked in any workweek in excess of 8 hours in any calendar day or 40 hours in the workweek (40 U.S.C. 327–332);

(q) *Clearinghouse review.* That the applicant has, at the earliest feasible time, notified the planning and development clearinghouse of the State and the region, if there is one, or of the metropolitan area in which the project is to be located, of its intent to apply for a grant under this subpart, and of the nature of the project for which assistance has been sought, including a summary description of such project; any comments received by the applicant from the clearinghouse pursuant to such notification shall be considered by the applicant and shall be included in or attached to the application;

(r) *Accessibility by handicapped.* That the applicant shall require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1—1961, as modified by other standards prescribed by the Secretary or the Administrator of General Services. The applicant shall be responsible for conducting inspections to insure compliance with these specifications by the contractor; and

(s) *Minimum standards of construction and equipment.* That the plans and specifications for the project will conform to the minimum standards of construction and equipment as set forth in Appendix A of this subpart.

The Secretary may at any time approve exceptions to the foregoing terms and conditions where he finds that such exceptions are not inconsistent with Part B of title VII of the Act and purposes of the program.

§ 57.108 Construction contract requirements.

The following conditions and provisions must be included in all construction contracts:

(a) The provisions set forth in "DHEW Requirements for Federally Assisted Construction Contracts Regarding Labor Standards and Equal Employment Opportunities", Form DHEW 514 (April, 1969) (issued by the Office of Grants Administration Policy, U.S. Department of Health, Education, and Welfare) pertaining to the Davis-Bacon Act, the Contract Work Hours Standards Act, and the Copeland Act (Anti-Kickback) Regulations, except in the case of contracts in the amount of $2,000 or less; and pertaining to Executive Order 11246, 30 F.R. 12319 (September 24, 1965), as amended, relating to nondiscrimination in construction contract employment, except in the case of contracts in the amount of $10,000 or less;

(b) The contractor shall furnish performance and payment bonds, each of which shall be in the full amount of the contract price, and shall maintain, during the life of the contract, adequate fire, workmen's compensation, public liability, and property damage insurance: *Provided however,* That in the case of a State or local unit of government which enters into a construction contract of less than $100,000, State or local provisions with respect to performance and payment bonds shall be deemed to meet the requirements of this paragraph; and

(c) The Secretary shall have access at all reasonable times to work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

§ 57.109 Good cause for other use of completed facility.

If, within 20 years after completion of construction (or, in the case of interim facilities prior to the time at which teaching in such facilities is moved to a permanent facility, whichever comes first), the facility shall cease to be used for any one or more of the purposes for which it was constructed, the Secretary, in determining whether there is good cause for releasing the applicant or other owner of the facility from the obligation so to use the facility, shall take into consideration the extent to which:

(a) The facility will be devoted by the applicant or other owner to the teaching of other health personnel, or to other purposes in the sciences related to health for which funds are available under Part B of title VII of the Act and these regulations;

(b) A hospital or outpatient facility will be used as provided for under title VI of the Act;

(c) There are reasonable assurances that for the remainder of such period other facilities not previously utilized for teaching health professions personnel, or for research and related purposes in the sciences related to health, or for medical library purposes, as the case may be, will be so utilized and are substantially the equivalent in nature and extent for such purposes.

§ 57.110 Acquisition of facilities.

In addition to the other requirements of this subpart the following provisions are also applicable to the acquisition of existing facilities:

(a) *Minimum standards of construction and equipment.* That a determination by the Secretary that the facility conforms (or upon completion of any necessary construction will conform) to the minimum standards of construction and equipment as set forth in Appendix A of this subpart, shall be obtained before entering into a final or unconditional contract for such acquisition. Where the Secretary finds that exceptions to or modification of any such minimum standards of construction and equipment would be consistent with the purposes of part B of title VII of the Act and of the program, he may authorize such exceptions or modifications;

(b) *Estimated cost of acquisition and remodeling: suitability of facility.* Each application for a project involving the acquisition of existing facilities shall include in the detailed estimates of the cost of the project, the cost of acquiring such facilities, and any cost of remodeling, renovating or altering such facilities to serve the purposes for which they are acquired. Such application shall demonstrate to the satisfaction of the Secretary that the architectural, structural and other pertinent features of the facility, as modified by any proposed expansion, remodeling, renovation, or alteration, will be clearly suitable for the purposes of the program, and, to the extent of the costs in which Federal participation is requested, are not in excess of what is necessary for the services proposed to be provided in such facilities;

(c) *Determination of necessary cost.* The necessary cost of acquisition of existing facilities will be determined on the basis of such documentation submitted by the applicant as the Secretary may prescribe (including the reports of such real estate appraisers as the Secretary may approve) and other relevant factors;

(d) *Bona fide sale.* Federal participation in the acquisition of existing facilities is on condition that such acquisition constitutes a bona fide sale involving an actual cost to the applicant and will result in additional or improved facilities for purposes of the program; and

(e) *Facility which has previously received Federal grant.* No grant for the acquisition of a facility which has previously received a Federal grant for construction, acquisition, or equipment shall serve either to reduce or restrict the liability of the applicant or any other transferor or transferee from any obligation of accountability imposed by the Federal Government by reason of such prior grant.

§ 57.111 Additional conditions.

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project, the interest of public health or the conservation of grant funds.

§ 57.112 Early termination and withholding of payments.

Whenever the Secretary finds that a grantee has failed in a material respect to comply with the applicable provisions of the Act, the regulations of this subpart or the terms of the grant, he may, on reasonable notice to the grantee, withhold further payments, and take such other action, including the termination of the grant, as he finds appropriate to carry out the purposes of the applicable provisions of the Act and regulations. Noncancellable obligations of the grant properly incurred prior to the receipt of the notice of termination will be honored. The grantee shall be promptly notified of such termination in writing and given the reasons therefor.

APPENDIX A—MINIMUM STANDARDS OF CONSTRUCTION AND EQUIPMENT

The minimum standards of construction and equipment set forth below have been established by the Secretary as required by section 727 of the Act. In accordance with 5 U.S.C. 552(a)(1), the publications to which reference is made in this Appendix A, unless otherwise indicated, are hereby incorporated by reference and made a part hereof. These documents are available for inspection at the Department's and Regional Offices' Information Centers listed in 45 CFR 5.31 and copies of such documents may be purchased as specified. These standards are applicable to all projects approved for construction grants under Part B of title VII of the Act; in addition, teaching hospitals and outpatient facilities are also required to comply with the requirements of "General Standards of Construction and Equipment for Hospital and Medical Facilities" (PHS No. 930-A-7) which document is incorporated by reference in § 53.101(a) of this chapter. Said document will be provided to all applicants with a need therefor, and is available to any interested person, whether or not affected by the provisions of this subpart, upon request to the Regional Office of the Department of Health, Education, and Welfare or the Public Inquiries Branch, Public Health Service, Washington, D.C.

(a) *General.* The structural design, construction, and fire safety provisions of all project facilities shall comply with the standards of the National Building Code, 1967 (available from American Insurance Association Engineering and Safety Department, 85 John Street, New York, NY 10038, or 120 South La Salle Street, Chicago, IL 60603, or 465 California Street, San Franciso, CA 94104) or with applicable State, local codes and ordinances, whichever is more restrictive.

(b) *Mechanical.* All installations of fuel burning equipment, steam, heating, air conditioning and ventilation, plumbing and other piping systems and boilers shall comply with the following standards:

(1) Handbook of Fundamentals: American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) 1972; United Engineer Center, 345 East 47th Street, New York NY 10017.

(2) National Standard Plumbing Code 1955; American Society of Mechanical Engineers (ASME); United Engineer Center, 345 East 47th Street, New York, NY 10017.

(3) Boiler and Pressure Vessel Code, 1971 edition, with current addenda, section 8, Division I. American Society of Mechanical Engineers (ASME); United Engineer Center, 345 East 47th Street, New York, NY 10017.

(c) *Fire and safety.* The fire-resistant design criteria for the facility will be governed by the criteria necessary for that portion of the facility which is subject to the most severe usage. Remodeled structures shall be upgraded, in total, unless it is feasible to isolate the improved portion of the building with fire walls and fire doors. Fire-resistant design shall be in accordance with the standards of Fire Safety Code Number 101, 1970, National Fire Protection Association, International, 60 Batterymarch Street, Boston, MA 02110.

(d) *Emergency electrical service.* Fire alarm systems and other electrical service shall conform to the standards as specified in Life Safety Code Number 101, 1970, National Fire Protection Association, International, 60 Batterymarch Street, Boston, MA 02110.

(e) *Electrical.* All electrical installations and equipment shall be in accordance with State and local codes and applicable sections of National Electric Code, NFPA Bulletin No. 70 HC, 1971, National Fire Protection Association, International, 60 Batterymarch Street, Boston, MA 02110.

(f) *Radiation protection.* All areas in which X-ray, gamma-ray, beta-ray producing and similar equipment is located shall be protected from radiation in accordance with the standards which are in the handbook reports No. 33, 1968; 34, 1970; 35, 1970, and 36, 1970, of the National Council on Radiation Protection and Measurement, Box 4867, Washington, DC 20008.

(g) *Earthquake.* All facilities shall be designed and constructed in accordance with the standard specified in the Uniform Building Code, 1970, International Conference of Building Officials, 50 South Los Robles, Pasadena, CA 91101, unless more retrictive State and local codes govern.

(h) *Zoning.* State and local codes shall apply.

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PART 57—GRANTS FOR CONSTRUCTION OF HEALTH RESEARCH FACILITIES (INCLUDING MENTAL RETARDATION FACILITIES), TEACHING FACILITIES, STUDENT LOANS, EDUCATIONAL IMPROVEMENT, AND SCHOLARSHIPS

Grants for Construction of Nurse Training Facilities

Notice of proposed rule making, public rule making procedures and postponement of effective date have been omitted in the issuance of the following revised Subpart E of Part 57 which relates to the awarding of grants to assist in the construction of nurse training facilities, because for good cause it has been found that such procedures would be contrary to the public interest in light of the delay in the passage of the amending legislation (Nurse Training Act of 1971, P.L. 92–158), and the need to provide adequate lead time for the development of proposals. The major changes in these regulations are (1) expansion of eligible projects to include the acquisition and construction of interim facilities; and (2) an increase in the maximum Federal share available. There are also included technical and clarifying changes.

Written comments concerning the regulations are invited from interested persons. Inquiries may be addressed, and data, views, and arguments relating to the regulations may be presented in writing, in triplicate, to Associate Director (Program Implementation), Bureau of Health Manpower Education, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 5 C 12, Bethesda, MD 20014. All comments received in response to this regulation will be available for public inspection in the Office of Grants Policy, Bureau of Health Manpower Education, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 5 B 36, Bethesda, MD 20014, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. All relevant material received not later than 30 days after publication of these regulations in the FEDERAL REGISTER will be considered.

The regulations set forth below shall become effective on the date of publication in the FEDERAL REGISTER (9–30–72).

Dated: August 9, 1972.

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

Approved: September 25, 1972.

ELLIOT L. RICHARDSON,
Secretary.

NOTE: Incorporation by reference provisions approved by the Director of the Federal Register, July 13, 1972.

1. Subpart E of the table of contents of Part 57 is hereby revised to read as follows:

Subpart E—Grants for Construction of Nurse Training Facilities

AUTHORITY: The provisions of this Subpart E issued under section 215, 58 Stat. 690, as amended; 42 U.S.C. 216.

Subpart E—Grants for Construction of Nurse Training Facilities

2. Subpart E is hereby revised to read as follows:

§ 57.401 Applicability.

The regulations of this subpart are applicable to the award of grants under section 801 of the Public Health Service Act (42 U.S.C. 296) for construction grants to expand and improve nurse training facilities.

§ 57.402 Definitions.

As used in this subpart:

(a) All terms not defined herein shall have the same meaning as given them in section 843 of the Act.

(b) "Act" means title VIII of the Public Health Service Act.

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(d) "Construction grant" and "grant" mean a grant of funds for the construction of an approved project as authorized under Part A of the Act and in accordance with these regulations.

(e) "Project" means all or so much of the teaching facilities including necessary equipment, with respect to which a grant is requested under Part A of the Act.

(f) "New school" means a school which, at the time of filing an application for a construction grant under this subpart has not graduated a class because of an insufficient period of operation.

(g) "Completion of construction" means that date on which the Secretary determines on the basis of certification by the grantee that the project is completed: *Provided, however,* In the event the applicant occupies the project prior to the date of such certification, the Secretary shall be immediately notified of such occupancy, and "completion of construction" shall be deemed to have occurred with respect to the project as of the date of such occupancy.

(h) "Equipment" includes those items which are necessary for functioning of the facility or portion thereof with respect to which the grant is made, but does not include items of current operating expense or consumed in use such as glassware, chemicals, food, fuel, drugs, paper, printed forms, books, pamphlets, periodicals, and disposable housekeeping items.

(i) "Council" means the National Advisory Council on Nurse Training (established by section 841(a) of the Act).

§ 57.403 Eligibility.

In order to be eligible for a grant under this subpart, an applicant shall:

(a) Meet the requirements of section 802 of the Act;

(b) Be located in a State;

(c) Be accredited as provided in section 843(f) of the Act; and

(d) In the case of an application with respect to interim facilities, provide assurance satisfactory to the Secretary that such facilities are designed to provide teaching space on a short term (less than 10 years) basis while facilities of a more permanent nature are being planned and constructed.

(e) Provide its assessment of the environmental impact of the project as called for by section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 433(2)(c)).

(f) Furnish its evaluation of the project site in accordance with the terms and provisions of Executive Order 11296, 31 F.R. 10663 (August 10, 1966) relating to the evaluation of flood hazards in locating federally owned or financed facilities.

§ 57.404 Priority.

Priority in approving applications for construction grants shall be determined in accordance with the provisions of section 802(c) of the Act, and the following: (a) The availability of training opportunities for students; (b) the relative effectiveness of the project in carrying out the purposes of Part A of the Act at the least relative cost to the Government; and (c) the relative ability of the applicant to make efficient and productive use of the facility constructed, consistent with the intent of Part A of the Act.

§ 57.405 Percentage of participation; amount of construction grant.

(a) *Percentages of maximum participation.* (1) The amount of any construction grant under Part A of the Act and pursuant to this subpart may not exceed 67 percent of the necessary cost of construction of a project as determined by the Secretary, except: (i) In the case of (*a*) a project with respect to a new school; (*b*) a project constituting new facilities, which will result in a major expansion of training capacity at an existing school; (*c*) all or so much of a project constituting a major remodeling or renovation of an existing facility which is required by a school to meet an increase in student enrollment; or (*d*) where the Secretary determines that unusual circumstances require a larger percent of participation in order to carry out the intent of Part A of the Act, the amount of grant made therefor may not exceed 75 percent of the necessary cost of construction.

(2) For purposes of subparagraph (1) of this paragraph: (i) A major expansion of training capacity at an existing

school shall be construed to mean that the full-time first-year enrollment at such school, upon completion, will exceed by not less than 40 students or 40 percent, whichever is greater, the highest full-time first-year enrollment at such school for any of the 5 full school years preceding the year in which the application for a construction grant is made: *Provided however,* That where the Secretary determines with regard to a particular school that the increased enrollment specified hereinabove cannot be achieved until the second or third full school year after completion of construction the Secretary may deem the requirements for a major expansion of training capacity as being met for each of the first or second full school years, respectively, after completion of construction if the increased first-year enrollment will equal such amount in excess of 5 percent or five students, whichever is greater, as the Secretary may specify; (ii) a major remodeling or renovation of a facility shall include only that portion of remodeling or renovation which is necessary to meet an increase in student enrollment, which increase shall be construed to mean that, during the first full school year after completion of construction and for each of the 9 school years thereafter the first-year enrollment will exceed the highest first-year enrollment at such school for any of the 5 full school years preceding the year in which the application is made by not less than the mandatory increase as provided for under section 806 (e)(1)(A) of the Act; (iii) the Secretary may determine that unusual circumstances exist (*a*) where a school is located in a geographical area of the United States with a critical shortage of nursing personnel (as determined by the Secretary with the advice of Council); (*b*) where the project is found to be vital in preventing the curtailment of enrollment at a school; or, (*c*) other relevant factors consistent with this subpart and the purposes of part A of the Act. The Secretary shall make his determination with respect to unusual circumstances on the basis of such additional information and assurances as he deems necessary to make such a determination.

(b) *Amount of construction grant—less than maximum.* In determining the amount of a construction grant within the percentage limitation as set forth in paragraph (a) of this section, the Secretary shall take into consideration the most effective use of available Federal funds to further the purposes of Part A of the Act, and the needs of the applicant.

§ 57.406 Nondiscrimination.

(a) *Executive Order 11246.* Each construction contract is subject to the condition that the applicant shall comply with the requirements of Executive Order 11246, 30 F.R. 12319 (Sept. 24, 1965), as amended, relating to nondiscrimination in construction contract employment, and the applicable rules, regulations, and procedures prescribed pursuant thereto.

(b) *Civil Rights Act of 1964.* Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title VI, applicable to grants for construction of nurse training facilities, has been issued by the Secretary with the approval of the President (45 CFR Part 80).

(c) *Discrimination on the basis of sex prohibited.* Attention is called to the requirements of section 845 of the Act and to 45 CFR Part 83 which together provide that the Secretary may not make a grant, loan guarantee, or interest subsidy payment under the Act to, or for the benefit of any school of nursing or any other entity unless the application for the grant, loan guarantee, interest subsidy payment contains assurances satisfactory to the Secretary that the school or entity will not discriminate on the basis of sex in the admission of individuals to its training programs.

§ 57.407 Terms and conditions.

In addition to any other requirements imposed by law or determined by the Secretary to be reasonably necessary with respect to particular projects to fulfill the purpose of the grant, each construction grant shall be subject to the condition that the applicant shall furnish and comply with the following assurances:

(a) *Title.* That applicant has a fee simple or such other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure for a period not less than 20 years (or in the case of interim facilities for the period constituting the estimated useful life of such facilities) undisturbed use and possession for the purpose of the construction and operation of the facility.

(b) *Competitive bids.* (1) That the approval of the Secretary shall be obtained before the project is advertised or placed on the market for bidding and that such approval shall include a determination by the Secretary that the final plans and specifications conform to the minimum standards of construction and equipment as set forth in Appendix A of these regulations. (2) That, except as otherwise provided by State or local law, all contracting for construction (including the purchase and installation of built-in equipment) shall, except as provided in subparagraph (3) of this paragraph, be on a lump sum fixed-price basis, and contracts will be awarded on the basis of competitive bidding obtained by public advertising with award of the contract to the lowest responsive and responsible bidder. The provision for exceptions based on State or local law shall not be invoked to give local contractors or suppliers a percentage preference over nonlocal contractors bidding for the same contract. Such practices are precluded by this paragraph. (3) A substitute bidding procedure of selective solicitation with response from three or more bidders may be used if: (i) The applicant requests and justifies the use of the procedure; (ii) the procedure is consistent with State and local laws; and (iii) the Secretary determines that it is necessary to limit bidding to contractors of proven competence due to the complexity or specialty of the project, or that the time element is of primary consideration. When this bidding procedure is used, the applicant shall establish reasonable bid prequalification standards for contractors. The applicant shall then accept and consider bids from any contractor who requests permission to bid and who is determined by the applicant to meet these prequalification standards. Adequate time (normally 30 days) shall be allowed for contractors to prepare bids and award of construction contracts shall be made to the lowest qualified and responsible bidder whose bid is considered fully responsive to the bid invitation.

(c) *Approval of estimated cost.* That applicant will enter into no construction contract or contracts, with respect to the project or any portion thereof, where the costs exceed estimates in the application for such work, without the prior approval of the Secretary.

(d) *Relocation assistance.* That, in the case of a public applicant with an approved project which involves the displacement of persons or businesses on or after January 2, 1971, whose real property has or will be taken, the applicant shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91–646) and the applicable regulations issued thereunder; (45 CFR Part 15, as added by 36 F.R. 18838) (Sept. 22, 1971).

(e) *Costs in excess of approved costs.* The applicant will finance all costs in excess of the estimated costs approved in the application and submit to the Secretary for prior approval any changes that substantially alter the scope of the educational program, or of the work, functions, utilities, or safety of the facility.

(f) *Completion responsibility.* That applicant will construct the project, or cause it to be constructed, to final completion in accordance with the grant application and approved plans and specifications.

(g) *Records and accounts.* That applicant will maintain adequate and separate accounting and fiscal records and accounts for all funds provided from any source to pay the cost of the project, and permit audit of such records and accounts at any reasonable time. All records will be retained for 3 years after the close of the fiscal year in which the construction is completed. Such records may be destroyed at the end of such 3-year period if the applicant has been notified of the completion of the Federal audit by such time. If the applicant has not been so notified by the end of such

3-year period, such records will be retained (1) for 5 years after the close of the fiscal year in which the construction is completed or (2) until the grantee is notified of the completion of the Federal audit, whichever is earlier. In all cases where audit questions have arisen before the expiration of such 5-year period, records shall be retained until resolution of all such questions.

(h) *Progress reports.* That applicant will furnish progress reports and such other information as the Secretary may require.

(i) *Construction supervision.* That applicant will provide and maintain competent and adequate architectural or engineering supervision and inspection at the construction site to insure that the completed work conforms with the plans and specifications.

(j) *Non-Federal share.* That sufficient funds will be available to meet the non-Federal share of the cost of constructing the facility.

(k) *Funds for operation.* That sufficient funds will be available after construction is completed for effective use of the facility for the purposes for which it is being constructed.

(l) *Authorized uses.* That the facility shall be used for the purposes for which the application has been made; that is, the nursing program(s) have exclusive use of administrative, faculty and supporting space, and priority on teaching space and equipment is allocated in accordance with the application.

(m) *Prohibition against religious use.* That no portion of the facility constructed with funds under Part A of the Act will be used for sectarian instruction or as a place for religious worship for so long as such facility has substantial value.

(n) *Expansion of training capacity.* That in the case of any application (including an application with respect to advanced training) to expand the training capacity of an existing school, the first-year enrollment at such school during the first full year after the completion of the construction and for each of the 9 school years thereafter shall exceed the highest first-year enrollment at such school for any of the 5 full years preceding the year in which the application is made by at least 5 percent of such highest first-year enrollment, or by five students, whichever is greater. This increase shall be in addition to any increase assured pursuant to section 806 (e) (1) (A) of the Act: *Provided, however,* That if such school is not required to meet in the fiscal year in which the application is made the enrollment increase prescribed under section 806(e) (1) (A) because of limitations of physical facilities available to the school for training, the Secretary may, after consultation with the Council, waive all or any portion of such requirements provided for, in this subsection if the application contains or is supported by reasonable assurances satisfactory to the Secretary that the number of first-year students enrolled at such school during the first full school year after the completion of such project and for each of the next 9 school years thereafter will be not less than the number of first-year students that such school would be required to enroll for a grant under section 806 (e) (1) (A) of the Act (without regard to paragraph (2) thereof) for a grant under section 806.

(o) *New school construction.* That in the case of a project for the construction of a new school, (1) the first-year enrollment at such school during the third full school year after completion of construction and for each of the seven school years thereafter shall be that number which is set forth in the application as the projected total first-year enrollment of the school, and which is determined by the Secretary to be adequate in relation to the amount of the grant, taking into consideration the most effective use of the total amount of Federal funds available, the amount of Federal funds requested by the applicant, the nature and quality of training to be provided in the facility, and other relevant factors; and (2) the first-year enrollment at such school during the first full school year after completion of construction shall be at least one-third of the number determined pursuant to subparagraph (1) of this paragraph.

(p) *Wage rate standards.* That any laborer or mechanic employed by any contractor or subcontractor in the performance of work on the construction of the facility shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined under the Davis-Bacon Act (40 U.S.C. 276 et seq.) and shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of 8 hours in any calendar day.

(q) *Clearinghouse review.* That the applicant has at the earliest feasible time, notified the planning and development clearinghouse of the State and the region, if there is one, or of the metropolitan area in which the project is to be located, of its intent to apply for a grant under this subpart and of the nature of the project for which assistance has been sought, including a summary description of such project; any comments received by the applicant from the clearinghouse pursuant to such notification shall be considered by the applicant and shall be included in or attached to the application.

(r) *Accessibility by handicapped.* That the applicant shall require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1–1961, as modified by other standards prescribed by the Secretary or the Administrator of General Services. The applicant shall be responsible for conducting inspections to insure compliance with these specifications by the contractor; and

(s) *Minimum standards of construction and equipment.* That the plans and specifications for the project will conform to the minimum standards of construction and equipment as specified in Appendix A of this subpart.

The Secretary may at any time approve exceptions to the foregoing terms and conditions where he finds that such exceptions are not inconsistent with the purposes of Part A of the Act.

§ 57.408 Construction contract requirements.

The following conditions and provisions must be included in all construction contracts:

(a) The provisions set forth in "DHEW Requirements for Federally Assisted Construction Contracts Regarding Labor Standards and Equal Employment Opportunities," Form DHEW 514 (April, 1969) (issued by the Office of Grants Administration Policy, U.S. Department of Health, Education, and Welfare) pertaining to the Davis-Bacon Act, the Contract Work Hours Standards Act, and the Copeland Act (Anti-Kickback) Regulations, except in the case of contracts in the amount of $2,000 or less; and pertaining to Executive Order 11246, 30 F.R. 12319 (September 24, 1965), as amended, relating to nondiscrimination in construction contract employment, except in the case of contracts in the amount of $10,000 or less;

(b) The contractor shall furnish performance and payment bonds each of which shall be in the full amount of the contract price, and shall maintain, during the life of the contract, adequate fire, workmen's compensation, public liability, and property damage insurance: *Provided, however,* That in the case of a State or local unit of government which enters into a construction contract of less than $100,000, State or local provisions with respect to performance and payment bonds shall be deemed to meet the requirements of this paragraph; and

(c) The Secretary shall have access at all reasonable times to work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

§ 57.409 Good cause for other use of completed facility.

If, within 20 years after completion of construction (or, in the case of interim facilities prior to the time at which teaching in such facilities is moved to a permanent facility, whichever comes first), the facility shall cease to be used for any one or more of the purposes for which it was constructed, the Secretary, in determining whether there is good cause for releasing the applicant or other owner of the facility from the obligation so to use the facility, shall take into consideration the extent to which:

(a) The facility will be devoted by the applicant or other owner to the teaching of other health personnel;

(b) There are reasonable assurances that for the remainder of such period other facilities not previously utilized for nurse training will be so utilized and are

substantially the equivalent in nature and extent for such purposes.

§ 57.410 Acquisition of facilities.

In addition to the other requirements of this subpart, the following provisions are also applicable to the acquisition of existing facilities, including the acquisition of land in connection therewith:

(a) *Minimum standards of construction and equipment.* That a determination by the Secretary that the facility conforms (or upon completion of any necessary construction will conform) to the minimum standards of construction and equipment as set forth in Appendix A of this subpart shall be obtained before entering into a final or unconditional contract for such acquisition. Where the Secretary finds that exceptions to or modification of any such minimum standards of construction and equipment would be consistent with the purposes of the Act and of the program, he may authorize such exceptions or modifications.

(b) *Estimated cost of acquisition and remodeling: suitability of facility.* Each application for a project involving the acquisition of existing facilities shall include in the detailed estimates of the cost of the project the cost of acquiring such facilities and any cost of remodeling, renovating or altering such facilities to serve the purposes for which they are acquired. Such application shall demonstrate to the satisfaction of the Secretary that the architectural, structural and other pertinent features of the facility, as modified by any proposed expansion, remodeling, renovation, or alteration, will be clearly suitable for the purposes of the program, and, to the extent of the costs in which Federal participation is requested, are not in excess of what is necessary for the services proposed to be provided in such facilities.

(c) *Determination of necessary cost.* The necessary cost of acquisition of existing facilities shall be determined on the basis of such documentation submitted by the applicant as the Secretary may prescribe (including the reports of such real estate appraisers as the Secretary may approve) and other relevant factors.

(d) *Bona fide sale.* Federal participation in the acquisition of existing facilities is on condition that such acquisition constitutes a bona fide sale involving an actual cost to the applicant and will result in additional or improved facilities for purposes of the program.

(e) *Facility which has previously received Federal grant.* No grant for the acquisition of a facility which has previously received a Federal grant for construction, acquisition, or equipment shall serve either to reduce or restrict the liability of the applicant or any other transferor or transferee from any obligation of accountability imposed by the Federal Government by reason of such prior grant.

§ 57.411 Additional conditions.

The Secretary may with respect to any grant award may impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project, the interests of the public health or the conservation of grant funds.

§ 57.412 Early termination and withholding of payments.

Whenever the Secretary finds that a grantee has failed in a material respect to comply with the applicable provisions of the Act, the regulations of this subpart, or the terms of the grant, he may, on reasonable notice to the grantee, withhold further payments, and take such other action, including the termination of the grant, as he finds appropriate to carry out the purposes of the applicable provisions of the Act and regulations. Noncancellable obligations of the grantee properly incurred prior to the receipt of the notice of termination will be honored. The grantee shall be promptly notified of such termination in writing and given the reasons therefor.

APPENDIX A—MINIMUM STANDARDS OF CONSTRUCTION AND EQUIPMENT

The minimum standards of construction and equipment set forth below have been established by the Secretary as required by section 802(b)(4) of the Public Health Service Act. In accordance with 5 U.S.C. 552(a)(1), the publications to which reference is made in this Appendix A are hereby incorporated by reference and made a part hereof. These documents are available for inspection at the Department's and Regional Offices' Information Centers listed in 45 CFR 5.31 and copies of such documents may be purchased as specified. These standards are applicable to all projects approved for construction grants under Part A of title VIII of the Act.

(a) *General.* The structural design, construction, and fire safety provisions of all project facilities shall comply with the standards of the National Building Code, 1967 (available from American Insurance Association Engineering and Safety Department, 85 John Street, New York, NY 10038, or 120 South LaSalle Street, Chicago, IL 60603, or 465 California Street, San Francisco, CA 94104) or with applicable State, local codes and ordinances, whichever is more restrictive.

(b) *Mechanical.* All installations of fuel burning equipment, steam, heating, air conditioning and ventilation, plumbing and other piping systems and boilers shall comply with the following standards:

(1) Handbook of Fundamentals: American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) 1972; United Engineer Center, 345 East 47th Street, New York, NY 10017.

(2) National Standard Plumbing Code 1955; American Society of Mechanical Engineers (ASME): United Engineer Center, 345 East 47th Street, New York, NY 10017.

(3) Boiler and Pressure Vessel Code, 1971 edition, with current addenda, section 8, Division I, American Society of Mechanical Engineers (ASME): United Engineer Center, 345 East 47th Street, New York, NY 10017.

(c) *Fire and safety.* The fire-resistant design criteria for the facility will be governed by the criteria necessary for that portion of the facility which is subject to the most severe usage. Remodeled structures shall be upgraded, in total, unless it is feasible to isolate the improved portion of the building with firewalls and firedoors. Fire-resistant design shall be in accordance with the standards of Fire Safety Code Number 101, 1970, National Fire Protection Association, International, 60 Batterymarch Street, Boston, MA 02110.

(d) *Emergency electrical service.* Fire alarm systems and other electrical service shall conform to the standards as specified in Life Safety Code Number 101, 1970, National Fire Protection Association, International, 60 Batterymarch Street, Boston, MA 02110.

(e) *Electrical.* All electrical installations and equipment shall be in accordance with State and local codes and applicable sections of National Electric Code, NFPA Bulletin No. 70 HC, 1971, National Fire Protection Association, International 60 Batterymarch Street, Boston, MA 02110.

(f) *Radiation protection.* All areas in which X-ray, gamma-ray, beta-ray producing and similar equipment is located shall be protected from radiation in accordance with the standards which are in the handbook reports No. 33, 1968; 34, 1970; 35, 1970 and 36, 1970, of the National Council on Radiation Protection and Measurement, Box 4867, Washington, DC 20008.

(g) *Earthquake.* All facilities shall be designed and constructed in accordance with the standard specified in the Uniform Building Code, 1970, International Conference of Building Officials, 50 South Los Robles, Pasadena, CA 91101, unless more restrictive State and local codes govern.

(h) *Zoning.* State and local codes shall apply.

[FR Doc.72-16447 Filed 9-29-72;8:45 am]

SUBCHAPTER F—QUARANTINE, INSPECTION, LICENSING

PART 78—REGULATIONS FOR THE ADMINISTRATION AND ENFORCEMENT OF THE RADIATION CONTROL FOR HEALTH AND SAFETY ACT OF 1968

Subpart C—Performance Standards for Electronic Products

DIAGNOSTIC X-RAY SYSTEMS AND THEIR MAJOR COMPONENTS

Correction

In F.R. Doc. 72-12311, appearing at page 16461, in the issue for Tuesday, August 15, 1972, the formula and the key in § 78.213-1(b)(8), should read as follows:

$$C=\frac{s}{\bar{X}}=\frac{1}{\bar{X}}\left[\sum_{i=1}^{n}\frac{(X_i-\bar{X})^2}{n-1}\right]^{1/2}$$

where

s = Estimated standard deviation of the population.
$\bar{X}$ = Mean value of observations sampled.
X_i = ith observation sampled.
n = Number of observations sampled.

Title 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation

[CGD 71-170A]

PART 146—TRANSPORTATION OR STORAGE OF EXPLOSIVES OR OTHER DANGEROUS ARTICLES OR SUBSTANCES, AND COMBUSTIBLE LIQUIDS ON BOARD VESSELS

Etiologic Agents

The purpose of this amendment to the dangerous cargo regulations is to provide for shipment of etiologic agents.

On January 7, 1972, the Coast Guard published a notice of proposed rule making, CGFR 71-170 (37 F.R. 220) which proposed these amendments. Interested persons were given 88 days in which to comment. A public hearing was held on March 28, 1972.

Three written comments were received on this proposal dealing with the definitions, scope, and exemptions of etiologic agents. The definition has been changed in order to clarify problems the commenters pointed out. The proposed § 146.30-2 *Scope* has been incorporated into the definition. The exemptions have been changed to be in agreement with the Health, Education, and Welfare regulations published in the June 30, 1972, FEDERAL REGISTER (37 F.R. 12915).

The Hazardous Materials Regulations Board is, for reasons fully stated in their amendment published at page 20554 of this issue of the FEDERAL REGISTER, adopting the Department of Health, Education, and Welfare's label for etiologic agents. The Coast Guard is also adopting this label for water shipments of etiologic agents.

In consideration of the foregoing Part 146 of Title 46 is amended as follows:

1. By adding in § 146.04-4 "Signs and abbreviations" the following entry:

§ 146.04-4 Signs and abbreviations.

* * * * *

Etio. Ag ..... Etiologic Agent.

* * * * *

2. By adding to § 146.04-5 "List of explosives and other dangerous articles and combustible liquids" in proper alphabetical sequence the following:

§ 146.04-5 List of explosives and other dangerous articles and combustible liquids.

Article	Classed as—	Label required
* * *	* * *	* * *
Etiologic agent, n.o.s.	Etio. Ag.	Etio. Ag.
* * *	* * *	* * *

3. Section 146.05-15 is amended by revising paragraphs (a), (b), and (e)(1), and by adding a new subparagraph (15) to paragraph (g) to read as follows:

§ 146.05-15 Marking and labeling.

(a) Department of Transportation regulations (49 CFR 170 to 179) in effect at the time of shipment with respect to the marking and labeling of containers of explosives, inflammable liquids, inflammable solids, oxidizing materials, corrosive liquids, compressed gases, poisonous articles, and etiologic agents apply to shippers preparing shipments for transportation or storage on board vessels subject to the regulations of this part.

(b) [Revoked]

* * * * *

(e) * * *

(1) Each package containing inflammable liquids, inflammable solids, oxidizing materials, corrosive liquids, compressed gases, poisons, and etiologic agents as defined herein shall be marked with the proper shipping name as shown in the commodity list of the regulations in this part. For tank cars this marking shall appear either on the placards or commodity cards. For other than domestic shipments, where the proper shipping name of a commodity is an "N.O.S." entry in the particular table, this marking shall be qualified by the chemical name of the commodity in parentheses e.g. "Corrosive liquid, N.O.S. (caprylyl chloride)."

* * * * *

(g) * * *

(15) The etiologic agent label as described and illustrated in § 146.05-17(w) on packages of etiologic agents except when exempted by the regulations in this part. If the etiologic agent is also a Class A poison or a radioactive material the "poison gas" label or "radioactive" label must also be applied to the package.

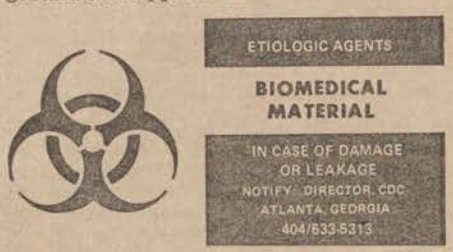
* * * * *

4. By adding to § 146.05-17 a new paragraph (w):

§ 146.05-17 Labels.

* * * * *

(w) Labels for packages of etiologic agents must be as prescribed by the regulations of the Department of Health, Education, and Welfare, 42 CFR 72.25(c)(4). For information, this label is required to be a rectangle measuring 51 millimeters (2 inches) high and 102.5 millimeters (4 inches) long, predominantly red printing on a white background and appears as follows:



6. By adding Subpart 146.30 to read as follows:

Subpart 146.30—Detailed Regulations Governing Etiologic Agents

Sec.

AUTHORITY: The provisions of this Subpart 146.30 issued under R.S. 4472, as amended; R.S. 4417a, as amended; sec. 1, 19 Stat. 252, 49 Stat. 1889, sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. 170, 391a, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b).

Subpart 146.30—Detailed Regulations Governing Etiologic Agents

§ 146.30-1 Definitions.

(a) An etiologic agent is defined by the DOT regulations as a viable microorganism or its toxin, which causes or may cause human disease, listed in 42 CFR 72.25(c) of the regulations of the Department of Health, Education, and Welfare. Such definition is binding upon all shippers making shipments of etiologic agents by common carrier vessels engaged in interstate or foreign commerce by water. This definition is accepted and adopted and forms part of the regulations in this subchapter applying to all shippers making shipments of etiologic agents by any vessel, and shall apply to owners, charterers, agents, or other persons transporting, carrying, conveying, storing, stowing, or using etiologic agents on board any vessel subject to R.S. 4472 as amended and this subchapter.

(b) A "diagnostic specimen" is any human or animal material including, but not limited to, excreta, secreta, blood and its components, tissue and tissue fluids, being shipped for purpose of diagnosis.

(c) A "biological product" is a material prepared and manufactured in accordance with the provisions of 9 CFR Part 102 (licensed veterinary biological products), 42 CFR Part 173 (licensed human biological products), 21 CFR Part 130, § 130.3 (new drugs for investigational use in humans), 9 CFR Part 103 (biological products for experimental treatment of animals), or 21 CFR Part 130, §130.3a (new drugs for investigational use in animals), and which in accordance with these provisions, may be shipped in interstate commerce.

§ 146.30-2 Packaging requirements for etiologic agents.

(a) Shipment of packages containing over 4 liters gross volume of an etiologic agent are not authorized, except as specifically approved by the Commandant pursuant to § 146.02-25 of this chapter.

(b) In addition to the requirements of 42 CFR 72.25 (e), (f), and (g), any package containing an etiologic agent must be designed and constructed so that, if it were subject to the environment and test conditions prescribed in this paragraph, there would be no release of the contents to the environment, and the effectiveness of the packaging would not be substantially reduced.

(1) *Environmental Conditions.* (i) Heat—direct sunlight in an ambient temperature of 130° F. in still air.

(ii) Cold—an ambient temperature of —40° F. in still air and shade.

(iii) Reduced pressure—ambient atmospheric pressure of 0.5 atmosphere (absolute) (7.3 p.s.i.a.).

(iv) Vibration—vibration normally incident to transportation.

(2) *Test conditions.* (i) Water spray—a water spray heavy enough to keep the entire exposed surface of the package (except the bottom) continuously wet during a period of 30 minutes. Packages for which the outer layer consists of metal, wood, ceramic, or plastic, or combination thereof, are exempt from this test.

(ii) Free drop—a free drop through a distance of 30 feet onto a flat, essentially unyielding horizontal target surface, striking the surface in a position for which maximum damage is expected.

(iii) Penetration—impact of the hemispheric end of a steel cylinder 1.25 inches in diameter and weighing 15 pounds, dropped from a height of 40 inches onto the exposed surface of the package expected to be most vulnerable to puncture. The long axis of the cylinder must be perpendicular to the impacted surface. This test is not required for a package subject to subdivision (iv) of this subparagraph.

(iv) Penetration (required for packages exceeding 15 pounds gross weight only)—a free drop of the package through a distance of 40 inches, striking the top end of a vertical cylindrical mild steel solid bar on an essentially unyielding surface, in a position for which maximum damage is expected. The bar must be 1.5 inches in diameter. The top of the bar must be horizontal, with its edge rounded to a radius not exceeding one-fourth inch. The bar must be of such length as to cause maximum damage to the package, but not less than 8 inches long. The long axis of the bar must be vertical to the unyielding horizontal impact surface of the package.

(3) *Testing procedure.* (i) At least one sample of each type package (maximum size and gross weight), filled with water, must be subjected to the water spray test unless exempted by subparagraph (2) (i) of this paragraph.

(ii) This sample package then must be given the free drop and one of the penetration tests, as applicable. Separate wetted sample packages may be used for the free drop and the penetration test.

(iii) If the sample package is exempted from the water spray test by subparagraph (2) (i) of this paragraph, at least one sample of each type package (maximum size and gross weight), filled with water, must be subjected consecutively to the free drop and the penetration test.

§ 146.30–3 Exemptions.

(a) The following substances are not subject to any requirements of this Part 146.

(1) Diagnostic specimens.

(2) Biological products.

§ 146.30–100 Table K—Classification: Etiologic agents.

Descriptive name of article	Characteristic properties, cautions, markings required	Label required	Required conditions for transportation			
			Cargo vessels	Passenger vessel	Ferry vessel, passenger or vehicle	RR car ferry, passenger or vehicle
Etiologic agents, N.O.S.	*Solutions, cultures, mixtures, preparations etc. of solid liquid or gaseous substances which consist of viable microorganisms or toxins thereof, which cause or are expected to cause human disease.*	Etiologic agent.	Can be shipped only under authorization of the Commandant (see §146.02–25).	Not permitted	Not permitted	Not permitted.

(R.S. 4472, as amended; R.S. 4417a, as amended; sec. 1, 19 Stat. 252, 49 Stat. 1889, sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. 170, 391a, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Effective date. This amendment becomes effective on December 30, 1972.

Dated: September 25, 1972.

T. R. SARGENT,
Vice Admiral, U.S. Coast Guard.
Assistant Commandant.

[FR Doc.72–16610 Filed 9–29–72;8:45 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 0—COMMISSION ORGANIZATION

Cable Television Service and Cable Television Relay Service; Correction

Order. In the matter of editorial amendments of Part 0 of the Commission's rules with respect to Cable Television.

This order is being issued to correct references in Part 0 of the Commission's rules to the cable television service and cable television relay service.

Since these are simply editorial corrections occasioned by the Commission's adoption of the Cable Television Report and Order, FCC 72–108 (37 F.R. 3242), the prior notice and effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) are not applicable.

Authority for these amendments is contained in sections 4(i), 5(d), and 303(r) of the Communications Act of 1934, as amended, and in § 0.231(d) of the Commission's rules.

It is ordered, That effective September 30, 1972, Part 0 is amended as set forth below.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

Adopted: September 26, 1972.

Released: September 27, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
JOHN M. TORBET,
Executive Director.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 0.5 [Amended]

1. In § 0.5(b)(3)(i), the fifth sentence is amended to read: "The Cable Television Bureau is responsible for the regulation of cable television systems and cable television relay stations (see Parts 76 and 78 of this chapter)."

§ 0.85 [Amended]

2. In § 0.85, the word "cable", replaces the words "community antenna", wherever they appear; also, the parenthetical references, "(see Subpart K, Part 74 of this chapter)" and "(see Subpart J, Part 74 of this chapter)", are revised to read, "(see Part 76 of this chapter)" and "(see Part 78 of this chapter)", respectively.

3. Section 0.289(c)(11) is amended to read as follows:

§ 0.289 Authority delegated.

* * * * *

(c) * * *

(11) To grant requests for waiver of §§ 78.53 and 78.55 of this chapter.

* * * * *

4. Section 0.406(b) intro is amended to read as follows:

§ 0.406 The rules and regulations.

* * * * *

(b) *Contents.* Parts 0–19 of the rules have been reserved for provisions of a general nature. Parts 20–69 of this chapter have been reserved for provisions pertaining to common carriers. Parts 70–79 have been reserved for provisions pertaining to broadcasting and cable television. Parts 80–99 of this chapter have been reserved for provisions pertaining to the Safety and Special Radio Services. In the rules pertaining to common carriers, Parts 21, 23, and 25 of this chapter pertain to the use of radio; Parts 31–66 of this chapter pertain primarily to telephone and telegraph companies. Persons having business with the Commission will find it useful to consult one or more of the following parts containing provisions of a general nature in addition to the rules of the radio or wire communication service in which they are interested:

* * * * *

5. Section 0.412(b) is amended to read as follows:

§ 0.412 Nongovernment publications.

* * * * *

(b) *Rules Service Co. service.* This service contains Parts 0, 1, 17, 73, 74, 76, 78, and 87 of the rules and regulations of this chapter and other materials. Information concerning this service may be obtained from the Rules Service Co., 5530 Wisconsin Avenue, Chevy Chase, MD 20015.

* * * * *

6. In § 0.453, a new paragraph (d) is added to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(d) *The Cable Television Reference Room.* The following documents and files are available for inspection at this location:

(1) Applications for certificates of compliance and related files;

(2) Petitions for special relief, requests for show cause orders, and related files;

(3) Applications for authorizations in the Cable Television Relay Service.

7. In § 0.455, paragraph (i) is revised to read as follows:

§ 0.455 Other locations at which records may be inspected.

* * * * *

(i) *Cable Television Bureau.* (1) Annual reports submitted for cable television systems pursuant to § 76.401 of this chapter;

(2) Annual employment reports submitted for cable television systems pursuant to § 76.409 of this chapter.

8. Section 0.457(d)(1) (iii) and (iv) is amended to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d)(1) * * *

(iii) Financial reports submitted for cable television systems pursuant to § 76.405 of this chapter.

(iv) Annual fee computation forms submitted for cable television systems pursuant to § 76.406 of this chapter.

* * * * *

[FR Doc.72-16717 Filed 9-29-72;8:50 am]

[Docket No. 19538; FCC 72-838]

PART 73—RADIO BROADCAST SERVICES

Television Broadcast Stations in Keyser, W. Va.

Report and order. In the matter of amendment of § 73.606(b), *Table of Assignments*, Television Broadcast Stations. (Keyser, W. Va.), Docket No. 19538, RM-1965.

1. On July 11, 1972, the Commission issued a notice of proposed rule making in the above-entitled matter, proposing to assign Channel 48 to Keyser, W. Va., and to reserve it for noncommercial educational use. The proceeding was instituted on the basis of a petition filed by the West Virginia Board of Regents (the Regents), licensee of noncommercial educational TV Station WWVU-TV, Morgantown, W. Va. Interested parties were invited to comment on the proposal on or before August 22, 1972, and could reply to such comments on or before September 1, 1972. There were no oppositions to the proposal. Supporting comments were filed by the petitioner.

2. Keyser, W. Va., a community of 6,586 persons, located in Mineral County which contains a population of 23,109,[1] at the present time has no television assignment. Petitioner contemplates a system of translators to bring educational television service to various parts of the State of West Virginia. As a component of this system, the proposed Keyser channel would be used for a translator which would receive the signal of Station WWVU-TV, Morgantown, for relay to other locations in the West Virginia panhandle area. The area to be served by the Keyser proposed operation is described as physically isolated from the rest of the State and economically distressed. On this basis the Regents urge assignment of Channel 48 so that the Keyser area may be linked with the rest of the State and benefit from the offerings of the State University Station. Petitioner's engineering statement indicates that the only UHF assignment within 20 miles (required mileage separation) of Keyser, is the Cumberland, Md. Channel 52 assignment. The reference point of Keyser is 18.4 miles from the reference point in Cumberland, 1.6 miles short of the required spacing. However, petitioner's supporting comments indicates a suitable and available transmitter-antenna site exists in the vicinity of Keyser which meets the required 20-mile spacing to the Cumberland reference point.

3. In its supporting comments the Regents state that Channel 48 would be an integral part of a translator system which would serve the eastern panhandle of West Virginia which does not presently receive noncommercial television service from West Virginia stations. The area is physically isolated from the mainstream of the State, and is handicapped by poor highways, limited county resources and low per capita wealth. It lies within the region defined by the Appalachian Regional Commission as an area which is economically distressed. The population in this area is widespread, with most persons living in small towns.

4. The Regents note that Channel 48 would not only serve the Keyser area, but also the rest of Mineral County and Grant County as well. It further recognizes the value and potential of activating Channel 48 as a future broadcast station, in lieu of using it only for a translator, and it intends to explore the matter as the educational television system develops. The Regents indicate that it and Station WWVU-TV work in close cooperation with the West Virginia Educational Broadcasting authority in developing plans to serve West Virginia. It adds that because of the unique characteristics of this area (rugged terrain, scattered populations, low per capita income, limited available funds for education, the nature of the economy, etc.), the future likelihood exists of the school systems and community leaders desiring to activate Channel 48 as a television broadcast station.

5. In view of the above and the fact that the assignment can be accomplished without involving the reassignment of existing channels and also that the use of a site near Keyser would eliminate the potential short spacing problem, we are convinced that it is in the public interest to assign Channel 48 to Keyser, W. Va., and to reserve it for noncommercial educational use. We stress that use of this channel would have to be accomplished with a transmitter site at normal spacing.

6. Authority for the amendment adopted herein is found in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

7. *Accordingly, it is ordered,* That effective November 8, 1972, the Table of Assignments contained in § 73.606(b) of the Commission's rules and regulations is amended, insofar as the community named below is concerned to read as follows:

City	*Channel No.*
Keyser, W. Va.	*48

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

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: September 20, 1972.

Released: September 26, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-16716 Filed 9-29-72;8:50 am]

[1] All populations are based on 1970 U.S. Census.

[2] Commissioner Robert E. Lee absent.

Title 49—TRANSPORTATION

Chapter I—Department of Transportation

SUBCHAPTER A—HAZARDOUS MATERIALS REGULATIONS BOARD

[Docket No. HM-96, Amdts. 172-17 and 173-67]

PART 172—COMMODITY LIST OF HAZARDOUS MATERIALS CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 170-189 OF THIS CHAPTER

PART 173—SHIPPERS

Etiologic Agents

The purpose of this amendment to the Hazardous Materials Regulations of the Department of Transportation is to provide for the shipment of etiologic agents.

On December 29, 1971, the Hazardous Materials Regulations Board published a notice of proposed rule making, Docket No. HM-96; Notice No. 71-32 (36 F.R. 25163), which proposed these amendments. Interested persons were invited to give their views.

The International Air Transport Association (IATA) and the Air Transport Association (ATA), representatives for many aircraft operators, submitted several similar comments generally objecting to the use of the proposed label, to some of the requirements for better packaging than is now being used by the industry (there are no requirements in the present DOT regulations), and to the prohibition against the shipment of other than exempt etiologic agents via passenger-carrying aircraft.

They objected to the use of the symbol on the label. The proposed symbol was adopted and published as a national standard (USAS Z35.1-1968) by those persons most familiar with these materials and most interested in their safe

handling. These comments were filed with the Department of Health, Education, and Welfare (HEW) and the Hazardous Materials Regulations Board, and considered before the publication of the new HEW label in 37 F.R. 12915. The Board cannot justify a requirement for two different labels on a shipping container for etiologic agents. The Department of Health, Education, and Welfare also advised the Board that the skull and crossbones symbol proposed by these commenters was unacceptable. The Board has determined that since a nationally acceptable symbol already exists, the transportation interests should undertake to educate themselves on its meaning and use rather than to develop another symbol.

The associations voiced serious reservations to some of the requirements for better packagings on the basis of past experience and the fact that the packaging would * * * "be difficult and expensive to manufacture and demonstrate" * * * for compliance with the regulations. The comment was not supported by data. They stated that this was primarily a matter for shippers to resolve. The Air Line Pilots Association (ALPA) stated that the * * * "testing procedures proposed are good, but they are the least that should be required for this type of commodity." Inasmuch as no person objected to the packaging requirements, and since the regulations are acceptable to an association which represents persons who must work in an environment involving these packages, the Board believes that the regulations are necessary.

Both IATA and ATA suggested that the proposed reduced pressure requirements did not provide an adequate safety margin under severe depressurization conditions. The requirements of 0.5 atmospheric (absolute) are based on existing performance criteria in the Hazardous Materials Regulations. This value is also consistent with present IAEA and IATA regulations. Before making any change the Board wants to evaluate the performance criteria as they presently exist for other materials and consider the need for change wherever the criteria are used. Also, additional consideration is being given by the Board to general pressure requirements for packaging. Regulations for solid carbon dioxide (dry ice) that will apply to air transportation will be covered in a future rule making notice.

The air carrier associations (IATA and ATA) and the representative for the pilots (ALPA) expressed opposing opinions regarding the presence of these materials on passenger aircraft. The carrier associations objected that * * * "very considerable hardship and transport difficulties" * * * would arise * * * "for research and medical facilities" * * * since there is much air freight traffic with these materials and * * * "many cities are not served by all-cargo aircraft." No data was furnished to support this position. The pilots' association (ALPA), in the opposite view, declared that * * * "we are reviewing the possibility of the association adopting a policy in strong opposition to the carriage of etiologic agents by public air transport." The Board received no other indication that its restriction against carriage on passenger-carrying aircraft would cause any hardship. In its deliberations, the Board's prime motivation must be the public interest. After weighing the curtailment of certain shipments in passenger-carrying aircraft against the lack of any demonstrated public interest need for such transportation, the Board concluded that the published regulations are in the best interest of the public.

Several other comments were received regarding definitions and scope of the proposed etiologic agent category. Since these comments related to technical matters with which the Department of Health, Education, and Welfare is more familiar, and since the Board is relying on that Department for adequate identification of what constitutes an etiologic agent and the degree of control necessary for each material, the Board has adopted the decisions of that Department as published in its regulations on June 30, 1972, in the FEDERAL REGISTER (37 F.R. 12915).

In consideration of the foregoing, 49 CFR Parts 172 and 173 are amended as follows:

I. (A) In § 172.4, paragraph (a) is amended by adding the following entry to the list of explanation of signs and abbreviations, as follows:

§ 172.4 Explanation of signs and abbreviations.

(a) * * *

Etio. Ag—Etiologic Agent

(B) In § 172.5(a) the list of hazardous materials is amended as follows:

§ 172.5 List of hazardous materials.

(a) * * *

Article	Classed as—	Exemptions and packing (see sec.)	Label required if not exempt	Maximum quantity in one outside container by rail express
* * *	* * *	* * *	* * *	* * *
Etiologic agent, n.o.s.	Etio. Ag	173.386, 173.387	Etiologic (17.383)	4 liters.
* * *	* * *	* * *	* * *	* * *

* * * * * * *

II. (A) In Part 173 Table of Contents, Subpart G is amended; §§ 173.386, 173.387, and 173.388 are added to read as follows:

Subpart G—Poisonous Materials, Etiologic Agents, and Radioactive Materials; Definition and Preparation

Sec.
173.386 Etiologic agents; definition and scope.
173.387 Packaging requirements for etiologic agents.
173.388 Labeling of packages containing etiologic agents.

(B) In § 173.119, paragraph (a)(22) is amended to read as follows:

§ 173.119 Flammable liquids not specifically provided for.

(a) * * *

(22) Specification 17H or 37A (§§ 178.118 and 178.131 of this subchapter). Metal drums with inside glass packagings not over 9 pints capacity each. Inside containers may contain biological materials if these materials are not etiologic agents, except that etiologic agents exempt by § 173.386(d) are authorized.

* * * * *

(C) Subpart G is amended to read as follows:

Subpart G—Poisonous Materials, Etiologic Agents, and Radioactive Materials: Definition and Preparation

(D) Section 173.386 is added to read as follows:

§ 173.386 Etiologic agents; definition and scope.

(a) *Definition.* For the purpose of Parts 170–189 of this subchapter:

(1) An "etiologic agent" means a viable microorganism, or its toxin, which causes or may cause human disease, and is limited to those agents listed in 42 CFR 72.25(c) of the regulations of the Department of Health, Education, and Welfare.

(2) A "diagnostic specimen" means any human or animal material including, but not limited to, excreta, secreta, blood, and its components, tissue, and tissue fluids, being shipped for purposes of diagnosis.

(3) A "biological product" means a material prepared and manufactured in accordance with the provisions of 9 CFR Part 102 (licensed veterinary biological products), 42 CFR Part 73 (licensed human biological products), 21 CFR Part 130, § 130.3 (new drugs for investigational use in humans), 9 CFR Part 103 (biological products for experimental treatment of animals), or 21 CFR Part 130, § 130.3a (new drugs for investigational use in animals), and which in accordance with these provisions, may be shipped in interstate commerce.

(b) *Applicability.* Except as provided in paragraph (d), no person may ship any material, including a diagnostic specimen or a biological product, containing an etiologic agent unless this material is packaged and prepared for shipment in accordance with § 173.24 and the other applicable regulations of this subchapter.

(c) *General provisions.* The requirements of these regulations (Parts 170–189 of this subchapter) supplement the requirements of the Department of Health, Education, and Welfare's regulations contained in 42 CFR 72.25.

(d) *Exemptions.* The following substances are not subject to any requirements of this subchapter if the items as packaged do not contain any material otherwise subject to the requirements of Parts 170–189 of this subchapter:

(1) Diagnostic specimens; and

(2) Biological products.

(E) Section 173.387 is added to read as follows:

§ 173.387 Packaging requirements for etiologic agents.

(a) Except as provided in § 173.386(d) no person may ship a package containing over 4 liters gross volume of an etiologic agent.

(b) In addition to the requirements of 42 CFR 72.25(c), each package containing an etiologic agent must be designed and constructed so that, if it were subject to the environment and test conditions prescribed in this section, there would be no release of the contents to the environment, and the effectiveness of the packaging would not be significantly reduced.

(1) *Environmental conditions.* (i) Heat—direct sunlight in an ambient temperature of 130° F. in still air.

(ii) Cold—an ambient temperature of −40° F. in still air and shade.

(iii) Reduced pressure—ambient atmospheric pressure of 0.50 atmosphere (7.3 p.s.i.a.).

(iv) Vibration—vibration normally incident in the mode of transportation the package is to be shipped.

(2) *Test conditions.* (i) Water spray—a water spray heavy enough to keep the entire exposed surface of the package (except the bottom) continuously wet during a period of 30 minutes. Packages for which the outer layer consists of metal, wood, ceramic, or plastic, or combination thereof, are exempt from this test.

(ii) Freedrop—a freedrop through a distance of 30 feet onto a flat, essentially unyielding horizontal target surface, the package striking the surface in a position for which maximum damage is expected.

(iii) Penetration—impact of the hemispheric end of a steel cylinder 1.25 inches in diameter and weighing 15 pounds, dropped from a height of 40 inches on to the exposed surface of the package expected to be most vulnerable to puncture. The long axis of the cylinder must be perpendicular to the impacted surface. This test is not required for a package subject to subdivision (iv) of this subparagraph.

(iv) Penetration (required for packages exceeding 15 pounds gross weight only)—a freedrop of the package through a distance of 40 inches, striking the top end of a vertical cylindrical mild steel solid bar on an essentially unyielding surface, in a position for which maximum damage is expected. The bar must be 1.5 inches in diameter. The top of the bar must be horizontal, with its edge rounded to a radius not exceeding one-quarter inch. The bar must be of such length as to cause maximum damage to the package, but not less than 8 inches long. The long axis of the bar must be vertical to the unyielding horizontal impact surface of the package.

(3) *Testing procedure.* (i) At least one sample of each type package (maximum size and gross weight), filled with water, must be subjected to the water spray test unless exempted by subparagraph (2)(i) of this paragraph.

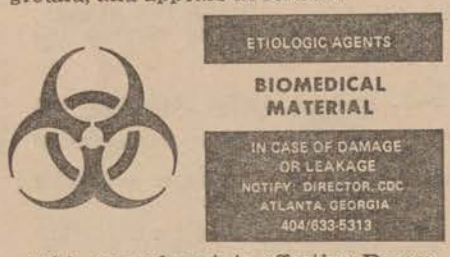
(ii) This sample package then must be given the freedrop and one of the penetration tests, as applicable. Separate wetted sample packages may be used for the freedrop and the penetration test.

(iii) If the sample package is exempted from the water spray test by subparagraph (2)(i) of this paragraph, at least one sample of each type package (maximum size and gross weight), filled with water, must be subjected consecutively to the freedrop and the penetration test.

(F) Section 173.388 is added to read as follows:

§ 173.388 Labeling of packages containing etiologic agents.

(a) Each package containing an etiologic agent, except a diagnostic specimen or a biological product, must be labeled as prescribed by the regulations of the Department of Health, Education, and Welfare, 42 CFR § 72.25(c)(4). For information, this label is required to be a rectangle measuring 51 mm. (2 inches) high and 102.5 mm. (4 inches) long, predominantly red printing on a white background, and appears as follows:



This amendment is effective December 30, 1972. However, compliance with the regulations, as amended herein is authorized immediately.

(Secs. 831–835, title 18, United States Code, sec. 9, Department of Transportation Act, 49 U.S.C. 1657, title VI; sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421–1430, 1472(h))

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

G. H. READ,
Captain, Alternate Board Member for the United States Coast Guard.

MAC E. ROGERS,
Board Member for the Federal Railroad Administration.

ROBERT A. KAYE,
Board Member for the Federal Highway Administration.

JAMES F. RANDOLPH,
Board Member for the Federal Aviation Administration.

[FR Doc.72-16609 Filed 9-29-72;8:45 am]

Chapter II—Federal Railroad Administration, Department of Transportation

[Docket No. 21]

PART 230—LOCOMOTIVE INSPECTION

Monthly Inspection Reports

The purpose of this amendment is to correct recent changes made in Part 230 concerning a new reporting record, Form FRA F6180–49, and to add a further provision connected with the form under § 230.331.

On August 18, 1972, the FRA issued new requirements for the use of Form FRA F6180–49 and abolished the existing Form No. 1–A (37 F.R. 16940). Effective October 1, 1972, the new form will take the place of Form No. 1–A for reporting monthly inspections and certain periodic tests performed on locomotive units.

A. In the recent changes, those sections requiring periodic tests which are presently recorded on Form No. 1–A were amended to require that Form FRA F6180–49 be used to record the tests. In each case, the test was required to be attested by an "inspector" and his supervisor. Although, in most instances, a railroad inspector may actually carry out the test, it was not the intention of the FRA to require him to do so. Therefore, each required attestation of a periodic test by an "inspector" is corrected to require an attestation by the "person conducting the test".

B. Under paragraph (c) of the revised §§ 230.331 and 230.451, when a new Form FRA F6180–49 is placed in the locomotive cab, the last performance dates of certain tests must be recorded on the form. Because the intervals prescribed for these tests may be extended by out-of-service time, paragraph (c) in §§ 230.331 and 230.451 is amended to require each new form to show the amount of time the unit has been out of service. In this way, inspectors will be able to readily determine when the next test is due.

C. A new paragraph (d) was added to §§ 230.331 and 230.451, allowing a railroad to maintain backup records of its own choosing for information submitted to the FRA and Form FRA F6180–49. By this amendment, in each case paragraph (d) has been rewritten to make it clear that backup records must be kept for all the tests and inspections reported on the new form, as well as records of the monthly inspections. This is not a new requirement, since railroads must presently maintain a copy of the Form No. 1–A which is used to report the periodic tests and inspections. Also in § 230.451 (d), the word "chief" is deleted with reference to the mechanical officer who is to maintain backup records. This is in keeping with the present requirement that a mechanical officer maintain duplicate copies of Form No. 1–A, rather than a "chief" mechanical officer.

D. In the recent revision of § 230.331, it was not intended to alter any substantive requirements in the existing rule with respect to inspections and tests. The

section was revised only for the purpose of accommodating the new record form and reporting procedures. Inadvertently, however, a provision in the existing rule (§ 230.331(c)) was omitted from the revision. This provision permits an extension of the interval for any test or inspection by the number of consecutive days a locomotive unit is out of service. This omission is being corrected by adding a new sentence to paragraph (e) in the revised §230.331.

E. Also in §§230.331 and 230.451, the new paragraph (e) is corrected in each case to provide for attestation by the inspector and his supervisor of each 30-day inspection performed before a unit is returned to service.

F. Lastly, in § 230.406, paragraph (b) is corrected to include the present requirement that main reservoirs be hammer tested "while the reservoir is empty".

For the reasons stated in the earlier amendment (37 F.R. 16940), notice and public comment are unnecessary in this proceeding. Because the regulations affected by these amendments become effective October 1, 1972, good cause exists for making them effective on less than 30 days notice.

This amendment is issued under the authority of sections 2, 5, 36 Stat. 913. 914, 45 U.S.C. 23, 28; sec. 6(e), (f), 80 Stat. 939, 940, 49 U.S.C. 1655; and § 1.49 (c)(5) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(c)(5).

In consideration of the foregoing, effective October 1, 1972, Part 230 of Title 49 of the Code of Federal Regulations is amended as follows:

§§ 230.206, 230.252, 230.253, 230.406, 230.447 [Amended]

1. Sections 230.206 (a), (b), and (d); 230.252; 230.253; 230.406 (a) and (b); and 230.447 are amended by deleting the word "inspector" from the last sentence in each case, and inserting in place thereof the words "person conducting the test".

2. In § 230.331, paragraphs (c), (d), and (e) are amended to read as follows:

§ 230.331 Monthly locomotive unit inspection and report.

* * * * *

(c) During the 6 months beginning with January and July of each year, the date and place of each inspection performed as required by paragraph (a) of this section shall be recorded on Form FRA F6180–49 and attested thereon by the inspector and his supervisor. The form shall be displayed under a transparent cover in a conspicuous place in the cab of each locomotive unit. When a new form is placed in the cab, the last date of each test performed under §§ 230.206, 230.252, and 230.253, and the number of days in each period of 30 or more consecutive days the unit has been out of service since that date, if any, shall be respectively recorded on the form. In January and July of each year the form covering the previous 6 months' inspections shall be removed from the cab, certified before a notary public by the railroad official responsible for the unit, and filed with the Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590.

(d) The mechanical officer of each railroad who is in charge of a locomotive unit shall maintain in his office a secondary record of the information reported to the FRA on Form FRA F6180–49 under this subpart.

(e) When a locomotive unit is removed from service for 30 or more consecutive days or is otherwise out of service when it is due for an inspection under paragraph (a) of this section, an out-of-service notation showing the number of out-of-service days shall be made on an inspection line on Form FRA F6180–49. A supervisory employee of the railroad who is responsible for operation of the unit shall attest to the notation. Before the unit is returned to service, an inspection shall be made as required by paragraph (a) of this section, recorded on Form FRA F6180–49, and attested by the inspector and his supervisor. If the unit is out of service for one or more periods of at least 30 consecutive days each, except as otherwise provided by this paragraph, the interval prescribed for any test or inspection required by this subpart may be extended by the number of days in each period the unit is out of service since the last test or inspection, as the case may be.

§ 230.406 [Amended]

3. The first sentence of paragraph (b) in § 230.406 is amended by inserting the words "while the reservoir is empty" between the word "tested" and the word "each."

4. In § 230.451, paragraphs (c), (d), and (e) are amended to read as follows:

§ 230.451 Filing of inspection reports.

* * * * *

(c) During the 6 months beginning with January and July of each year, the date and place of each inspection performed as required by paragraph (a) of this section shall be recorded on Form FRA F6180–49 and attested thereon by the inspector and his supervisor. The form shall be displayed under a transparent cover in a conspicuous place in the cab of each locomotive unit. When a new form is placed in the cab, the last date of each test performed under §§ 230.406 and 230.447, and the number of calendar months the unit has been out of service since that date, if any, shall be respectively recorded on the form. In January and July of each year, the form covering the previous 6 months' inspections shall be removed from the cab, certified before a notary public by the railroad official responsible for the unit, and filed with the Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590.

(d) The mechanical officer of each railroad who is in charge of a locomotive unit shall maintain in his office a secondary record of the information reported to the FRA on Form FRA F6180–49 under this subpart.

(e) When a locomotive unit is removed from service for 30 or more consecutive days or is otherwise out of service when it is due for an inspection under paragraph (a) of this section, in lieu of that inspection, an out-of-service notation may be made on an inspection line on Form FRA F6180–49. A supervisory employee of the railroad who is responsible for operation of the unit shall attest to the notation. Before the unit is returned to service, an inspection shall be made as required by paragraph (a) of this section, recorded on Form FRA F6180–49, and attested by the inspector and his supervisor.

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

JOHN W. INGRAM,
Administrator.

[FR Doc.72–16671 Filed 9–29–72;8:47 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release Nos. 34–9785, 35–17702, IC–7376]

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Public Availability of Certain Shareholder Proposal Materials

The Securities and Exchange Commission has adopted a new § 200.82 of Title 17 of the Code of Federal Regulations (17 CFR 200.82) concerning the public availability of materials filed with the Commission pursuant to Rule 14a–8 (d) of the Commission's proxy rules under the Securities Exchange Act of 1934 (17 CFR 240.14a–8(d)) and certain related documents. Notice of the proposed action was published December 15, 1971 (see Securities Exchange Act Release No. 9423) (36 F.R. 25235).

Under § 200.82 all materials required to be filed with the Commission pursuant to proxy Rule 14a–8(d) will be considered public records of the Commission. Rule 14a–8(d) provides that whenever the management of a company asserts that a proposal submitted by a security holder for inclusion in the management's proxy material may be omitted therefrom, it shall file with the Commission within a specified period of time

A copy of the proposal and any statement in support thereof as received from the security holder, together with a statement of reasons why the management deems such omission to be proper in the particular case, and, where such reasons are based on matters of law, a supporting opinion of counsel.

Section 200.82 also provides for the public availability of written communications related to the materials filed pursuant to Rule 14a–8(d) which may be voluntarily submitted by shareholder-proponents or other persons. In addition, the new section makes available to the public any no-action letters or other written communications issued by the staff in connection with the materials

filed under Rule 14a–8(d). A no-action letter is one in which an authorized staff official may state that the staff will not recommend to the Commission that it take enforcement action if a specific proposed transaction is consummated in the manner described in the incoming letter, or if certain proposed action is taken for the reasons stated in the incoming letter.

The Commission has previously treated the documents mentioned above as nonpublic, since they relate to information included in preliminary proxy material and are filed in advance of distribution of the definitive material. Although the relationship of these documents to preliminary proxy material continues to exist, such documents are treated in a manner similar to requests for no-action letters in other areas and the Commission has previously determined that letters of that nature should be made available to the public (see Securities Act Release No. 5098) (35 F.R. 17779). Accordingly, documents covered by § 200.82 which relate to materials filed pursuant to Rule 14a–8(d) on or after the effective date of the new section will be made available. However, in view of the Commission's prior position in this area, requests relating to materials filed before the effective date will be considered on an item-by-item basis.

Section 200.82 makes available to the public only those documents specifically mentioned therein. It is an exception to the provisions of § 200.80(c)(4) of Title 17 of the Code of Federal Regulations (17 CFR 200.80(c)(4)), which states that the Commission will not generally publish or make available to any persons certain matters, including information relating to preliminary proxy materials. Therefore, the new section does not affect in any way the nonavailability of other preliminary proxy materials. Commission action:

Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding thereunder a new § 200.82, reading as follows:

§ 200.82 Public availability of materials filed pursuant to § 240.14a–8(d) and related materials.

Materials filed with the Commission pursuant to Rule 14a–8(d) under the Securities Exchange Act of 1934 (17 CFR 240.14a–8(d)), written communications related thereto received from any person, and each related no-action letter or other written communication issued by the staff of the Commission, shall be made available to any person upon request for inspection or copying.

(Secs. 14(a), 23(a), 48 Stat. 895, 901, secs. 5, 78 Stat. 569, 570, sec. 203(a), 8, 49 Stat. 704, 1379, 15 U.S.C. 78n(a), 78w(a))

The foregoing rule has been adopted pursuant to sections 14(a) and 23(a) of the Securities Exchange Act of 1934 and shall become effective on November 1, 1972.

By the Commission.

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

SEPTEMBER 22, 1972.

[FR Doc.72-16799 Filed 9-29-72;8:54 am]

[Release Nos. 33-5307 34-9786]

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

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Resale of Certain Securities

The Securities and Exchange Commission announced today that it has proposed for comment an amendment to subparagraph (g)(2) of Rule 144 (17 CFR 230.144) under the Securities Act of 1933 (Act),[1] and has adopted amendments to paragraph (h) of that rule effective November 1, 1972. Rule 144, which relates to the resale of securities acquired directly or indirectly in transactions not involving any public offerings and securities held by persons in a control relationship with an issuer, was adopted on January 11, 1972, effective April 15, 1972 (Securities Act of 1933 Release No. 5223) (37 F.R. 596).

The proposed amendment to Rule 144 would revise subparagraph (g)(2) of the rule to permit brokers to continue their quotations in an interdealer quotation service while selling securities pursuant to the rule subject to certain conditions.[1] Also, subparagraph (h) of Rule 144 has been amended to require transmittal of the required notice of proposed sale on Form 144 (17 CFR 239.144) to the principal stock exchange on which the securities to be sold are listed for trading as well as to the Commission.

The Commission also has adopted clarifying amendments to Forms 10–K (17 CFR 249.310) and 10–Q (17 CFR 249.308a) with respect to the existing requirement that a statement by the issuer be made in reports on those forms to the effect that all reports required by section 13 or section 15(d) of the Exchange Act have been filed.

AMENDED RULE 144(h)—NOTICE OF PROPOSED SALES

In order to facilitate the dissemination to the marketplace of information concerning proposed resales pursuant to Rule 144, the Commission has adopted an amendment to paragraph (h) of Rule 144 requiring transmittal of one copy of the notice on Form 144 to the principal national securities exchange on which the security to be sold is traded. The Commission finds that the amendment to paragraph (h) of Rule 144 is minor and not of material substance and, therefore, publication for comment pursuant to the Administrative Procedure Act is unnecessary.

AMENDMENTS TO FORMS 10–Q AND 10–K

Rule 144(c) requires that there be available current public information concerning the issuer of securities to be sold pursuant to the rule. In determining whether such information is available, Rule 144(c)(1) permits the person selling the securities to rely on a statement in the most recent report filed by the issuer that the issuer has complied with the reporting requirements of section 13 or section 15(d) of the Exchange Act. A requirement for such a statement was provided by amendment to Forms 10–Q and 10–K (Securities Exchange Act of 1934 Release No. 9442) (37 F.R. 600, 601, 4331). The purpose of this requirement was that the issuer would thereby indicate: (1) Whether or not it had filed all reports required to be filed by those sections of the Exchange Act and (2) whether or not it had been subject to those requirements for the 90 days prior to the filing of the report. The present language of the required statement apparently has caused confusion in this regard, and the Commission has adopted a clarifying amendment which codifies the appropriate interpretation. Since this is a minor interpretative amendment for purposes of clarification the Commission does not find it is necessary to publish the amendment for comment pursuant to the Administrative Procedure Act.

Commission action: Pursuant to authority contained in the provisions of the Securities Act of 1933 mentioned below, the Commission hereby amends §§ 230.144(h), 239.308a, and 239.310 of Chapter II of Title 17 of the Code of Federal Regulations to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(h) *Notice of proposed sale.* Concurrently with the placing with a broker of an order to execute a sale of any securities in reliance upon this rule, there shall be transmitted to the Commission, at its principal office in Washington, D.C., for filing three copies of a notice on Form 144 which shall be signed by the person for whose account the securities are to be sold; and, if such securities are admitted to trading on any national exchange, one copy of such notice shall be transmitted to the principal national securities exchange on which such securities are so admitted; *Provided*, That such a notice need not be filed if the amount of securities to be sold during any period of 6 months does not exceed 500 shares or other units and the aggregate sale price thereof does not exceed $10,000. If all of the securities for which a notice is filed are not sold within 90 days after the filing of such notice, an amended notice shall be transmitted to the Commission concurrently with the commencement on any further sales of such securities. Neither the filing of such notice nor the failure of the Commission to comment thereon shall be deemed to preclude the Commission from taking any action it deems necessary or appropriate with respect to the sale of the securities referred to in such notice.

* * * * *

§§ 239.308a, 239.310 [Amended]

Forms 10–Q (17 CFR 239.308a) and 10–K (17 CFR 239.310).

The following amendment is made to the clause at the end of the facing sheet of each of the forms:

Indicate by check mark whether the registrant (1) has filed all annual, quarterly and

[1] Filed as a separate document, see page 20576.

other reports required to be filed with the Commission and (2) has been subject to the filing requirements for at least the past 90 days. Yes —— No——

The amendment to Rule 144(h) is adopted effective November 1, 1972, pursuant to the Securities Act of 1933, particularly sections 2(11), 4(1), 4(2), 4(4), and 19(a) thereof.

The amendments to Forms 10–Q and 10–K are adopted effective November 1, 1972, pursuant to the Securities Exchange Act of 1934, particularly sections 13, 15(d), and 23(a) thereof.

The Commission finds that the amendment to Rule 144(h) and Forms 10–Q and 10–K are interpretative rules and minor and not of material substance, are in the public interest and should not impose burdens on issuers or others or sacrifice the protection of investors, and thus, further notice and rule making procedures pursuant to 5 U.S.C. 552 are unnecessary.

(Secs. 2(11), 4(1), 4(2), 4(4), 19(a), 48 Stat. 74, 77, 85, sec. 209, 48 Stat. 908, secs. 1–4, 68 Stat. 683, sec. 12, 78 Stat. 580, 15 U.S.C. 77(b)(11), 77(d)(1), 77(d)(2), 77(d)(4), 77(s)(a); Secs. 13(a), 15(d), 23(a), 48 Stat. 894, 895, 901, secs. 203(a), 8, 49 Stat. 704, 1379, secs. 4, 6, 78 Stat. 569, 570–574, 15 U.S.C. 78m(a), 78o(d), 78w(a)).

By the Commission.

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

SEPTEMBER 26, 1972.

[FR Doc.72-16798 Filed 9-29-72;8:54 am]

Title 7—AGRICULTURE

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

[Valencia Orange Reg. 410, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

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

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i) and (ii) of § 908.710 (Valencia Orange Regulation 410 37 F.R. 19620) during the period September 22 through September 28, 1972, are hereby amended to read as follows:

§ 908.710 Valencia Orange Regulation 410.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 429,000 cartons.

(ii) District 2: 396,000 cartons.

* * * * *

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

Dated: September 27, 1972.

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

[FR Doc.72-16669 Filed 9-29-72;8:47 am]

[Lemon Reg. 553]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.853 Lemon Regulation 553.

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

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on September 26, 1972.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period October 1, through October 7, 1972, is hereby fixed at 190,000 cartons.

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

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

Dated: September 27, 1972.

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

[FR Doc.72-16764 Filed 9-29-72;8:54 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 72–GL–3, Amdt. 39–1530]

PART 39—AIRWORTHINESS DIRECTIVES

Bellanca Aircraft Corp. (Champion) Models 7ECA, 7GCAA, 7GCBC, 7KCAB, and 8KCAB

It has been determined that certain serial numbers of airplanes of the Bellanca Aircraft Corp. (Champion) Models 7 and 8 series have been equipped with improper control cables that do not meet the strength and fatigue life standards of the Type Design Data. Although Bellanca procurement specifications require aircraft quality cable, their sup-

plier inadvertently furnished a lesser grade cable certified as meeting the Bellanca specification. These cables are, therefore, subject to excessive stretch with probable excessive wear and possible failure which could result in loss of control of the airplane. Since this condition exists only in those airplanes of the serial numbers listed, an Airworthiness Directive is being issued to require replacement of the control cables of the Bellanca Aircraft Corp. (Champion) Models 7 and 8 series of the applicable serial numbers.

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

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by the following new Airworthiness Directive:

BELLANCA AIRCRAFT CORPORATION (CHAMPION): Applies to the following Bellanca Models and Serial Numbers:

Models	*Serial Numbers*
7ECA (0-235-C1 Engine)	840-72. 842-72 through 871-72.
7GCAA	234-72 through 242-72. 244-72 through 246-72.
7KCAB	304-72 through 310-72. 312-72 through 320-72. 322-72.
7GCBC (150 HP)	346-72. 347-72. 349-72 through 361-72. 363-72 through 376-72.
8KCAB	13-72. 15-72 through 37-72.

Compliance required as indicated after the effective date of this Airworthiness Directive, unless already accomplished:

To prevent flight controls malfunction including possible loss of control due to cable failure, accomplish the following:

(A) Effective immediately, all affected aircraft are prohibited from acrobatic flight and must have a placard installed in clear view of pilot which reads as follows:

All acrobatic flight, including intentional spins, is prohibited.

On all Model 8KCAB aircraft, revise the FAA Approved Airplane Flight Manual to delete section 1.2.1 through 1.2.7. Insert the following after section 1.2 Acrobatic Category Limitations:

All acrobatic flight, including intentional spins, is prohibited.

(B) Effective immediately, all affected aircraft with 100 hours or more cumulative flying time and every 100 hours thereafter must have all flight control cables inspected for evidence of wear, fraying, or stretching. If such wear, fraying, or stretching, is found, replace the defective flight control cable before further flight, except that the airplane may be flown in accordance with FAR 21.197 to a base where the repair can be made.

(C) All flight control cables of the affected aircraft must be replaced in accordance with Bellanca Aircraft Corp. Service Letter No. 104, dated September 12, 1972, and subsequent revisions or in accordance with data approved by the Chief, Engineering and Manufacturing Branch, Great Lakes Region. On those airplanes with less than a cumulative flying time of 600 hours, replace cables before reaching 700 hours. On those airplanes with a cumulative flying time of 600 hours or more, replace cables within the next 100 hours flying time. Cable replacement on all affected aircraft must be accomplished by January 1, 1973. All replaced cables must be rendered unusable for any further aircraft applications or handled in accordance with Bellanca Aircraft Corp. (Champion) Service Letter No. 104, dated September 12, 1972, and subsequent revisions. Any cables replaced in compliance with Airworthiness Directive 72-18-3 are exempt from this Airworthiness Directive.

(D) The placard required by paragraph "A" may be removed; the revision to the Airplane Flight Manual required by paragraph "A" may be deleted; and the repetitive inspections required by paragraph "B" may be discontinued when compliance with paragraph "C" of this Airworthiness Directive is accomplished.

This amendment becomes effective October 5, 1972.

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

Issued in Des Plaines, Ill., on September 21, 1972.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.72-16673 Filed 9-29-72;8:47 am]

[Airworthiness Docket No. 67-WE-23-AD; Amdt. 39-1528]

PART 39—AIRWORTHINESS DIRECTIVES

Certain General Dynamics Model 240, 340, and 440 Airplanes Using Turbo-Propeller Power

Amendment 39-528 (32 F.R. 20945), AD 67-33-3, requires external inspection of each wing in the area of the fuel tanks for fuel leakage, additional internal inspections of each wing fuel tank, repair of structural damage under certain circumstances, and that all underwing fueling be accomplished with the overwing fuel tank filler cap(s) removed when filling each tank above 80 percent of its capacity, of General Dynamics Model 240/340/440 airplanes which have been modified per STC Nos. SA1316WE, SA1054WE, SA1132WE, or SA1096WE.

After issuing Amendment 39-528 the FAA determined that:

(1) A placard should be affixed to the aircraft to alert ground service personnel to the provisions of paragraph (4) of the AD.

(2) Provision for equivalent FAA-approved modifications should be incorporated.

(3) A modification has been developed which, if installed, will constitute terminating action as to paragraph (4).

(4) If either (a) fuel leakage or overpressurization is detected in operation, or (b), the aircraft is known to have been refueled not in accordance with paragraph (4), when applicable, the inspection required by paragraph (1) and (2) should be repeated. The applicability statement is being amended to describe briefly the modifications approved per the enumerated Supplemental Type Certificates.

Since this amendment authorizes alternate methods of compliance and the installation of a placard imposes no undue burden on any person, notice and public procedures hereon are unnecessary and this amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-528 (32 F.R. 20945), AD 67-33-3, is amended as follows:

(a) Amend the applicability statement to read:

GENERAL DYNAMICS. Applies to Model 240/340/440 airplanes using turbo-propeller power which have been modified to incorporate underwing pressure fueling per STC Nos. SA1316WE, SA1132WE, SA1096WE, or SA1054WE.

(b) Amend paragraph 4 to read:

4. Within 30 days after the effective date of this amendment to AD 67-33-3, unless already accomplished, install adjacent to each underwing refuel valve in clear view of ground fueling crews a placard stating, "Remove the overwing filler cap(s) while fueling the tank above 80 percent capacity. If not, further inspection required per AD 67-33-3."

When fueling at or above 80 percent of the fuel tank capacity, perform all underwing fueling with overwing fuel tank filler cap(s) removed. The placard may be removed, and the procedure described in this paragraph may be discontinued after the accomplishment of (5) below.

(c) Add a new paragraph (5) to read:

5. Compliance with paragraph (4) is no longer required:

(a) When underwing pressure fueling system as installed on the Model 240 aircraft is modified to incorporate a pressure vent valve in accordance with Aircraft Tank Service, Inc., Drawing 2036, Change "A", entitled "Refueling Valve Installation—CV 240", dated April 23, 1966, or later FAA-approved revisions, or an equivalent modification approved by the Chief, Aircraft Engineering Division, Western Region.

(b) When the underwing pressure fueling system as installed on the Model 340/440 aircraft is modified to incorporate a pressure vent valve in accordance with Aircraft Tank Service, Inc., Drawing 2363, Change "B", entitled "Installation of Pressure Vent Valve-Wing Fuel Tanks—Convair 340/440", dated July 3, 1968, or later FAA-approved revisions, or an equivalent modification approved by the Chief, Aircraft Engineering Division, Western Region.

(d) Add a new paragraph (6) to read:

6. If either (a) fuel leakage or overpressurization is detected in operation, or (b) the aircraft is known to have been refueled not in accordance with the procedure set forth in paragraph (4) above, repeat the inspection described in paragraphs (1) and (2) above, and accomplish repairs, per (3) above, if applicable.

This amendment is effective October 3, 1972.

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

Issued in Los Angeles, Calif., on September 20, 1972.

ARVIN O. BASNIGHT,
Director, FAA Western Region.

[FR Doc.72-16674 Filed 9-29-72;8:47 am]

[Airspace Docket No. 72-SW-55]

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

Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate the Marble Falls, Tex., transition area.

On August 17, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 16622) stating the Federal Aviation Administration proposed to designate a transition area at Marble Falls, Tex.

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., December 7, 1972, as hereinafter set forth.

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

MARBLE FALLS, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Horseshoe Bay Airport (latitude 30°31'27" N., longitude 98°21'45" W.), and within 3.5 miles each side of the 012° bearing extending from the 5-mile radius area to 11.5 miles north of the NDB site at latitude 30°31'27" N., longitude 98°21'45" W.

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

Issued in Fort Worth, Tex., on September 21, 1972.

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

[FR Doc.72-16676 Filed 9-29-72;8:48 am]

[Airspace Docket No. 72-SW-58]

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

Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate the Mena, Ark., transition area.

On August 25, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 17214) stating the Federal Aviation Administration proposed to designate a transition area at Mena, Ark.

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. December 7, 1972, as hereinafter set forth.

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

MENA, ARK.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Mena Municipal Airport (latitude 34°33'00" N., longitude 94°12'31" W.) and within 5 miles each side of the Page, Okla., VORTAC 112° radial extending from the 5-mile radius area to the VORTAC.

The transition area will provide controlled airspace for aircraft executing approach/departure procedures at Mena, Ark., Municipal Airport.

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

Issued in Fort Worth, Tex., on September 21, 1972.

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

[FR Doc.72-16675 Filed 9-29-72;8:48 am]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

OZARK NATIONAL SCENIC RIVERWAYS, MISSOURI

Boating, Scuba Diving, Spelunking

Notice is hereby given that pursuant to the authority contained in Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3), the Act of August 27, 1964 (78 Stat. 608, 16 U.S.C. 460m), 245 DM 1 (27 F.R. 6395) as amended, National Park Service Order No. 66 (37 F.R. 21218), as amended Midwest Region Order No. 5 (37 F.R. 6324), and the cession of concurrent jurisdiction by the State of Missouri contained in section 12.025 R.S. Mo. 1969 and accepted by the United States as required by 40 U.S.C. 255 (1970), it is proposed to add § 7.83 to Title 36 of the Code of Federal Regulations as set forth below.

The purpose of this amendment is to establish additional restrictions on boating and to establish restrictions on scuba diving, and cave entry within the boundaries of the Ozark National Scenic Riverways.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the Superintendent, Ozark National Scenic Riverways, Van Buren, Mo. 63965, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

It is proposed that a new section, § 7.83 be added to this part as follows:

§ 7.83 Ozark National Scenic Riverways.

(a) *Boating.* (1) A vessel equipped with a propeller above the water, commonly referred to as an "airboat" is prohibited on the Current River and the tributaries thereof and the Jacks Fork River, within the boundaries of Ozark National Scenic Riverways. A vessel, commonly referred to as a "jet boat" is prohibited on the Current River and the tributaries thereof and the Jacks Fork River within the boundaries of Ozark National Scenic Riverways.

(2) The use of a motor on a vessel is prohibited within the boundaries of the Ozark National Scenic Riverways on the Jacks Fork River, and on the Current River and the tributaries thereof, between Montauk State Park and the Missouri Highway 19 bridge at Round Spring.

(3) A motor of no more than 20 horsepower may be used on a vessel on the Current River from the Missouri Highway 19 bridge at Round Spring to the Ripley County line within the boundaries of the Ozark National Scenic Riverways, except as permitted in subparagraph (4) of this paragraph.

(4) A motor of no more than 40 horsepower may be used on the commercial passenger-carrying tour boats operated in the Big Spring area on the Current River within the boundaries of Ozark National Scenic Riverways pursuant to a National Park Service concession contract.

(b) *Scuba diving.* (1) Scuba diving is prohibited within all areas designated by the posting of appropriate signs for boat mooring, boat launching, and boat docking on the Current River and the tributaries thereof and the Jacks Fork River within the boundaries of the Ozark National Scenic Riverways.

(2) Scuba diving is prohibited within all springs on the Current River and the tributaries thereof and the Jacks Fork River within the boundaries of the Ozark National Scenic Riverways without a written permit from the superintendent.

(3) *Permits.* The superintendent shall issue written permits for scuba diving in springs within the boundaries of the Ozark National Scenic Riverways: *Provided,*

(i) That the permit applicant will be engaged in scientific or educational investigations which will have demonstrable value to the National Park Service in its management or understanding of riverways resources, and

(ii) That the permit applicant is adequately equipped and experienced so as to insure the protection and prescrvation of riverways resources, and

(iii) That the activities of the permit applicant will not result in damage or injury to any of the resources of the area.

(4) *Solo diving.* Solo diving is prohibited within any spring on the Current River and the tributaries thereof or the Jacks Fork River within the boundaries of the Ozark National Scenic Riverways.

(c) *Cave entry.* (1) *Closed areas.* With the exception of the regular trips into the Round Spring Cavern under the guidance or supervision of employees of the National Park Service, no person shall enter any cave or undeveloped part or passageway of any cave located on federally owned lands within the boundaries of the Ozark National Scenic Riverways without a written permit from the superintendent.

(2) *Permits.* The superintendent shall issue written permits for exploration or investigation of caves or undeveloped parts or passageways of caves located on federally owned land within the boundaries of the Ozark National Scenic Riverways: *Provided,*

(i) That the permit applicant will be engaged in scientific or educational investigations which will have demonstrable value to the National Park Service in its management or understanding of Riverways resources, and

(ii) That the permit applicant is adequately equipped and experienced so as to insure the protection and preservation of riverways resources, and

(iii) That the activities of the permit applicant will not result in damage or injury to any of the resources of the area.

(3) *Solo exploration.* Solo exploration or investigation is not permitted in any cave or undeveloped part or passageway of any cave located on federally owned lands within the boundaries of the Ozark National Scenic Riverways.

RANDALL R. POPE,
Superintendent,
Ozark National Scenic Riverways.

J. LEONARD VOLZ,
Director, Midwest Region.

[FR Doc.72-16691 Filed 9-29-72;8:49 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 982]

FILBERTS GROWN IN OREGON AND WASHINGTON

Proposed Free and Restricted Percentages for Fiscal 1972–73

Notice is hereby given of a proposal to establish, for the 1972–73 fiscal year, beginning August 1, 1972, free and restricted percentages of 67 and 33 percent, respectively, applicable to filberts grown in Oregon and Washington. The proposed percentages would be established in accordance with the provisions of the marketing agreement, as amended, and Order No. 982, as amended (7 CFR Part 982; 37 F.R. 588) regulating the handling of filberts grown in Oregon and Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposed percentages were unanimously recommended by the Filbert Control Board.

Consideration will be given to any written data, views, or arguments pertaining to the proposal which are received by the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than October 10, 1972. All written submissions made pursuant to this notice should be in quadruplicate and will be made available for public inspection at the Office of the Hearing Clerk during official hours of business (7 CFR 1.27(b)).

The proposed percentages are based upon the following estimates for the 1972–73 fiscal year:

(1) Production of 10,200 tons;

(2) Total requirements for 1972 crop merchantable filberts of 5,866 tons, which is the sum of an in-shell trade demand of 5,500 tons and provision for in-shell handler carryover on July 31, 1973, of 750 tons, less the in-shell handler carryover on August 1, 1972, of 384 tons not subject to regulation; and

(3) A total supply of merchantable filberts subject to regulation of 8,753 tons which is the estimated production of 10,200 tons, less 1,625 tons nonmerchantable production, plus 178 tons of carry-in subject to regulation.

On the basis of the foregoing estimates, free and restricted percentages of 67 and 33 percent, respectively, appear to be appropriate for the 1972–73 season.

The proposal is as follows:

§ 982.222 Free and restricted percentages for merchantable filberts during the 1972–73 fiscal year.

The following percentages are established for merchantable filberts for the fiscal year beginning August 1, 1972:

Free percentage	67
Restricted percentage	33

Dated: September 26, 1972.

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

[FR Doc.72-16736 Filed 9-29-72;8:53 am]

[7 CFR Part 1139]

[Docket No. AO 374]

MILK IN THE LAKE MEAD MARKETING AREA

Notice of Hearing on Proposed Marketing Agreement and Order

Notice is hereby given of a public hearing to be held at the Washington County Court House (Room 201) 197 East Tabernacle Street, St. George, UT, beginning at 10 a.m., local time, on October 17, 1972, with respect to a proposed marketing agreement and order, regulating the handling of milk in the Lake Mead marketing area.

The hearing is called 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 governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The hearing is for the purpose of:

(a) Receiving evidence with respect to economic and marketing conditions which relate to the proposed marketing agreement and order, hereinafter set forth, and any appropriate modifications thereof;

(b) Determining whether the handling of milk in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determining whether there is need for a marketing agreement or order regulating the handling of milk in the area; and

(d) Determining whether the proposed marketing agreement and order or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

The proposals, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Alamo Dairy Association, Clark County, Dairymen, Hi-Land Dairymen's Association and Vegas Valley Farms:

PROPOSAL NO. 1

PART 1139—MILK IN LAKE MEAD MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

GENERAL PROVISIONS

§ 1139.1 General provisions.

The terms, definitions, and provisions in Part 1000 [1] of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1139.2 Lake Mead marketing area.

"Lake Mead marketing area" hereinafter called the "marketing area" means all territories within the parametric boundaries listed in paragraphs (a) and (b) of this section, including all territory occupied by government (municipal, county, State, or Federal) reservations, installations, institutions, or other establishments. Where such an establishment is partly within and partly without the designated boundaries, the marketing area shall include the entire area encompassed by such establishment:

(a) In the State of Nevada, the county of Clark; and

(b) In the State of Utah, Cedar City in Iron County and St. George in Washington County.

§ 1139.3 Route.

"Route" for purposes of §§ 1139.7 and 1139.8 means delivery of a fluid milk product from a distributing plant to a retail or wholesale outlet (including delivery through a distributing point, plant store, vendor, or vending machine) except delivery to a plant.

§ 1139.4 [Reserved]

§ 1139.5 [Reserved]

§ 1139.6 [Reserved]

§ 1139.7 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section except a plant exempt pursuant to §§ 1139.8 or 1139.19.

(a) Any plant, hereinafter referred to as a "distributing pool plant" in which during the month fluid milk products are processed or packaged and from which:

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[1] See Appendix, filed as part of the original document.

(1) An amount equal to 50 percent or more of the total receipts of Grade A fluid milk products (including milk diverted by the operator of such plant to a nonpool plant(s) pursuant to § 1139.13 (c)(2)) is distributed as fluid milk products, except filled milk, on routes; and

(2) An amount equal to 10 percent or more of such receipts is distributed as fluid milk products, except filled milk, on routes in the marketing area; and

(b) Any plant, hereinafter referred to as a "supply pool plant" from which during the month an amount equal to 50 percent of its dairy farm supply of Grade A milk (including Grade A milk diverted by the operator of such plant to a nonpool plant(s) pursuant to § 1139.13(c)(2)) is moved to a distributing pool plant(s) as fluid milk products, except filled milk. Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant in each of the following months of March through August unless written request for nonpool status for any such month is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of March through August unless it fulfills the shipping requirements of this paragraph for such month.

§ 1139.8 Nonpool plant.

"Nonpool plant" means any milk, or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operator by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant which is neither an other order plant nor a producer-handler plant and from which fluid milk products are moved during the month to a pool plant.

§ 1139.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a partially regulated distributing plant;

(c) A cooperative association with respect to milk of its member producers which is diverted pursuant to § 1139.13 (c)(1) to a nonpool plant for the account of such cooperative association.

(d) A cooperative association with respect to milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association, if the cooperative association notifies the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it elects to be the handler for such milk;

(e) A producer-handler; or

(f) Any person who operates an exempt plant.

§ 1139.10 Producer-handler.

(a) "Producer-handler" means any person who is an individual, partnership, or corporation and who operates a milk processing or packaging plant and a dairy farm and who meets all the following conditions:

(1) Provides proof satisfactory to the market administrator that the ownership, care, and management of the dairy animals and other resources necessary to produce the entire volume of milk received at the plant operated by such person is the exclusive enterprise of and at the sole risk of such person;

(2) Provides proof satisfactory to the market administrator that the ownership and management of the milk processing or packaging plant is the exclusive enterprise of and at the sole risk of such person;

(3) Neither receives nor distributes fluid milk products from any source except those derived from milk produced pursuant to subparagraph (1) of this paragraph;

(4) Provides proof satisfactory to the market administrator that the ownership and management of the business of distributing the fluid milk products is the exclusive enterprise of, and at the sole risk of such person; and

(5) For the purpose of this section, all fluid milk products distributed on routes or at stores operated by him or by any person who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store distribution.

(b) Sections 1139.40 through 1139.45, 1139.50 through 1139.54, 1139.60, 1139.61, 1139.71 through 1139.78, 1139.85, and 1139.86 shall not apply to a producer-handler.

§ 1139.11 [Reserved]

§ 1139.12 Producer.

"Producer" means any person (other than a producer-handler as defined in any order (including this part) issued pursuant to the Act) who produces milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is received at a pool plant or diverted from a distributing pool plant to a nonpool plant within the limits set forth in § 1139.13(c). The term "producer" shall not include any person determined to be a "producer" as defined in any order (except this part) issued pursuant to the Act.

§ 1139.13 Producer milk.

"Producer milk" means skim milk and butterfat contained in milk from producers (in an amount determined by weights and measurements for individual producers, as taken at the farm) which is:

(a) Received from producers at a pool plant but not including milk of producers for which a cooperative association is the handler pursuant to § 1139.9 (d); and

(b) Received by a cooperative association handler pursuant to §§ 1139.9(c) and 1139.9(d);

(c) Diverted from a distributing pool plant to a nonpool plant within the limits set forth in subparagraphs (1) and (2) of this paragraph.

(1) A cooperative association may divert for its account the milk of any member-producer from whom at least three deliveries of milk are received during the month at a distributing pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of its member producer milk received at distributing pool plants during the month. Diversions in excess of such percentages shall not be producer milk, and the diverting cooperative association shall specify the dairy farmers whose milk is ineligible as producer milk.

(2) A handler in his capacity as the operator of a pool plant may divert for his account the milk of any producer (other than a member of a cooperative association), from whom at least three deliveries of milk are received during the month at his pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of the milk received at such pool plant during the month from producers who are not members of a cooperative association.

§ 1139.14 Other source milk.

"Other source milk" means skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products from any source except:

(1) Producer milk;

(2) Fluid milk products received from other pool plants; and

(3) Receipts from a cooperative association pursuant to § 1139.9(d); and

(b) Products (except Class II products received from pool plants) other than fluid milk products, from any source (including those produced in the plant) which are reprocessed or converted to another product in the plant during the month, and any disappearance of nonfluid milk products produced in the plant or in a form which can be converted into fluid milk products.

§ 1139.15 Fluid milk product.

"Fluid milk product" means any product containing 6.5 percent or more of milk solids (other than sodium caseinate) with less than 9 percent butterfat (6 percent butterfat in the case of eggnog and eggnog flavored milk drinks) and 27 percent milk solids-not-fat but more than 20 percent moisture, all computed on the basis of weight, excluding additives not derived from milk.

§ 1139.16 [Reserved]

§ 1139.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1139.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of dairy farmers which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1139.19 Exempt plants.

(a) An "exempt plant" is a plant which meets the conditions of subparagraphs (1), (2), or (3) of this paragraph:

(1) A plant meeting the requirements of § 1139.7(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was distributed during the month on routes in such other Federal marketing area than was distributed in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition, except filled milk is distributed on routes in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(2) A plant meeting the requirements of § 1139.7(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk is distributed during the month on routes in this marketing area than is distributed in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; or

(3) Any distributing plant from which less than an average of 300 pounds of Class I milk per day, except filled milk, is distributed on routes in the marketing area during the month; and

(b) The provisions of this part shall not apply to exempt plants except as provided in §§ 1139.32 and 1139.76a.

HANDLER REPORTS

§ 1139.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month the following handlers shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(a) Each handler who operates a pool plant(s) shall report for each such plant:

(1) The receipts of milk and the pounds of butterfat contained therein:

(i) From producers, including that diverted pursuant to § 1139.13(c); and

(ii) From cooperative association handlers pursuant to § 1139.9(d);

(2) The quantities of skim milk and butterfat contained in (or used in the production of) fluid milk products received from other pool plants;

(3) The quantities of skim milk and butterfat contained in receipts of other source milk;

(4) The pounds of skim milk and butterfat contained in all fluid milk products on hand both in bulk and in packages at the beginning and at the end of the month;

(5) The utilization of all skim milk and butterfat required to be reported by this section, including a separate statement of the route distribution of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route distribution of filled milk;

(6) In the case of diversions to nonpool plants, the following additional information;

(i) The name of the plant to which diverted;

(ii) The names of individual dairy farmers whose milk was diverted; and

(iii) The pounds of skim milk and butterfat from each diary farmer contained in the milk so diverted;

(iv) The number of deliveries of milk of the dairy farmer(s) received at his distributing pool plant; and

(7) Such other information with respect to receipts and utilization as the market administrator may prescribe; and

(b) Each cooperative association shall report with respect to milk for which it is a handler pursuant to § 1139.9 (c) or (d) as follows:

(1) Receipts of skim milk and butterfat from producers;

(2) Utilization of skim milk and butterfat diverted to nonpool plants;

(3) The quantities of skim milk and butterfat delivered to each pool plant of another handler; and

(4) In the case of diversions to nonpool plants, the following additional information:

(i) The name of the plant to which diverted;

(ii) The names of dairy farmers whose milk was diverted;

(iii) The pounds of skim milk and butterfat from each dairy farmer contained in the milk so diverted; and

(iv) The number of deliveries of milk of the dairy farmer received at a distributing pool plant; and

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products distributed on routes in the marketing area.

§ 1139.31 Payroll reports.

On or before the 23d day of each month the following handlers shall report to the market administrator:

(a) Each handler who operates a pool plant(s) shall submit his payroll for receipts of producer milk at each of his pool plants during the preceding month which shall show:

(1) The name and the days of delivery of each producer from whom milk was received during the month with the address of any producer for whom such information was not furnished previously;

(2) The total pounds of milk, the average butterfat test thereof, and the pounds of butterfat received from each producer, identifying separately those producers for which a cooperative association is authorized to collect payments pursuant to § 1139.72(b);

(3) Such other information with respect to receipts and utilization of skim milk and butterfat as the market administrator may prescribe.

(b) Each handler who operates a partially regulated distributing plant and elects to make payments pursuant to § 1139.76(a) shall report as required in paragraph (a) of this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of receipts from producers; and

(c) Each cooperative association shall report with respect to milk for which it is the handler pursuant to § 1139.9 (c) and (d) the name and the number of deliveries with the address of any producers not previously reported, the total pounds of milk, the average butterfat test therefor and the pounds of butterfat received from each producer.

§ 1139.32 Other reports.

(a) Each producer-handler, each handler operating an exempt plant, and each handler making payments pursuant to § 1139.76 shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe;

(b) Each handler who also is engaged in the capacity as the operator of any mobile vehicle(s) used during the month for transporting producer milk en route from the farm of any producer to a pool plant(s) or to a nonpool plant(s), or from the plant of any cooperative association

to the plant of another handler shall keep and report to the market administrator at his request records which shall show:

(1) The date, time, source, and quantity of each lot of such milk received and/or transported by any mobile vehicle owned and/or operated by such handler together with the date, time, and quantity of all such milk disposed of or delivered from such vehicle, and the location and identification of the milk plant or other facility to which delivery or disposition was made;

(2) The amount of any charges and of any and all money or other reimbursement received in connection with the hauling of milk; and

(3) Complete data as to all other transactions involving money, services, or other items of value consummated with any producer or handler as defined in this part, including transactions with any person who controls, or is controlled wholly or in part (e.g., as an interlocking stockholder) by such a producer or handler, or with any person in which or wherein such a handler or producer (including in the case of a corporation any stockholder therein) has or is the object of a financial interest.

CLASSIFICATION OF MILK

§ 1139.40 Classes of utilization.

(a) Class I milk shall be all skim milk (including reconstituted or recombined skim milk) and butterfat:

(1) Disposed of from a plant in the form of fluid milk products, except:

(i) Fluid milk products in uses classified as Class II milk or Class III milk.

(ii) Fluid milk products to which nonfat milk solids are added shall be Class I milk in an amount equal to the weight of such finished products.

(2) Used to produce milkshake, milkshake base, and other flavored mixes which are not further processed in a commercial establishment.

(3) Used to produce concentrated milk, flavored milk, or flavored milk drinks disposed of for fluid consumption.

(4) Disposed of as a fluid product containing less than 6 percent nonmilk fat (or oil).

(5) In inventory of fluid milk products in packaged form on hand at the end of the month; or

(6) Not specifically accounted for as Class II milk or Class III milk.

(b) Class II milk shall be all skim milk and butterfat:

(1) Disposed of as cream (sweet or sour), plastic cream, aerated cream, frozen cream, and any mixtures of milk, skim milk, or cream containing 9 percent or more of butterfat, anhydrous butterfat, and eggnog containing 6 percent or more butterfat.

(2) Used to produce yogurt, cottage cheese, creamed or partially creamed cottage cheese, any other cheese containing more than 50 percent moisture, cheese dips, sour cream, and any sour mixtures of cream and milk or skim milk containing 9 percent or more butterfat.

(3) Used to produce any product containing 6 percent or more nonmilk fat (or oil) that resembles any product specified in subparagraphs (1) and (2) of this paragraph.

(4) Used to produce frozen dessert mixes, including milkshake and milkshake base for further processing in commercial establishments.

(5) Used to produce evaporated milk, evaporated skim milk, condensed milk and condensed skim milk (sweetened or unsweetened, canned or in bulk), canned liquid diet formulas and canned liquid formulas for infant feeding.

(6) Used to produce a nonfluid milk product not otherwise specified in Class II or Class III milk.

(c) Class III milk shall be all skim milk and butterfat:

(1) Used to produce dry whole milk, nonfat dry milk, dry whey, dry buttermilk, caseine, lactose, and other dried products, including food and feed mixtures containing 20 percent or less moisture.

(2) Used to produce cheese not defined as Class II.

(3) Used to produce butter.

(4) Used to produce condensed whey and buttermilk for animal feed.

(5) In that portion of fortified milk products excluded from Class I milk pursuant to paragraph (a)(1)(ii) of this section.

(6) In fluid milk products or Class II products which are dumped after prior notification to and opportunity for verification by the market administrator.

(7) In inventory of bulk fluid milk products on hand at the end of the month.

(8) In shrinkage at each pool plant assigned pursuant to § 1139.41(b)(1), not to exceed the following:

(i) Two percent of receipts of producer milk described in § 1139.13(a); plus

(ii) 1.5 percent of receipts from a cooperative association in its capacity as a handler pursuant to § 1139.9(d), except that if the handler operating the pool plant files with the market administrator notice that he is purchasing such milk on the basis of farm weights determined by farm bulk tank calibrations, and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent; plus

(iii) 1.5 percent of receipts of milk in bulk tank lots from other pool plants; plus

(iv) 1.5 percent of receipts of fluid milk products in bulk tank lots from an other order plant, exclusive of the quantity for which Class III utilization was requested by the operator of such plant and the handler; plus

(v) 1.5 percent of receipts of fluid milk products in bulk tank lots from unregulated supply plants, exclusive of the quantity for which Class III utilization was requested by the handler; less

(vi) 1.5 percent of disposition of milk in bulk tank lots to other milk plants either by transfers or diversions;

(9) In shrinkage assigned pursuant to § 1139.41(b)(2); and

(10) In shrinkage resulting from milk for which a cooperative association is the handler pursuant to § 1139.9 (c) or (d) not being delivered to pool plants and nonpool plants, but not in excess of one-half percent of such receipts, exclusive of those for which farm weights and tests are used as the basis of receipt at the plant to which delivered.

§ 1139.41 Shrinkage.

The market administrator shall assign a handler's shrinkage at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler; and

(b) For each handler prorate the resulting amount between:

(1) The pounds of skim milk and butterfat in other source milk received in bulk in the form of fluid milk products exclusive of that specified in § 1139.40 (c)(8); and

(2) The maximum pounds of skim milk and butterfat computed pursuant to § 1139.40(c)(8) divided by 0.02.

§ 1139.42 Classification of transfers and diversions.

Skim milk and butterfat disposed of in the form of a fluid milk product (or a Class II product moved between pool plants) by a handler, including a handler pursuant to § 1139.9(c), either by transfer or diversion shall be classified as follows:

(a) At the utilization indicated by the operator of both plants, otherwise as Class I milk, if transferred from a pool plant to another pool plant (except that for the purpose of this paragraph milk that was physically received at a pool plant from a handler pursuant to § 1139.9 (d) or transferred in bulk from a pool plant operated by a cooperative association shall be considered as a receipt of producer milk at the transferee plant) subject to the following conditions:

(1) The skim milk or butterfat so assigned to any class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1139.44(i).

(2) If the transferor plant received during the month other source milk to be assigned pursuant to § 1139.44(d), the skim milk and butterfat so transferred shall be classified so as to assign the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be assigned pursuant to § 1139.44 (h) or (i), the skim milk and butterfat so transferred shall be classified so as to assign to producer milk the greatest possible Class I utilization at both plants.

(b) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant, nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph.

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph

(3) of this paragraph in his report submitted to the market administrator pursuant to § 1139.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I utilization distributed on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(ii) Any Class I utilization distributed on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant.

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants;

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class II milk to the extent of such uses at the plant and then as Class III milk; and

(v) If any skim milk or butterfat is transferred to a second plant under this paragraph, the same conditions of audit, classification, and assignment shall apply.

(c) If transferred or diverted to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which assigned as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, classification shall be in Class I if assigned as a fluid milk product under the other order to Class I, in Class II if assigned to Class II under an order which provided three classes and in Class III if assigned to Class III under the other order or if assigned to Class II under an order which provides only two classes (including assignment under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class III to the extent of the Class III utilization (or comparable utilization under such other order) available for such assignment pursuant to the assignment provisions of the transferee order;

(4) If information concerning the classification to which assigned under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat assigned to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat assigned to another class shall be classified as Class III; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1139.40.

§ 1139.43 General classification rules.

(a) All skim milk and butterfat which is required to be reported pursuant to § 1139.30 shall be classified by the market administrator pursuant to §§ 1139.40–1139.45.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all the water originally associated with such solids.

(c) For each month the market administrator shall correct for mathematical and other obvious errors, the reports of receipts and utilization submitted pursuant to § 1139.30 and shall compute the milk in each class at all pool plants of such handler and the pounds in each class received from producers by a cooperative association handler pursuant to § 1139.9 (c) and (d), and was not received at a pool plant.

(d) For each pool plant or for each handler pursuant to § 1139.9 (c) and (d), compute the amount by which total butterfat classified pursuant to § 1139.40 exceeds total receipts of butterfat.

§ 1139.44 Classification of producer milk.

After making the computations pursuant to § 1139.43, the market administrator shall determine each month for each ceived from producers by each handler pursuant to § 1139.9 (c) and (d) which was not received at a pool plant and the classification of milk received in bulk from pool plants operated by cooperative associations, and from handlers pursuant to § 1139.9(d) at a pool plant(s). For the purpose of this section, and §§ 1139.60 and 1139.85, milk that was physically received at a pool plant from a handler pursuant to § 1139.9(d) or transferred in bulk from a pool plant operated by a cooperative association shall be considered as a receipt of producer milk at the transferee plant. The total of skim milk and butterfat from all sources shall be assigned in the following manner:

(a) Subtract from the total pounds in Class III the pounds classified as Class III pursuant to § 1139.41(b)(2).

(b) Subtract from the remaining pounds in each class the pounds in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to paragraph (d)(5) of this section as follows:

(1) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(2) From Class I milk, the remainder of such receipts;

(c) Subtract from the remaining pounds in Class I, the pounds in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(d) Subtract in the order specified below from the pounds remaining in each class, in series beginning with Class III, the pounds in each of the following:

(1) Other source milk in a form other than that of a fluid milk product;

(2) Receipts of fluid milk products for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(3) Receipts of fluid milk products from a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(4) Receipts of reconstituted milk in filled milk from unregulated supply plants; and

(5) Receipts of reconstituted milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted milk is assigned to Class I at the transferor plant;

(e) Subtract, in sequence beginning with Class III in the order specified below, from the pounds remaining in Class III and Class II;

(1) The pounds in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to paragraph (d)(4) of this section for which the handler requests Class III utilization, but not in excess of the pounds remaining in Class III and Class II.

(2) The pounds remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to paragraph (d)(4) of this section which are in excess of the pounds determined as follows:

(i) Multiply the pounds remaining in Class I by 1.25; and

(ii) Subtract from the result the sum of the pounds in producer milk, in receipts from pool plants of other handlers and in receipts in bulk from other order plants that were not subtracted pursuant to paragraph (d) (5) of this section.

(3) The pounds in receipts of fluid milk products in bulk from an other order plant(s), that were not subtracted pursuant to paragraph (d) (5) of this section, in excess of similar transfers or diversions to such plant but not in excess of the pounds remaining in Class III (and Class II), if the lowest classification under each order was requested by the operators of both plants.

(f) Subtract from the pounds remaining in each class, in series beginning with Class III, the pounds in inventory of bulk fluid milk products on hand at the beginning of the month;

(g) Add to the remaining pounds in Class III the pounds subtracted pursuant to paragraph (a) of this section;

(h) Subtract from the pounds remaining in each class, pro rata to the total pounds remaining in each class the pounds in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to paragraph (d) (4) or (e) (1) or (2) of this section. (For purposes of this subtraction at a pool plant(s) operated by a cooperative association, milk in fluid milk products transferred to the pool plant of another handler shall be added to the remaining pounds in each class pro rata to the market average utilization announced pursuant to § 1139.45(a));

(i) Subtract from the pounds remaining in each class, in the following order, the pounds in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to paragraphs (d) (5) or (e) (3) of this section. Such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class III and Class II milk combined:

(1) The estimated utilization in each class, by all handlers as announced for the month pursuant to § 1139.45(a); or

(2) The pounds remaining in each class at the pool plant(s) of the handler. (For purposes of such computation at a pool plant(s) of a cooperative association, the pounds remaining shall include any remainder of the quantity added pursuant to paragraph (h) of this section);

(j) Subtract from the pounds remaining in each class the pounds received from pool plants of other handlers according to the classification assigned pursuant to § 1139.42(a); and

(k) If the remaining pounds in all classes exceed the pounds contained in milk received from producers, from pool plants operated by cooperative associations, and from cooperative associations pursuant to § 1139.9(d), subtract such excess from the remaining pounds in series beginning with Class III. Any amount so subtracted shall be known as "overage."

§ 1139.45 Market Administrator's reports and announcements concerning classification.

(a) Whenever required for purposes of assigning receipts from other order plants pursuant to § 1139.44(i), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are assigned pursuant § 1139.44 pursuant to such report, and thereafter any change in such assignment required to correct errors disclosed in verification of such reports;

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were assigned by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report; and

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be pro rated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1139.50 Class prices.

(a) *Class I milk.* The Class I price shall be the basic formula price for the second preceding month plus $1.60.

(b) *Class II milk.* The Class II price shall be the basic formula price for the month plus 15 cents; and

(c) *Class III milk.* The Class III price shall be the basic formula price for the month.

§ 1139.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For such adjustment the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month).

§ 1139.52 Plant location adjustments for handlers.

(a) Milk received from producers and from cooperative association handlers pursuant to § 1139.9(d) at a pool plant or diverted to a nonpool plant located more than 40 miles by shortest highway distance as determined by the market administrator from the county courthouse in Las Vegas, Nev., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the price computed pursuant to § 1139.50(a) shall be reduced by 10 cents, if such plant is located more than 40 but not more than 50 miles from such courthouse, and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 50 miles, provided such resulting price if applied to milk received at a plant in California shall not be less than the price established by the California Bureau of Milk Stabilization.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers and cooperative associations pursuant to § 1139.9(d). Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

§ 1139.53 Announcement of class prices.

The market administrator shall publicly announce on or before the fifth day of each month:

(a) The Class I price for the following month; and

(b) The Class II and Class III prices for the preceding month.

§ 1139.54 Equivalent price.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available, the market administrator shall use a price determined by the Secretary to be equivalent to the price required.

UNIFORM PRICE

§ 1139.60 Handler's value of milk for computing uniform price.

The pool obligation of each pool handler and of each cooperative association handler pursuant to § 1139.9 (c) and (d) each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to §1139.44 by the applicable class prices (adjusted pursuant to § 1139.52);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class by the class prices plus or minus an amount computed as follows: multiply the pounds of overage by 0.035 and subtract such result from the pounds determined pursuant to § 1139.43(d) and multiply this result by the butterfat differential specified in § 1139.74 times 10.

(c) Add the amounts computed pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Multiply the difference between the Class III price for the preceding month and the Class I price for the current month by the hundredweight subtracted from Class I pursuant to § 1139.44(f); and

(2) Multiply the difference between the Class III price for the preceding month and the Class II price for the current month by the hundredweight subtracted from Class II milk pursuant to § 1139.44(f).

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class III price, with respect to other source milk subtracted from Class I pursuant to § 1139.44(d), except that for receipts of fluid milk products assigned to Class I pursuant to § 1139.44(d) (4) and (5) the Class I price shall be adjusted to the location of the transferor plant; and

(e) Add the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent weight was received (such adjusted price not to be less than the Class III price) with respect to the pounds subtracted from Class I pursuant to § 1139.44(h).

§ 1139.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1139.60 for all handlers who filed reports prescribed and who made the payments pursuant to §§ 1139.70 and 1139.73 for the preceding month;

(b) Add an amount equal to the total value of the location differentials computed pursuant to § 1139.75;

(c) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1139.60(e); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" per hundredweight of producer milk of 3.5 percent butterfat content delivered to plants at which no location adjustment is applicable.

§ 1139.62 Announcement of uniform price and butterfat differential.

On or before the 12th day each month the market administrator shall announce the uniform price for producer milk computed pursuant to § 1139.61, and the butterfat differential computed pursuant to § 1139.74, for the preceding month.

Payments for Milk

§ 1139.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1139.71, 1139.76, 1139.76a, 1139.77, and 1139.78 and out of which he shall make all payments pursuant to §§ 1139.72 and 1139.77 provided that any payments due a handler shall be offset by any payments due from such handler.

§ 1139.71 Payments to the producer-settlement fund.

On or before the 14th day after the end of the month, each handler shall pay the market administrator an amount equal to his net pool obligation computed pursuant to § 1139.60 less:

(a) The amount obtained from multiplying the weighted average price applicable at the location of plants from which other source milk is received (not to be less than the Class III price) by the hundredweight of other source milk for which a value is computed pursuant to § 1139.60(e); and

(b) Proper deductions and charges authorized in writing by producers from whom he received milk, except that total deductions and charges made pursuant to this section shall not be greater than the total value of the milk received from such producer.

§ 1139.72 Payments from the producer-settlement fund.

(a) On or before the 15th day after then end of the month, the market administrator shall make payment, subject to paragraph (b) of this section, to each producer (except member producers of a cooperative association), for milk received from such producer by handlers from whom the appropriate payments have been received pursuant to § 1139.71 (a) at the uniform price per hundredweight adjusted pursuant to §§ 1139.74, 1139.75, and 1139.86 less deductions and charges authorized in writing;

(b) In making payments to producers pursuant to paragraph (a) of this section, the market administrator shall pay on or before the day prior to the date specified in such paragraph, to each cooperative association for all producers who market their milk through the cooperative association and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraph (a) of this section;

(c) If the market administrator does not receive the full payment required of a handler pursuant to § 1139.71, he shall reduce uniformly per hundredweight his payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete the payments to producers on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler; and

(d) If the unobligated balance in the producer-settlement fund in insufficient to make all payments pursuant to this section except those due producers as described in paragraph (c) of this section, the market administrator shall reduce uniformly per hundredweight his payments to producers and shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the funds become available.

§ 1139.73 [Reserved]

§ 1139.74 Butterfat differential.

The uniform price pursuant to § 1139.61 shall be increased or decreased for each one-tenth of 1 percent which the butterfat content of a producer's milk is above or below 3.5 percent, respectively, by a butterfat differential rounded to the nearest one-tenth cent, computed at 0.125 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk creamery butter per pound at Chicago, as reported by the Department for the preceding month.

§ 1139.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price to be paid for milk received at a pool plant from producers, in bulk from pool plants operated by cooperative associations, and from cooperative association handlers pursuant to § 1139.9(d) may be reduced by the amount of the location adjustment at the rates set forth in § 1139.52, applicable at the location of the pool plant at which such milk was first received from producers and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of such nonpool plant, at the rates set forth in § 1139.52, but, if such nonpool plant is located in California, the resulting price shall not be less than the price established for such nonpool plant pursuant to the California Milk Stabilization Act.

(b) For purposes of computations pursuant to §§ 1139.71 and 1139.72, the uniform price shall be adjusted at the rates set forth in § 1139.52 applicable at the location of the nonpool plant from which the milk was received, but, if such nonpool plant is located in California, the resulting price shall not be less than the price established for such nonpool plant pursuant to the California Milk Stabilization Act.

§ 1139.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's

election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1139.30 and 1139.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1139.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or other order plant shall be classified as Class III (or Class II) milk if assigned to such class at the pool plant or an other order plant and be valued at the uniform price of the respective order if so assigned to Class I milk, except that reconstituted milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1139.61(e) and a credit in the amount specified in § 1139.71 with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(ii) If the operator of a partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1139.30 and 1139.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1139.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant;

(2) From this obligation there will be deducted the sum of:

(i) The gross payments made by such handler for Grade A milk received during the month from dairy farmers or from a cooperative association at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph; and

(ii) Any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant; or

(b) An amount computed as follows:

(1) Determine the pounds of fluid milk products distributed as Class I milk on routes in the marketing area;

(2) Deduct the pounds of fluid milk products received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted fluid milk products in fluid milk products disposed of on routes in the marketing area;

(4) From the value of such fluid milk products at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted fluid milk products specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such fluid milk products at the Class III price.

§ 1139.76a Payments by handler operating an exempt plant.

Each handler operating an exempt plant if subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(a) Determine the quantity of reconstituted skim milk in filled milk distributed on routes in the marketing area which was assigned to Class I at such other order plant. If reconstituted skim milk in filled milk is distributed from such plant on routes in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(b) Compute the value of the quantity assigned in paragraph (a) of this section to Class I disposition in this marketing area, at the Class I price under this part applicable at the location of the other order plant and subtract its value at the Class III price.

§ 1139.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1139.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1139.71, 1139.76, 1139.76a, 1139.77, and 1139.78 shall be increased 1 percent for each month or portion thereof beginning with the third day following the date by which such obligation was payable; *Provided*, That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

§ 1139.79 [Reserved]

§ 1139.80 Additional deductions from payments to producers or cooperative associations.

Proper deductions (as to purpose and amount) may be deducted from payments to producers or cooperative associations, if authorized in writing by such producer or cooperative association and approved by the market administrator. In ascertaining the propriety of the amount of such deductions, the market administrator shall be authorized to collect data and other evidence as necessary from handlers and others affected or involved, including a hauler pursuant to § 1139.32(b), to determine whether such deduction is appropriate for the goods received or services rendered as indicated by charges made for the same class of service by competing firms, and does not impair the statutory requirement that prices established under this part shall be applied uniformly to all handlers. If the data or facts necessary to make the above evaluation are not made available to the market administrator, any deductions involved shall be deemed to be inappropriate.

Administrative Assessment and Marketing Service Deduction

§ 1139.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including milk received from a cooperative association pursuant to § 1139.9 (c) or (d)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1139.44(d); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

§ 1139.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 1139.73, shall deduct 12 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before

the 14th day after the end of the month. Such money shall be used by the market administrator to provide marketing information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 16th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deduction was computed from each producer.

Copies of this notice may be procured from the Hearing Clerk, Room 112, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

Signed at Washington, D.C., on September 27, 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.72-16737 Filed 9-29-72;8:53 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1910]

[S-72-6]

SANITATION

Proposed Safety and Health Standards; Notice of Informal Hearing

On July 15, 1972, a document was published in the FEDERAL REGISTER (37 F.R. 13996) containing a proposed revision of the Sanitation Standards (29 CFR 1910.141) established pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

In accordance with the provisions of this proposal, numerous written comments were submitted as well as requests for a hearing with respect to the portions of the proposal relating to housekeeping (§ 1910.141(a)(3)), spitting § 1910.141 (a)(4)), waste disposal (§ 1910.141 (a)(5)), water supply (§ 1910.141(b)), toilet facilities (§ 1910.141(c)), showers, (§ 1910.141(d)(3)), and change rooms (§ 1910.141(e)).

As these requests concern such a substantial portion of the whole proposal, I am hereby giving notice of an informal hearing where presentations may be made with respect to any of the provisions of the proposed sanitation standards (subject to the exceptions discussed herein) before Hearing Examiner Salvatore J. Arrigo beginning at 10:30 a.m. on Wednesday, November 8, 1972, in Conference Room B of the Departmental Auditorium between 12th and 14th Streets on Constitution Avenue NW., Washington, D.C. 20210.

A request to hold the hearing in Gary, Ind., based on alleged hazards to which workers in that area may be exposed under that portion of the proposal relating to washing or bathing with nonpotable water (§ 1910.141(b)(2)) is rejected. The subject of the proposal is general and has no unique regional implications.

Paragraph (f) of the current § 1910.141 contains standards relating to retiring rooms for women. Since a separate hearing has been scheduled with respect to this subject (see page 15880 of the FEDERAL REGISTER of August 5, 1972), it will not be considered at this hearing. The subject of the height of toilet partitions has also been the subject of recent public proceeding and will therefore not be reopened at this time. (See page 11255 of the FEDERAL REGISTER of June 6, 1972.)

Persons desiring to appear at the hearing must file with the Office of Standards, Room 305, Railway Labor Building, 400 First Street NW., Washington, DC 20210, a notice of intention to appear no later than October 25, 1972. The notice must state the name and address of the person to appear and the capacity in which he will appear. The notice must also include an approximation of the amount of time needed for the presentation, a statement of the position to be taken and the evidence to be adduced.

Written statements received at the above address not later than November 3, 1972, from persons not wishing to attend the hearing will be made a part of the record.

Copies of the proposal appearing in the July 15, 1972, issue of the FEDERAL REGISTER may be obtained without charge by writing to the Office of Standards at the above address.

Beginning at 10 a.m. on November 8, 1972, the hearing examiner will hold a prehearing conference in order to establish the order and time for the presentation of statements and settle any other procedural matters relating to the proceedings. All documents that are intended to be submitted for the record at the hearing should be submitted in duplicate.

The hearing shall be conducted in accordance with the rules of procedure in 29 CFR 1911.15. The hearing examiner shall have discretion to keep the record open for a fixed period after the close of the hearing to permit any person who appeared to submit additional written material responsive to oral presentations made by others. Thereafter, he shall certify the record in accordance with 29 CFR 1911.17 and a decision will be made in accordance with 29 CFR 1911.18.

Signed at Washington, D.C., this 27th day of September 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-16738 Filed 9-29-72;8:53 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 72-190P]

AIWW, MILE 342, FLORIDA

Proposed Drawbridge Operation Regulations

The Coast Guard is considering revising the regulations for the Commercial Boulevard Bridge across the AIWW, Mile 342, Lauderdale-By-The-Sea to provide closed periods of no more than 15 minutes. The draw is presently required to open on signal. This change is being considered because of an increase in vehicular traffic.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments, to the Commander (oan), Seventh Coast Guard District, Room 1018, Federal Building, 51 Southwest First Avenue, Miami, FL 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before November 1, 1972, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by adding a new § 117.445 immediately after § 117.443 to read as follows:

§ 117.445 AIWW, Mile 342, Lauderdale-By-The-Sea.

(a) The draw shall open on signal except that from November 1 through May 15 from 12 noon to 6 p.m., Monday through Saturday, and from 9 a.m. to 6 p.m. on Sunday the draw need not open for a period of 15 minutes after each closure and except as provided in paragraph (b) of this section. The owner of or agency controlling the bridge will display on both sides a time clock acceptable to the District Commander which will indicate to approaching vessels the number of minutes remaining before the draw shall open for the passage of vessels.

(b) The draw shall open at any time for the passage of public vessels of the United States, tugs with tows, regularly scheduled cruise boats and vessels in distress. The opening signal from these vessels shall be four blasts of a whistle, horn, or other sound-producing device or by shouting.

(Sec. 5, 28 Stat. 362, as amended, sec. 6 (g) (2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g) (2); 49 CFR 1.46(c) (5), 33 CFR 1.05-1 (c) (4))

Dated: September 21, 1972.

J. D. McCann,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.72-16700 Filed 9-29-72;8:49 am]

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-CE-24]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Parsons, Kans.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106. All communications received within 30 days after publication of this notice in the Federal Register will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106.

the requirements of the U.S. Standard

Alteration of the Parsons, Kans., transition area is necessary in order to update the terminal airspace associated with the Parsons (Tri-City) Airport and so that the transition area conforms to for Terminal Instrument Procedures (TERPS).

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

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

PARSONS, KANS.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Tri-Ctly Airport (latitude 37°-19'52" N., longitude 95°30'32" W.); and within 3 miles each side of the 173° bearing from the Tri-City RBN extending from the 6.5-mile radius to 8.5 miles south of the RBN, and within 3 miles each side of the 008° bearing from the Tri-City RBN extending from the 6.5-mile radius to 8.5 miles north of the RBN, and that airspace extending upward from 1,200 feet above the surface 9.5 miles west of and 4.5 miles east of the 008° bearing of the Tri-City RBN extending from the airport to 18.5 miles north, excluding the Chanute, Kans. 700-foot transition area.

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

Issued in Kansas City, Mo., on September 11, 1972.

John M. Cyrocki,
Director, Central Region.

[FR Doc.72-16677 Filed 9-29-72;8:48 am]

[14 CFR Part 71]

[Airspace Docket No. 72-NW-19]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering amendments to Part 71 of the Federal Aviation Regulations that would alter the description of the Pocatello, Idaho Control zone.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Operations, Procedures and Airspace Branch, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108. All communications received within 30 days after publication of this notice in the Federal Register will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108.

A LOC/DME (BC) Runway 3 approach has been proposed for the Pocatello Municipal Airport. In order to provide controlled airspace, the control zone needs to be altered to contain IFR arrival operations while between the surface and 1,000 feet above the surface.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.171 (37 F.R. 2056) the description of the Pocatello, Idaho Control Zone is amended as follows:

To the existing description add: "* * * that airspace within 5 miles each side of the Pocatello VORTAC 225° radial extending from the 5-mile radius to 10½ miles southwest of the VORTAC; and that airspace within a 1-mile radius of the American Falls Airport (latitude 42°48'00" N., longitude 112°49'30" W.), American Falls, Idaho."

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Seattle, Wash., on September 21, 1972.

George R. La Caille,
Acting Director, Northwest Region.

[FR Doc.72-16678 Filed 9-29-72;8:48 am]

[14 CFR Part 71]

[Airspace Docket No. 72-SO-24]

TRANSITION AREA

Withdrawal of Proposed Alteration

On March 31, 1972, a notice of proposed rule making was published in the Federal Register (37 F.R. 6596), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Chattanooga, Tenn., transition area.

Subsequent to publication of the notice, it was determined that it would be impossible to establish an instrument approach procedure to Hardwick Field, Cleveland, Tenn., utilizing the Chattanooga VORTAC, and action is required to withdraw the proposal which was to provide the required controlled airspace protection.

In consideration of the foregoing, notice is hereby given that the proposed amendment contained in Airspace Docket No. 72-SO-24 is withdrawn.

This withdrawal is made under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on September 20, 1972.

Phillip M. Swatek,
Director, Southern Region.

[FR Doc.72-16679 Filed 9-29-72;8:48 am]

[14 CFR Part 91]

[Docket No. 12269; Notice 72-26]

VOR EQUIPMENT CHECK FOR IFR OPERATIONS

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 91 of the Federal Aviation Regulations to permit the use of VOR maintenance test signals radiated by FAA certificated and appropriately rated radio repair stations as a means of complying with § 91.25.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20591. All communications received on or before December 29, 1972, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments in the rules docket for examination by interested persons.

Section 91.25 of the Federal Aviation Regulations requires that persons who operate civil aircraft under IFR using the VOR system of radio navigation must have the aircraft VOR equipment: (1) Maintained, checked, and inspected under an approved procedure, or (2) operationally checked within the preceding 10 hours of flight time and within 10 days before flight, and found to be within the limits of permissible indicated bearing error specified in that section.

A method of performing the required check is by using an FAA operated or approved VOR test signal at the airport of intended departure. The term "FAA approved," as used in the past, was applied to test signals radiated by a relatively few non-Federal facilities with FAA approval, and on frequencies assigned by the Federal Communications Commission (FCC). However, these private facilities have been decommissioned or the responsibility for their operation assumed by the FAA. The operation of non-Federal radiated test signals is now regulated by the FCC. The FCC licenses test signals in two categories: (1) Operational test facilities which require an identification signal, flight test, and monitoring; and (2) maintenance test facilities which are exempted from the above requirements.

Air carriers and other operators who have an FAA-approved inspection and maintenance program for the aircraft VOR equipment have no difficulty in complying with § 91.25. However, a problem exists with general aviation operators who do not have an approved inspection and maintenance program and who operate under IFR from airports at which there are no FAA operated or approved test signals or FAA designated airport checkpoints due to the inability to receive VOR ground stations on the ground because of distance, terrain effect, and unusable radials. Such conditions also preclude comparison of bearing indications between dual VOR aircraft installations. Airborne checks using ground checkpoints designated by the Administrator may be used but such checks require VFR flight conditions in order to identify ground checkpoints. Thus, operators who fly IFR infrequently from airports without a VOR test signal or airport checkpoint encounter problems in complying with § 91.25 of the Federal Aviation Regulations prior to IFR flight. This is particularly true if the 10-hour and 10-day periods have been exceeded.

FAA VOR test signals are usually located at major airports and are not readily available to general aviation operators who operate from small remote airports. However, many of these small airports have radio repair stations that are FAA certificated and appropriately rated to perform VOR receiver maintenance.

Appendix A to Part 145 of the Federal Aviation Regulations, paragraph (d), prescribes the equipment and materials an applicant must have to efficiently perform the job functions appropriate to the ratings sought. An applicant for a radio rating must have the required equipment and materials on his premises or, for certain job functions, available through contract with an outside agency having such equipment and materials. The equipment and materials must be of such type that the work they are used for can be done competently and efficiently. The station must test all inspection and test equipment at regular intervals to insure correct calibration.

Applicants for radio repair station ratings to maintain and alter VOR equipment must demonstrate during the certification process that the test equipment to be used is adequate to test and calibrate VOR receivers to approved performance standards. Therefore, the FAA believes the equipment accuracy should be considered adequate to perform VOR equipment checks in accordance with the provisions of § 91.25 of the Federal Aviation Regulations. The FCC advised that as of February 25, 1971, there were 585 radio repair stations licensed to radiate maintenance test signals, but no stations licensed in the operational signal category. The FAA believes that those stations should be considered as acceptable sources of test signals since the equipment used has been shown to be adequate for airborne VOR calibration and testing. Such acceptance would make available a considerable number of approved VOR test signal sources for use by general aviation operators as a means of compliance with the subject regulation.

The FAA therefore proposes that VOR test signals radiated by a certificated and appropriately rated radio repair station be considered acceptable as a means of compliance with § 91.25(a). Only qualified personnel of the repair station will perform the required VOR equipment check and make the required entry in the aircraft log or other permanent record. In the opinion of the FAA, this method will provide a level of safety equivalent to that prescribed by the present regulations. The FAA notes that such test signals are not used as a VOR navigational signal, and that they are licensed to radiate only on a discrete frequency. Also, they have no location identification, are not monitored as are FAA operated test signals, and are not flight checked. However, a qualified technician is required for their operation. This method of compliance with § 91.25 is proposed only as a means of relieving a problem that now exists for many general aviation operators. It will provide a convenient means of compliance with § 91.25 of the Federal Aviation Regulations and greatly enhance safety in air commerce.

In consideration of the foregoing, it is proposed to amend Part 91 of the Federal Aviation Regulations as follows:

1. By amending subparagraph (1) of paragraph (b) of § 91.25 to read as follows:

§ 91.25 VOR equipment check for IFR operations.

* * * * *

(b) * * *

(1) Use, at the airport of intended departure, an FAA operated or approved test signal or a test signal radiated by a certificated and appropriately rated radio repair station or, outside the United States, a test signal operated or approved by appropriate authority, to check the VOR equipment (the maximum permissible indicated bearing error is plus or minus four degrees);

* * * * *

This amendment is proposed under the authority of sections 313(a), 601, 603, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, and 1427), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

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

C. R. MELUGIN, JR.,
Acting Director,
Flight Standards Service.

[FR Doc.72-16680 Filed 9-29-72;8:48 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 72-22, Notice 1]

LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

Notice of Proposed Rule Making

This notice proposes an amendment to 49 CFR 571.108 and 571.108a, Motor Vehicle Safety Standards Nos. 108 and 108a, *Lamps Reflective Devices, and Associated Equipment,* that would require mobile structure trailers (commonly known as mobile homes) to be equipped

only with tail lamps, stop lamps, and turn signal lamps.

Since January 1, 1968, mobile homes towed on their own wheels have been categorized as "trailers" by the Federal motor vehicle safety standards, and required to conform to applicable Federal motor vehicle lighting specifications. Pursuant thereto, mobile homes in transit have been equipped with the full complement of trailer lighting equipment required by Standard No. 108: Tail lamps, stop lamps, license plate lamps, reflex reflectors, side marker lamps and reflectors, identification lamps, clearance lamps, and turn signal lamps.

Because of the limited time a mobile home is on the public ways, manufacturers have been advised that compliance may be achieved by use of a lighting harness removable upon completion of transit. The Trailer Coach Association alleges that installation and removal expense of the wiring harness adds needless cost to "the only low cost housing available to the majority of people today." It has petitioned for an amendment of the lighting requirements such that reflex reflectors, license plate lamps, identification lamps, clearance lamps, and side marker lamps would not be required on mobile structure trailers "when moved under the authority of State issued permits whose regulations specifically prohibit movement during hours of darkness."

The NHTSA has decided that Trailer Coach Association's petition merits initiation of rule making. Available information indicates that a mobile structure trailer, defined in 49 CFR 571.3 as "a trailer that has a roof and walls, is at least 10 feet wide, and can be used off road for dwelling or commercial purposes," cannot move over the public roads of any State without a permit containing the condition that the trailer shall not be moved during hours of darkness. In many jurisdictions, movement is also prohibited during inclement weather or under other conditions of reduced visibility. The safety benefit of requiring the full complement of trailer lighting equipment appears negligible under these circumstances, and unnecessary for the safety of the motoring public. Accordingly, the NHTSA has tentatively determined that mobile structure trailers need only be equipped with stop lamps, tail lamps, and turn signal lamps.

In consideration of the foregoing, it is proposed that 49 CFR 571.108 and 49 CFR 571.108a be revised by adding a new section S4.1.1.____ to each, to read as follows: "Mobile structure trailers need be equipped only with stop lamps, tail lamps, and turn signal lamps."

Proposed effective dates: Standard No. 108, Standard No. 108a, January 1, 1973.

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on November 30, 1972, will be considered, and will be available for examination in the docket at the above address 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 rule making. 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 material.

This notice is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1407) and the delegations of authority at 49 CFR 1.51 and 49 CFR 501.8.

Issued on September 25, 1972.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.72-16702 Filed 9-29-72;8:51 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 207]

[Docket No. 24271; EDR-220A]

FREQUENCY AND REGULARITY OF OFF-ROUTE CHARTERS

Proposed Liberalization of Restrictions; Termination

On March 7, 1972, the Board issued a notice of proposed rule making (EDR-220, 37 F.R. 5133) proposing to amend Part 207 of the Economic Regulations (14 CFR Part 207) to liberalize the restrictions imposed by § 207.7a on the frequency and regularity of off-route charter trips performed by scheduled carriers. Specifically, it was proposed to exclude from said restrictions the first 10 off-route charter trips operated in a calendar year by a scheduled carrier in each direction between any pair of points. The proposed rule was intended to give scheduled carriers an additional measure of operational flexibility to perform off-route charters in circumstances where their applications for relief from present restrictions on the frequency and regularity of such flights would ordinarily be granted by the Board.

In response to the notice, 15 comments were filed,[1] consisting of four by scheduled combination trunkline carriers,[2] four by local service carriers,[3] two by scheduled all-cargo carriers,[4] two by supplemental air carriers,[5] one each by Pan American World Airways, Inc. (Pan American) and LTV Jet Fleet Corp. (Jet Fleet), and one by the National Air Carrier Association, Inc. (NACA) on behalf of a number of its member carriers. Most of the combination trunkline carriers, Pan American, Ozark, and Seaboard support the proposed rule, although Braniff and Western request several modifications to the specific provisions therein. Airwest, Frontier, and Southern object to the proposed rule insofar as it would permit trunkline carriers to increase their frequency of off-route charter services between points served by subsidized local service airlines. Eastern, NACA, Jet Fleet, Capitol, and JFS oppose the proposed rule.

The comments opposing the proposed liberalization of the Part 207 frequency and regularity restrictions argue: (1) The proposal would create a major gap in the protection afforded to supplemental carriers by the § 207.7a restrictions, and would do so in the context of the scheduled carriers' present "on-route" charter authority which has been expanded both by new route awards and by the broad definition of "on-route" charter to which the Board adheres,[6] as well as by the sharp increases in the scheduled carriers' overall charter operations; (2) the proposal would not be a mere codification of an existing administrative practice, as the notice suggests, since the proposed new off-route authorization is of much wider scope than the "small scale" operations of a "limited scope" for which the Board has in the past granted waivers;[7]

[1] Including late comments, filed by Braniff Airways, Inc. (Braniff), Hughes Airwest, Inc. (Airwest) and Frontier Airlines, Inc. (Frontier), which have been accepted.

[2] American Airlines, Inc. (American), Braniff, Eastern Air Lines, Inc. (Eastern), Western Air Lines, Inc. (Western).

[3] Airwest, Frontier, Ozark Air Lines, Inc. (Ozark), Southern Airways, Inc. (Southern).

[4] The Flying Tiger Line Inc. (FTL), Seaboard World Airlines, Inc. (Seaboard).

[5] Capitol International Airways, Inc. (Capitol), Johnson Flying Service, Inc. (JFS).

[6] An "on-route" charter is a charter performed by a scheduled carrier between any points which the carrier is authorized to serve, and, as such, is not subject to the Part 207 limitations on volume, frequency and regularity. Under this definition it is possible for a carrier to perform on-route charters between points to which it does not provide regularly scheduled service, provided that the carrier's certificate authorizes service between such points through a common junction point. In two separate petitions for rule making, the supplemental carriers have urged the Board to narrow substantially the "on-route" definition so as to preclude scheduled carriers from providing charter service (1) between city pairs where they do not have nonstop scheduled authority, and (2) between city pairs wherein their scheduled service is limited by a long-haul beyond market restriction. The Board denied these requests because in neither instance were the petitioners able to demonstrate a present need, in terms of a factual showing of harm to their operations, to amend the Part 207 definition of "on-route."

[7] For example, if each of the domestic trunklines and Pan American fully utilized the proposed authority, a total of more than 300 additional off-route charter trips could be performed in each of the transatlantic, transpacific, and Hawaiian markets alone.

(3) in practical market terms, the instant proposal would enable trunkline carriers to perform a substantial number of single entity incentive charter programs for which they now lack authorization, and thus deprive supplemental carriers of a large percentage of that market.

Alleging that the proposed rule would authorize an "enormous expansion" of operating rights, domestic as well as worldwide, for the route carriers, Capitol further argues that the 10-trip exclusion would result in diversion to such carriers of a substantial amount of the charter business presently being performed by the supplemental carriers in prime charter markets.

Eastern adds that the protection afforded route carriers by the Part 207 restrictions—i.e., to protect route operators from undue competition in their certificated markets—has already been diluted by the certification of the supplemental carriers, and that the Board's instant proposal would compound the problem by permitting "foreign" scheduled carriers to use their excess capacity to a greater degree in markets where they hold no route authority.

Various modifications to the proposed rule have also been requested. Those within the scope of the rule making are as follows:[8]

1. NACA urges that the 10-trip exclusion be made subject to a first-refusal restriction in favor of supplemental carriers which hold operating authority in markets where off-route charters are proposed to be performed.

2. FTL requests modification of the proposed liberalizing amendment so as to exclude from its application off-route charters performed by an all-cargo carrier outside of its area of operations as set forth in § 207.6

3. Frontier and Southern request the Board to exclude from the coverage of the 10-trip exclusion: (1) Origination and destination points which are designated as "small" or "nonhub" cities in the most recent edition of "Airport Activity Statistics" and are served by local service carriers, and (2) off-route charters which would constitute on-route charters for local service carriers.

4. Air West would require trunkline carriers to obtain local service carrier concurrence in off-route charter flights authorized by the instant proposal which the trunkline carrier proposed to operate over segments served by a local service carrier.

5. Braniff and Western urge further liberalization of the proposed rule so as to make the 10-trip exclusion applicable only to those off-route charter trips which would otherwise trigger operation of the Part 207 frequency and regularity restrictions.[9]

Western also suggests establishment of a reporting system under which carriers availing themselves of unrestricted off-route charters would be required to file with the Board, and all carriers, a notice that it is availing itself of "X" number of flights under the proposed rule, and that it has "Y" number of unrestricted flights remaining at its disposal.

Upon consideration of the foregoing, we have determined to withdraw the proposed amendment to Part 207. In our judgment, the filed comments have raised substantial doubts as to the advisability of adopting the proposed rule, with or without modification.

Accordingly, the Board hereby terminates the rule making proceedings in Docket 24271.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-16722 Filed 9-29-72;8:53 am]

[8] Proposals outside the scope of the rule making have been advanced by Seaboard and Capitol; these, respectively, are: (1) To liberalize the 2 percent volume restriction with respect to off-route cargo charters performed by an all-cargo carrier outside of its area of operations; (2) to authorize supplemental carriers to perform one-stop inclusive tour charters and a "limited number of regularly scheduled flights between any pair of points which flights could be chartered to an authorized indirect air carrier, travel agent, or tour operator."

[9] Braniff would revise the proposed rule so as to apply the 10-flight exception to a specific group of 10 flights—i.e., to one period of 10 consecutive off-route charter trips which an air carrier performs, during any calendar year, in each direction between any pair of points—rather than the first 10 flights. It also requests modification of rule 7a(b) so as to allow at least one round trip off-route charter flight in the same direction on the same day of two or more successive calendar weeks.

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 19555]

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Proposed Implementation; Extension of Time for Filing Comments

Order. 1. A notice of proposed rule making in this proceeding was released on August 1, 1972. Interested persons were invited to file comments by September 29 and reply comments by October 30. A petition was filed on September 18, 1972, by the American Radio Relay League, Inc., asking that the time for filing comments be extended to October 31 and that the time for filing reply comments be extended to December 8.

2. In support of its request, the League states that the proposed rules may have a substantial impact upon amateur radio operators; that a study of the legislative history of the National Environmental Policy Act is required before the League can file its comments; that the next scheduled meeting of the League's Executive Committee is on September 30, 1972, 1 day after comments are due; and that the additional time is needed for study of the legislative history and for obtaining guidance from the Executive Committee following its meeting.

3. The proposed rules involve matters of considerable importance to the communications industry as a whole. They warrant extensive study, including the consideration of alternative approaches, and we think that an extension is desirable in the interest of obtaining thorough and well-considered comment on the proposal. However, it is also important that these proceedings to adopt procedural rules to implement the environmental statute not be unduly delayed. Barring extraordinary circumstances, therefore, no request for additional extensions of time in this proceeding will be granted.

4. In view of the foregoing: *It is ordered,* That the time for filing comments in this proceeding is extended to October 31, 1972, and that the time for filing reply comments is extended to December 8, 1972.

Adopted: September 22, 1972.

Released: September 25, 1972.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] JOHN W. PETTIT,
General Counsel.

[FR Doc.72-16721 Filed 9-29-72;8:52 am]

[47 CFR Parts 73, 76]

[Docket No. 19513]

SPONSORSHIP IDENTIFICATION RULES

Order Extending Time for Filing Reply Comments

In the matter of amendment of the Commission's "Sponsorship identification" rules (§§ 73.119, 73.289, 73.654, 73.789, and 76.211), Docket No. 19513.

1. The notice of proposed rule making in the above-entitled proceeding was adopted May 17, 1972, and published in the FEDERAL REGISTER on May 25, 1972, 37 F.R. 10583. The date for filing comments has expired. The date for filing reply comments is presently September 22, 1972.

2. On September 21, 1972, Friends of the Earth (FOE) filed a request for an extension of time to and including September 29, 1972, for the filing of reply comments. FOE states that one of its counsel and the student researcher are no longer based in Washington and have been living on the west coast since shortly after the comments were filed, therefore the mechanical task of coordinating the preparation of the reply comments via telephone and mails has resulted in unforeseen delays in preparing reply comments.

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 reply comments in the above docket is extended to and including September 29, 1972.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: September 22, 1972.

Released: September 26, 1972.

[SEAL] HAROLD L. KASSENS,
Acting Chief, Broadcast Bureau.

[FR Doc.72-16720 Filed 9-29-72;8:51 am]

[47 CFR Parts 89, 91, 93]

[Docket No. 19545]

AIR-TO-GROUND COMMUNICATION

Utilization of Land Mobile Frequencies; Order Extending Time for Filing Comments

In the matter of amendment of Parts 89, 91, and 93 of the Commission's rules concerning use of land mobile frequencies aboard aircraft, Docket No. 19545.

1. Aeronautical Radio, Inc. (ARINC) has requested an extension of time from September 25, 1972, to October 13, 1972, for the filing of comments in the above-captioned proceeding.

2. In support of its request, ARINC states that it is in the process of coordinating an industry position on the questions raised in Docket No. 19545 and that this cannot be completed within the comment period. ARINC states that the extension will permit it to formulate a comprehensive industry position and present meaningful comments.

3. It appears that the public interest would be served by granting the additional 18 days asked to afford the petitioner and other interested parties a full opportunity for the preparation and presentation of their views in this proceeding.

4. *Accordingly, it is ordered,* Pursuant to § 0.331(b)(4) of the Commission's rules, that the time for filing comments in the above-captioned proceeding is extended from September 25, 1972, to October 13, 1972, and for reply comments from October 11, 1972, to October 30, 1972.

Adopted: September 25, 1972.

Released: September 26, 1972.

[SEAL] IRVING BROWNSTEIN,
Acting Chief, Safety and Special Radio Services Bureau.

[FR Doc.72-16719 Filed 9-29-72;8:51 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 230]

[Release Nos. 33-5307, 34-9786]

DEFINITION OF "BROKERS' TRANSACTIONS"

Notice of Proposed Rule Making

The Securities and Exchange Commission announced today it has proposed for comment an amendment to subparagraph (g)(2) of Rule 144 (17 CFR 230.144) under the Securities Act of 1933 (Act), and has adopted amendments to subparagraph (h) of that rule effective November 1, 1972.[1] Rule 144, which relates to the resale of securities acquired directly or indirectly in transactions not involving any public offerings and securities held by persons in a control relationship with an issuer, was adopted on January 11, 1972, effective April 15, 1972 (Securities Act of 1933 Release No. 5223) (37 F.R. 596).

The proposed amendment to Rule 144 would revise subparagraph (g)(2) of the rule to permit brokers to continue their quotations in an interdealer quotation service while selling securities pursuant to the rule subject to certain conditions. Also, subparagraph (h) of Rule 144 has been amended to require transmittal of the required notice of proposed sale on Form 144 (17 CFR 239.144) to the principal stock exchange on which the securities to be sold are listed for trading as well as to the Commission.[1]

The Commission also has adopted clarifying amendments to Forms 10-K (17 CFR 249.310) and 10-Q (17 CFR 249.308a) with respect to the existing requirement that a statement by the issuer be made in reports on those forms to the effect that all reports required by section 13 or 15(d) of the Exchange Act have been filed.[1]

PROPOSED AMENDMENT TO SUBPARAGRAPH (G)(2) OF RULE 144—BROKERS' TRANSACTIONS

Subparagraph (g)(2) of Rule 144 presently prohibits the solicitation of customers' orders to buy the securities with the proviso that "this shall not preclude inquiries by the broker [of] other brokers or dealers who have indicated an interest in the securities within the preceding 60 day * * *"

In a previously proposed version of Rule 144 (Securities Act of 1933 Release No. 5087) (35 F.R. 15447) and in a predecessor group of proposals, the so-called "160 series" (Securities Act of 1933 Release No. 4997) (34 F.R. 14228) the Commission indicated that it was considering a provision permitting the broker to continue to insert quotations in an interdealer quotation service on a class of securities to be sold by the broker pursuant to that rule.[2] The Commission, however, did not include such a provision when it announced it was considering a revised version of Rule 144 or in adopting Rule 144 because of the questions of conflict with the antimanipulative provisions of Rule 10b-6 (17 CFR 240.101) under the Securities Exchange Act of 1934.[3]

The Commission having observed the operation of Rule 144, now believes that prohibiting brokers from continuing to enter quotations in an interdealer quotation service on securities he wants to sell pursuant to Rule 144, may operate to limit the liquidity of the investments both of persons desiring to resell securities pursuant to Rule 144 through the broker and of other persons if the broker is not permitted to remain in the sheets in situations where a distribution may not be taking place and the purposes underlying the antimanipulative provisions of Rule 10b-6 do not apply. Moreover, the Commission also has observed that the absence of standards applicable to dealers who receive brokerage orders to sell securities pursuant to Rule 144 in which they are making markets may be resulting in competitive disadvantages for dealers who, in good faith, are attempting to comply with the provisions of subparagraph (g)(2) of Rule 144.

Thus, the Commission has been giving careful consideration of amending subparagraph (g)(2) of Rule 144 to allow brokers selling securities pursuant to Rule 144 to continue to insert quotations in an interdealer quotation service under certain circumstances. However, inasmuch as section 4(4) of the Act and Rule 144 prohibit a broker from soliciting buy orders, the problem remains how to provide assurance that entering such quotations will not be a solicitation.

The Commission's proposed amendment to subparagraph (g)(2) of Rule 144 would permit a broker to continue to insert bid and offer quotations for a security in an interdealer quotation service provided that the quotations are incident to the maintenance of a bona fide interdealer market for the broker's own account and the broker has published such bona fide bid and offer quotations on at least 15 out of the last 20 trading days and 4 out of the last 5 trading days before receipt of the order. One question that arises concerning this proposal is what constitutes a bona fide interdealer market and bona fide bid and offer quotations. Accordingly, the Commission is considering an additional condition to the proposed amendment to subparagraph (g)(2) of Rule 144. This condition would provide limitations on the amount of securities that could be sold pursuant to Rule 144 by a market maker acting as agent. It has been suggested that such limitation be a percentage of the dealer's average daily trading volume over a prior period of time. This is designed to assure that the predominant percentage of the market maker's transactions on a given day in the particular security will be unrelated to Rule 144 transactions. The Commission invites comments from interested persons on the proposal as well as the foregoing alternative.

The Commission believes that the amendment to subparagraph (g)(2) of Rule 144 would relieve restrictions in the public interest without sacrificing the protection of investors and thus an extensive period of comment need not be provided pursuant to the Administrative Procedure Act. Moreover, as discussed

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[1] Filed as a separate document, see p. —.

[2] A similar proposal had been made in the report of the Commission's Disclosure Policy Study. Disclosure to Investors, A Reappraisal of Federal Administrative Policies Under the 1933 and 1934 acts, April 1969 ("Wheat Report"), 197.

[3] Securities Act of 1933 Release No. 5186 (Sept. 10, 1971) note 7 (36 F.R. 18585); and Securities Act of 1933 Release No. 5223 (Jan. 11, 1972), note 6.

above, similar proposals have been published for comment. Accordingly, the comment period will expire October 15, 1972.

Pursuant to the Securities Act of 1933, particularly sections 2(11), 4(1), 4(2), 4(4), and 19(a) thereof, subparagraph (g)(2) of § 230.144 of Chapter II of Title 17 of the Code of Federal Regulations would be amended as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(g) *Brokers' transactions.* The term "brokers' transaction" in section 4(4) of the Act shall for the purposes of this rule be deemed to include transactions by a broker in which such broker—

* * * * *

(2) Neither solicits nor arranges for the solicitation of customers' orders to buy the securities in anticipation of or in connection with the transaction; provided, that the foregoing shall not preclude inquiries by the broker or other brokers or dealers who have indicated an interest in the securities within the preceding 60 days, nor shall it preclude the publication by the broker of bid and offer quotations for the security in an interdealer quotation service: *Provided,* (i) That such quotations are incident to the maintenance of a bona fide interdealer market for the security for the broker's own account; and (ii) the broker has published bona fide bid and offer quotations for the security in an interdealer quotation service on at least 15 of the last 20 days and on at least 4 out of the last 5 trading days before receipt of the order; and

* * * * *

All interested persons are invited to submit their views and comments on the proposed amendment to subparagraph (g)(2) of Rule 144 in writing (three copies) to Alan B. Levenson, Director, Division of Corporation Finance on or before October 15, 1972. All communications with respect to the proposed amendments should refer to File No. S7–454. All such comments will be considered available for public inspection.

(Secs. 2(11), 4(1), 4(2), 4(4), 19(a), 48 Stat. 74, 77, 85, sec. 209, 48 Stat. 908, secs. 1–4, 68 Stat. 683, sec. 12, 78 Stat. 508, 15 U.S.C. 77(b)(11), 77(d) (2), 77(d) (4), 77(S)(a))

By the Commission.

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

SEPTEMBER 26, 1972.

[FR Doc.72–16800 Filed 9–29–72;8:54 am]

SELECTIVE SERVICE SYSTEM

[32 CFR Part 1631]

INDUCTIONS

Action by Local Board Upon Receipt of Allocation

Pursuant to the Military Selective Service Act, as amended (50 U.S. Code App., sections 451 et seq.), and Executive Order No. 11623 dated October 12, 1971, the Director of Selective Service hereby gives public notice that consideration is being given to the following proposed amendment to the Selective Service Regulations constituting a portion of Chapter XVI of the Code of Federal Regulations. These regulations implement the Military Selective Service Act, as amended (50 U.S. Code App., sections 451 et seq.).

All persons who desire to submit views to the Director on the proposal should prepare them in writing and mail them to the General Counsel, National Headquarters, Selective Service System, 1724 F Street NW., Washington, DC 20435, within 30 days following the publication of this notice in the FEDERAL REGISTER.

The proposed amendment follows:

Section 1631.6(c)(2)(ii) is amended to read as follows:

§ 1631.6 Action by local board upon receipt of allocation.

* * * * *

(c) * * *

(2) * * *

(ii) *1971 and later years.* In the calendar year 1971 and each calendar year thereafter, nonvolunteers in Class 1–A, Class 1–A–O, Class 1–O, or Class 1–H who prior to January of each such calendar year have attained the age of 19 years but not of 20 years and nonvolunteers who prior to January 1 of each such calendar year have attained the age of 19 but not of 26 years, who do not qualify for the Extended Priority Selection Group as defined in subparagraph (1) of this paragraph or a lower priority selection group as defined in subparagraph (3) of this paragraph, and who during that year are classified into Class 1–A, Class 1–A–O, Class 1–O, or Class 1–H.

* * * * *

BYRON V. PEPITONE, *Acting Director.*

SEPTEMBER 27, 1972.

[FR Doc.72–16713 Filed 9–29–72;8:50 am]

[32 CFR Part 1661]

SELECTIVE SERVICE REGULATIONS

Classification of Conscientious Objectors

Pursuant to the Military Selective Service Act, as amended (50 U.S. Code App., sections 451 et seq.), and Executive Order No. 11623 dated October 12, 1971, the Director of Selective Service hereby gives public notice that consideration is being given to the following proposed amendment to the Selective Service Regulations constituting a portion of Chapter XVI of the Code of Federal Regulations. These regulations implement the Military Selective Service Act, as amended (50 U.S. Code App., sections 451 et seq.).

All persons who desire to submit views to the Director on the proposal should prepare them in writing and mail them to the General Counsel, National Headquarters, Selective Service System, 1724 F Street NW., Washington, DC 20435, within 30 days following the publication of this notice in the FEDERAL REGISTER.

The proposed amendment follows:

Part 1661 is added to read as follows:

PART 1661—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

§ 1661.1 Purpose; definitions.

(a) The provisions of this part govern the consideration of a claim by a registrant for classification in Class 1–A–O (§ 1622.11 of this chapter) or Class 1–O (§ 1622.14 of this chapter).

(b) The definitions in this paragraph shall apply in the interpretation of the provisions of this part:

(1) *Crystallization of a registrant's beliefs.* The ripening of vague and ill-defined feelings concerning war into a conscious resolve affirmatively to oppose participation in war in any form.

(2) *Noncombatant service.* Service in any unit of the Armed Forces which is unarmed at all times; any other military assignment not requiring the bearing of arms or the use of arms in combat or training in the use of arms.

(3) *Noncombatant training.* Any training which is not concerned with the study, use or handling of arms or other implements of warfare designed to destroy human life.

(4) *Prima facie claim.* A nonfrivolous claim, which, if true, would be sufficient on its face to warrant granting classification in Class 1–A–O or Class 1–O.

§ 1661.2 Basis for classification in Class 1–A–O.

(a) A registrant must be conscientiously opposed to participation in war in any form and conscientiously opposed to combatant training and service in the Armed Forces, but at the same time he must demonstrate a willingness to perform noncombatant training and service.

(b) A registrant's objection must be founded on religious training and belief; it may be based on strictly religious beliefs, or on personal beliefs that are purely ethical or moral in source or content and occupy in the life of a registrant a place parallel to that filled by belief in a supreme being for those holding more traditionally religious views.

(c) A registrant's objection must be sincere.

§ 1661.3 Basis for classification in Class 1–O.

(a) A registrant must be conscientiously opposed to participation in war in any form and conscientiously opposed to participation in both combatant and noncombatant training and service in the Armed Forces.

(b) A registrant's objection must be founded on religious training and belief which may include a moral belief; it may be based on strictly religious beliefs, or on personal beliefs that are purely ethical or moral in source or content and occupy in the life of a registrant a place

parallel to that filled by belief in a supreme being for those holding more traditionally religious views.

(c) A registrant's objection must be sincere.

§ 1661.4 Exclusion from Class 1–A–O and Class 1–O.

(a) Registrants who assert beliefs which are of a religious, moral, or ethical nature, but who are not found to be sincere in their assertions.

(b) Registrants whose stated beliefs and objection to war do not rest at all upon religious, moral, ethical, or religious principle, but instead rest solely upon considerations of policy, pragmatism, expediency or their own self-interest or well-being.

(c) Registrants whose objection is directed against a particular war rather than against war in any form (a selective objection). If a registrant objects to war in any form, but also believes in a theocratic, spiritual war between the forces of good and evil, he may not by reason of that belief alone be considered a selective conscientious objector.

§ 1661.5 Analysis of religious training and belief.

A registrant claiming conscientious objection is not required to be a member of a "peace church" or any other church, religious organization or religious sect to qualify for a 1–A–O or 1–O classification; nor is it necessary that he be affiliated with any particular group opposed to war in any form.

(a) The registrant who identifies his beliefs with those of a traditional church or religious organization must show that he basically adheres to beliefs of that church or religious organization whether or not he is actually affiliated with the institution whose teachings he claims as the basis of his conscientious objection.

(b) A registrant whose beliefs are not religious in the traditional sense, but are based primarily on moral or ethical principle should hold such beliefs with the same strength of conviction as the belief in a Supreme Being is held by a person who is religious in the traditional sense. Beliefs may be mixed; they may be a combination of traditional religious beliefs and of nontraditional religious, moral, or ethical beliefs. The registrant's beliefs must play a significant role in his life but should be evaluated only insofar as they pertain to his stated objection to his participation in war.

(c) Where the registrant is or has been a member of a church, religious organization, or religious sect, and where his claim of a conscientious objection is related to such membership, the board may properly inquire as to the registrant's membership, the religious teachings of the church, religious organization, or religious sect, and the registrant's religious activity, insofar as each relates to his objection to participation in war. The fact that the registrant may disagree with or not subscribe to some of the tenets of his church or religious organization or religious sect does not necessarily discredit his claim.

(d) (1) The history of the process by which the registrant acquired his beliefs, whether founded on religious, moral, or ethical principle, is relevant to the determination whether his stated opposition is deeply held.

(2) The registrant must demonstrate that his religious, ethical, or moral convictions were acquired through training, study, contemplation, or other activity comparable to the processes by which traditional religious convictions are formulated. He must show that these religious, moral, or ethical convictions, once acquired, have directed his life in the way traditional religious convictions of equal strength, depth, and duration have directed the lives of those whose beliefs are clearly founded in traditional religious conviction.

(e) The registrant need not use formal or traditional language in describing the religious, moral, or ethical nature of his beliefs. Board members are not free to reject beliefs because they find them incomprehensible or inconsistent with their own beliefs.

(f) Conscientious objection to participation in war in any form, if based on moral, ethical, or religious beliefs, may not be deemed nonreligious simply because those beliefs may influence the registrant concerning the nation's domestic or foreign policies.

§ 1661.6 Impartiality.

Local and appeal boards may not give precedence to one religion over another, and all beliefs whether of a religious, ethical, or moral nature, are to be given equal consideration.

§ 1661.7 Determination as to whether claim is prima facie.

(a) A claim to classification in Class 1–A–O or 1–O may be made by the registrant in writing, such document shall be placed in his File Folder (SSS Form 101). Generally, the claim should include the submission of a completed Special Form for Conscientious Objector (SSS Form 150). The registrant may supplement his claim with oral information at a personal appearance before the local board, but the oral information must be summarized in writing in accord with § 1624.4(b) of this chapter. A prima facie claim as defined in § 1661.1(b)(4) must include the following:

(1) An affirmative written or oral statement (which does not on its face appear to be frivolous) that the registrant is conscientiously oppose to participation in war in any form.

(2) An affirmative written or oral statement (which does not on its face appear to be frivolous) explaining the registrant's moral, ethical, or religious basis for his claim.

(b) If the local board determines on the basis of information submitted by the registrant that a prima facie case has not been presented, it need not reopen the classification. In such case, the board should accompany its refusal to reopen with a written statement setting forth its reason(s) for deciding that the registrant failed to submit a prima facie claim. This statement will be placed in the registrant's File Folder (SSS Form 101), and the registrant will be notified of the board's reason(s).

§ 1661.8 Considerations relevant to granting or denying a prima facie claim for classification as a conscientious objector.

If it is determined that the registrant has submitted a prima facie claim, the information in the registrant's file folder should then be evaluated to determine whether the registrant is sincere in his claim of conscientious objection. Oral statements by the registrant at a personal appearance before the local or appeal board, and the registrant's general demeanor during such an interview, are to be taken into account in assessing sincerity.

(a) The registrant's stated convictions should be a matter of conscience which are so deeply held that he would have no rest or peace should he participate in war.

(b) The board should be convinced that the registrant's personal history since the crystallization of his conscientious objection is not inconsistent with his claim and demonstrates that the registrant's objection is not solely a matter of expediency. A late crystallization of beliefs does not necessarily indicate expediency.

(c) The information presented by the registrant should reflect a pattern of behavior in response to war and weapons which is consistent with his stated beliefs. Instances of violent acts or conviction for crimes of violence, or employment in the development or manufacturing of weapons of war may, if the claim is based upon or supported by a life of nonviolence, be indicative of inconsistent conduct.

(d) The development of a registrant's opposition to war in any form may bear on his sincerity. If the registrant claims a recent crystallization of beliefs, his claim should be supported by evidence of a religious or educational experience, a traumatic event, an historical occasion, or some other special situation which explains when and how his objection to participation in war crystallized.

(e) In the event that a registrant has previously claimed or been granted a deferment to work in the development of or manufacturing of weapons of war or to serve as a member of a military reserve unit, it should be determined whether such a deferment was claimed or granted prior to the stated crystallization of the registrant's conscientious objector beliefs. Inconsistent classifications claimed or held prior to the actual crystallization of conscientious objector beliefs are not necessarily indicative of insincerity. But, inconsistent claims or classifications claimed or held subsequent to actual crystallization may indicate that registrant's stated objection is not sincere.

(f) If a registrant attends a personal appearance before the local and appeal board, his behavior before the local

board may be relevant to the matter of the sincerity of his claim.

(1) Evasive answers to questions by board members or the use of hostile, belligerent, or threatening words or actions, for example, may in proper circumstances be deemed inconsistent with a claim in which the registrant bases his objection on a belief in nonviolence. But such behavior may have less relevance to the sincerity question if the registrant bases his beliefs solely on a conscientious objection to bearing arms.

(2) Care should be exercised that nervous, frightened, or apprehensive behavior at the personal appearance is not misconstrued as a reflection of insincerity.

(g) Oral response to questions by board members should be consistent with the written statements of the registrant and should generally substantiate the submitted information in the registrant's File Folder (SSS Form 101); any material inconsistencies should be satisfactorily explained by the registrant. It is important to recognize that the registrant need not be eloquent in his answers. But a clear inconsistency between the registrant's oral remarks at his personal appearance and his written submission to the board may be adequate grounds, if not satisfactorily explained, for concluding that his claim is insincere.

(h) The registrant is encouraged to submit letters of reference and other supporting statements of friends, relatives, and acquaintances to corroborate the sincerity of his claim, although such supplemental documentation is not essential to approval of his claim. A finding of insincerity based on these letters or supporting statements must be carefully explained in the board's decision, specific mention being made of the particular material relied upon for denial of 1–A–O or 1–O classification.

§ 1661.9 Types of decisions.

The following are the types of decision which may be made by the local and appeal board when a prima facie claim of conscientious objection has been stated.

(a) Decision to grant a claim for 1–A–O or 1–O classification as requested, based on a determination that the truth or sincerity of the registrant's prima facie claim is not refuted by any information contained in the registrant's file or obtained during his personal appearance.

(b) Decision to deny a claim for 1–A–O or 1–O classification, finding on the basis of all information before the board, that the claim fails to meet the tests specified in §§ 1661.2 and 1661.3. If supported by evidence in the file the board may find that the facts presented by the registrant in support of his claim are untrue.

(c) Decision to grant a 1–A–O classification to a registrant even though he requested a 1–O classification. It should be noted that the registrant who requests classification in Class 1–O should be classified in Class 1–A–O only when the information presented demonstrates clearly that the registrant is opposed only to bearing arms and that he does not object to noncombatant service.

§ 1661.10 Statement of reasons for denial.

(a) Denial of a conscientious objector claim either by the local or appeal board must be accompanied by a statement specifying the reason(s) for such denial as prescribed in §§ 1623.4 and 1626.4 of this chapter. The reason(s) must, in turn, be supported by evidence in the registrant's file (which should include a summary of the interview with the registrant, if any, at his personal appearance).

(b) If the board's denial is based on statements by the registrant or on a determination that the claim is inconsistent or insincere, this should be fully explained in the statement of reasons accompanying the denial.

BYRON V. PEPITONE,
Acting Director.

SEPTEMBER 27, 1972.

[FR Doc.72–16735 Filed 9–29–72;8:53 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

MANUAL HOISTS FROM LUXEMBOURG

Withholding of Appraisement Notice

Information was received on February 2, 1972, that manual hoists from Luxembourg were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of March 15, 1972 (37 F.R. 5397). The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the exporter's sales price (sec. 204 of the Act; 19 U.S.C. 163) of manual hoists from Luxembourg is less, or likely to be less, than the foreign market value (sec. 205 of the Act; 19 U.S.C. 164).

Statement of reasons. The information currently before the Bureau tends to indicate that there are insufficient sales in the home market to form a proper basis of comparison for fair value purposes. Therefore, the probable basis for comparison will be between exporter's sales price and the third country price of such or similar merchandise.

Exporter's sales price will probably be calculated by deducting from the resale price of the related United States firm to unrelated purchasers in the U.S. discounts, ocean freight, marine insurance, brokerage fees, inland freight in Luxembourg and the United States, U.S. duty, and selling expenses.

The third country price will probably be based upon a f.o.b. Antwerp, Belgium, price with deductions for discounts, inland freight, credit terms, selling commission, and advertising expenses. Appropriate adjustments will probably be made for differences in merchandise compared.

Using the above criteria, there are reasonable grounds to believe or suspect that exporter's sales price will be lower than the third country price.

Customs officers are being directed to withhold appraisement of manual hoists from Luxembourg in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

In accordance with §§ 153.32(b) and 153.37, Customs Regulations (19 CFR 153.32(b), 153.37), interested parties may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, DC 20226, in time to be received by his office not later than 10 days from the date of publication of this notice in the FEDERAL REGISTER.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

This notice, which is published pursuant to § 153.34(b), Customs regulations (19 CFR 153.34(b)), shall become effective upon publication in the FEDERAL REGISTER (9–30–72). It shall cease to be effective at the expiration of 6 months from the date of such publication, unless previously revoked.

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

Approved: September 28, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72–16805 Filed 9–29–72;8:54 am]

[T.D. 72–267]

CERTAIN "MONTEREY" CHEESE
Classification

Recent shipments of "Monterey" cheese from Denmark vary sufficiently in characteristics from each other so as to possibly require different treatment for tariff classification purposes. The status of this cheese for quota purposes is dependent upon its classification. Further, it is the Bureau's understanding that the process used to produce this cheese has not been changed for the past 2 years.

The cheese has been entering the United States under the provision for other cheese in item 117.75 or 117.85, Tariff Schedules of the United States, depending on value and has been subject to quota under item 950.10D in the Appendix to the Tariff Schedules.

Notice is hereby given that each shipment of "Monterey" cheese from Denmark (or any other country) entered, or withdrawn from warehouse, for consumption on or after the 31st day following the date of publication of this notice in the weekly Customs Bulletin will be treated according to its actual identity for classification and quota purposes as Monterey (in items 117.75 or 117.85 and 950.10D), cheddar (in items 117.15 or 117.20 and 950.08A), Colby (in items 117.81 or 117.75 and 950.08B), or American-type cheese (in items 117.75 or 117.85 and 950.08B). Danish "Monterey" cheese entered, or withdrawn from warehouse, for consumption before the effective date of this notice will continue to be classified as other cheese in either item 117.75 or 117.85 of the tariff schedules and subject to the quota provisions in item 950.10D of the Appendix to the Tariff Schedules.

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

Approved: September 25, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72–16734 Filed 9–29–72;8:53 am]

Office of the Secretary

NORTHERN BLEACHED HARDWOOD KRAFT PULP FROM CANADA

Determination of Sales at Less than Fair Value

SEPTEMBER 28, 1972.

Information was received on September 10, 1971, that prime grade and off-grade northern bleached hardwood kraft pulp from Canada were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

A "Withholding of Appraisement Notice" issued by the Commissioner of Customs was published in the FEDERAL REGISTER of June 30, 1972 (37 F.R. 12978).

I hereby determine that for the reasons stated below, prime grade and off-grade northern bleached hardwood kraft pulp from Canada are being, or are likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

Statement of reasons on which this determination is based. Information currently before the Bureau of Customs indicates that there are sufficient sales of prime grade pulp, but insufficient sales of off-grade pulp, in the home market to provide an adequate basis of comparison for fair value purposes. However, off-grade pulp is considered to be interchangeable with prime grade pulp for the purposes for which it is used.

Accordingly, for fair value purposes, the basis of comparison for prime grade pulp was between purchase price and home market price of such or similar merchandise; and the basis of comparison for off-grade pulp was between purchase price and adjusted home market price of similar merchandise.

Purchase price of both grades was calculated by deducting trade discounts,

freight charges, and customs brokerage fees, as appropriate, from the delivered United States price.

Home market price for prime grade pulp was based on the weighted-average of delivered prices, with deductions for trade discounts, insurance, and freight charges, as appropriate. Appropriate adjustments were made for commissions, selling expenses, and packing.

Adjusted home market price for off-grade pulp was based on the weighted-average of delivered prices, with deductions for trade discounts, insurance, and freight charges, as appropriate. Appropriate adjustments were made for commissions, selling expenses, packing, and differences in the merchandise.

Using the above criteria, purchase price was found to be lower than home market price and adjusted home market price.

Exporter's sales price is applicable to one exporter. The sales subject to exporter's sales price comparison account for less than 14 percent of the total sales of the prime grade pulp to the United States. As to this exporter, exporter's sales price will be calculated on its sales to a related party who does not resell the merchandise in the United States.

The U.S. Tariff Commission is being advised of this determination.

This determination is being published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)).

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

[FR Doc.72-16804 Filed 9-29-72;8:54 am]

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

PROPOSED OAHE UNIT, SOUTH DAKOTA

Draft Environmental Statement; Notice of Public Hearing

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the initial stage of Oahe Unit, S. Dak. This statement (INT DES 72-82, dated August 4, 1972) was made available to the public on August 11, 1972.

The draft environmental statement deals with a proposed diversion of water from Lake Oahe on the Missouri River for the purpose of irrigation, flood control, fish and wildlife enhancement, recreation, and municipal water.

A public hearing will be held in Aberdeen, S. Dak., in the Cypress Room of the Holiday Inn, 2727 Southeast Sixth Avenue, November 29, 1972, at 10 a.m., to receive views and comments from representatives of interested organizations or individuals relating to the environmental impacts of this unit. Oral statements at the hearing will be limited to a period of 15 minutes. Speakers will not trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comment after all persons wishing to make comment have been heard. Speakers will be scheduled according to the time preference mentioned in their letters or telephone request, whenever possible, and any scheduled speaker not present when called will lose his or her privilege in the scheduled order and his name will be recalled at the end of the scheduled speakers.

Organizations or individuals desiring to present their statements at the hearing should contact Regional Director Harold E. Aldrich, Bureau of Reclamation, Room 2501, 316 North 26th Street, Billings, MT 59103, telephone (406) 245-6711, extension 6214, and announce their intention to participate, before 4:30 p.m., November 24, 1972.

Written comments from those unable to attend, and from those wishing to supplement their oral presentation at the hearing should be sent on or before December 6, 1972, so that they can be included in the hearing record.

Dated: September 25, 1972.

ELLIS L. ARMSTRONG,
Commissioner,
Bureau of Reclamation.

[FR Doc.72-16684 Filed 9-29-72;8:48 am]

National Park Service

ADVISORY BOARD ON NATIONAL PARKS, HISTORIC SITES, BUILDINGS, AND MONUMENTS

Notice of Closed Meetings

A. Advisory Board on National Parks, Historic Sites, Buildings, and Monuments.

B. The purpose of the meetings is to provide advice and information to Department officials concerning national parks, historic sites, buildings, and monuments.

C. A meeting on October 2, 1972, is scheduled for 9 a.m. in Room 5160 of the Department of the Interior Building. A meeting on October 3, 1972, is scheduled for 9 a.m. in Room 5160, 3121 and the eighth floor studio of the Department of the Interior Building. A meeting on October 4, 1972, is scheduled for 9 a.m. in Room 5160 of the Department of the Interior Building. The address of that building is 18th and C Streets NW., Washington, DC 20006.

D. The Secretary of the Interior, pursuant to section 31(d) of Executive Order 11671 of June 5, 1972, has determined that the meetings scheduled in paragraph C above shall be exempt from the provisions of sections 13 (a), (b), and (c), relating to public participation and recordkeeping, because the Board's activities are matters which fall within policies analogous to those recognized in section 522(b) of Title 5 of the United States Code, and the public interest requires such activities to be withheld from disclosure. The Advisory Board meetings involve advice, recommendations, opinions, and other deliberative or policy-making processes which would normally be privileged. There will also be dissemination of factual material. However, the factual material cannot be separated from the policy and deliberation process of the Advisory Board in a dynamic and unrestricted meeting.

E. Further information may be obtained from the Office of the Director, National Park Service, Department of the Interior Building, 18th and C Streets NW., Washington, DC 20006.

Dated: September 27, 1972.

STANLEY W. HULETT,
Acting Director,
National Park Service.

[FR Doc.72-16742 Filed 9-29-72;8:53 am]

[Order 1]

PROCUREMENT AND PROPERTY MANAGEMENT OFFICER; HARPERS FERRY CENTER

Delegation of Authority

Delegation. The Procurement and Property Management Officer may execute and approve contracts and/or purchase orders not in excess of $50,000 for construction, supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

(NPS Order No. 73, revised, 37 F.R. 6409, as amended, 37 F.R. 16509, dated Aug. 15, 1972. Service Center Operations Order No. 4, 37 F.R. 17501, dated Aug. 29, 1972)

Dated: September 18, 1972.

RALPH ROAN,
Acting Director,
Harpers Ferry Center.

[FR Doc.72-16690 Filed 9-29-72;8:49 am]

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

MIAMI COUNTY LIVESTOCK CO., INC., ET AL.

Proposed Posting of Stockyards

The Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration, U.S. Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

KS-197 Miami County Livestock Co., Inc., Paola, Kans.
MO-228 Seaton Livestock Auction, Inc., Nixa, Mo.
MO-227 Potosi Livestock Market, Potosi, Mo.
NY-153 Smitty's Sales, Weedsport, N.Y.
TN-171 Rhea County Livestock Auction Company, Inc., Dayton, Tenn.
VA-146 Virginia-Carolina Livestock and Agricultural Market, Inc., Danville, Va.

VA-145 Front Royal Livestock Sales, Inc., Front Royal, Va.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the Act as provided in Section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule, may do so by filing them with the Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250, within 15 days after publication of this notice in the FEDERAL REGISTER.

All written submissions made pursuant to this notice shall be made available for public inspection at such times and places in a manner convenient to the public business (7 U.S.C. 1.27(b)).

Done at Washington, D.C., this 26th day of September 1972.

G. H. HOPPER,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.72-16670 Filed 9-29-72;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

BORDEN, INC.

Pasteurized Process Cheese Product 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 (21 U.S.C. 341) of the Federal Food, Drug, and Cosmetic Act, notice is given that the temporary permit held by Borden, Inc., 277 Park Ave., New York, NY 10017, which covers limited interstate marketing tests of a pasteurized process cheese product that deviates from identity standards prescribed in §§ 19.750 and 19.765 (21 CFR 19.750 and 19.765), in that it contains skim milk cheese as part of the total cheese ingredient, is significantly lower in fat and higher in moisture, and contains enzyme modified cheese, is extended to July 13, 1973. (Notice of issuance of the permit was published in the FEDERAL REGISTER of October 22, 1971 (36 F.R. 20451).)

The principal display panel of the label bears the name "Pasteurized Process Cheese Product—Skim Milk and American Cheeses," and all ingredients will be appropriately listed in the ingredient statement on the label.

Dated: September 25, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-16649 Filed 9-29-72;8:45 am]

DOW CHEMICAL CO.

Notice of Withdrawal of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)) the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), the Dow Chemical Co., Post Office Box 512, Midland, MI 48640, has withdrawn its petition (FAP OH2466) for which notice of filing was published in the FEDERAL REGISTER of October 29, 1969 (34 F.R. 17461) proposing that § 121.1225 *Adjuvants for pesticide use dilutions* (21 CFR 121.1225) be amended to provide for the safe use of cross-linked acrylamide-acrylic acid resin as an adjuvant for making pesticide use dilutions by a grower or applicator prior to application to the raw agricultural commodity.

Dated: September 25, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-16650 Filed 9-29-72;8:45 am]

HYNITE CORP.

Notice of Withdrawal of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b), 72 Stat. 1786; 21 U.S.C. 348(b)) the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), the Hynite Corp., Carrollville Station, Oak Creek, WI 53154, has withdrawn its petition (MF 3488) for which notice of filing was published in the FEDERAL REGISTER of February 12, 1972 (37 F.R. 3199) proposing that § 121.301 *Hydrolyzed leather meal* (21 CFR 121.301) be amended to provide for the safe use of hydrolyzed leather meal in chick and broiler rations as a source of protein in an amount not to exceed 3.75 percent by weight of the finished feed.

Dated: September 25, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-16651 Filed 9-29-72;8:45 am]

[FAP 2B2793]

ROHM AND HAAS CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b) (5), 72 Stat. 1786; 21 U.S.C. 348(b) (5)), notice is given that a petition (FAP 2B2793) has been filed by Rohm and Haas Co., Independence Mall West, Philadelphia, Pa. 19105, proposing that § 121.2597 *Polymer modifiers in semirigid and rigid vinyl chloride plastics* (21 CFR 121.2597) be amended to provide for the safe use of polymers identified in paragraph (a) (2) combined during their polymerization with butadiene-styrene copolymers which may also contain not more than 5 weight-percent of total polymer units derived by copolymerization with divinyl benzene and/or 1,3-butylene glycol dimethacrylate and not more than 10 weight-percent of total polymer units derived by copolymerization with methyl methacrylate, as modifiers in semirigid and rigid vinyl chloride plastic food-contact articles.

Dated: September 20, 1972.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.72-16652 Filed 9-29-72;8:45 am]

National Institutes of Health

BIOMEDICAL LIBRARY REVIEW COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the Biomedical Library Review Committee, October 4–6, 1972, from 8:30 a.m. to 5 p.m. each day, at the National Library of Medicine in the Board Room. This meeting will be open to the public from 8:30 a.m. to 5 p.m. on October 5, and closed to the public all day on both October 4 and October 6, to review, discuss, evaluate, and rank grant applications, in accordance with section 13(d) of Executive Order 11671 and the Secretary's determination.

The name of the person from whom rosters of committee members and/or a summary of the meeting may be obtained is:

Mrs. Nina W. Matheson, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Md. 20014; Telephone: 301 496-4671.

Agenda: Discussions on information science and biomedical communications research.

Dated: September 25, 1972.

JOHN F. SHERMAN,
Deputy Director, National Institute of Health.

[FR Doc.72-16664 Filed 9-29-72;8:47 am]

NATIONAL HEART AND LUNG INSTITUTE

Notice of Certain Committee Meetings

Pursuant to Executive Order 11671 notice is hereby given of meetings of the following committees and the executive secretaries from whom summaries of meetings may be obtained.

Committee, date, time, and location of meeting

Cardiovascular Training Committee, Barbara Murphy, Room 554, Westwood Building, NIH, Bethesda, Md., October 5 and 6, 1972, 8:30 a.m.–5 p.m., Linden Hill Hotel, Bethesda, Md. (Terrace Room).

Heart and Lung Program Project Committee, Dr. Jim L. Shields, Room 6A18, NIH Westwood Building, Bethesda, Md., October 6 and 7, 1972, 8:30 a.m.–5 p.m., Westwood Building, Conference Room C, Bethesda, Md.

Pulmonary Training Committee, Barbara Murphey, Room 554, NIH Westwood Building, Bethesda, Md., October 12 and 13, 1972, 8:30 a.m.–5 p.m., NIH Building 31, Conference Room 7, Bethesda, Md.

These meetings shall be closed to the public in accordance with section 13(d) of Executive Order 11671 and the Secretary's determination, in order to review, discuss and evaluate and/or rank grant applications.

Dated: September 25, 1972.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.72–16665 Filed 9–29–72;8:47 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIR CARRIER DISTRICT OFFICE, SUN VALLEY, CALIF.

Notice of Closing

Notice is hereby given that on or about October 1, 1972, the Burbank Air Carrier District Office (WE–ACDO–32) located at Sun Valley, Calif., will be closed. Services to the aviation public in southern California, formerly provided by this office, will be provided by Flight Standards District Offices in Long Beach, San Diego, and Van Nuys. Services in the State of Arizona, formerly provided by this office, will be provided by the Flight Standards District Office in Phoenix, Ariz. Services in southern Nevada, formerly provided by this office, will be provided by the Air Carrier District Office at Los Angeles, Calif. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Los Angeles, Calif., on September 19, 1972.

ARVIN O. BASNIGHT,
Director, Western Region.

[FR Doc.72–16681 Filed 9–29–72;8:48 am]

Federal Railroad Administration

[FRA–Pet–49 (Power Brake)]

DULUTH, MISSABE & IRON RANGE RAILWAY CO.

Notice of Hearing Regarding Petition for Relief

SEPTEMBER 26, 1972.

The Duluth, Missabe & Iron Range Railway Co. has filed a petition seeking relief from the requirements of § 232.13 (e) (1) which requires the visual inspection of the air brakes of each car. In lieu thereof, the petitioner would substitute the brake pipe test required by § 232.13(c) (1) and (2) on its transfer trains of empty cars from the Duluth ore docks to its yard in Proctor, Minn.; a distance of about 6.5 miles.

The petitioner states relief is sought for its trains of 100 to 110 empty ore cars which are returned up hill from the ore docks to Proctor at a speed of 7 to 9 miles per hour. These cars are 220,000-pound load limit, open-top ore hoppers equipped with AB single-capacity brakes and composition brake shoes. These trains are hauled by either two- or three-unit diesel-electric locomotives. These cabooses are equipped with a duplex gauge to measure pressure in the auxiliary reservoir in addition to the brake pipe. These cabooses are also being equipped with power hand brakes. Two-way radio communication is maintained on them as well as on all locomotives.

The petitioner requests that, in lieu of walking the train as required by § 232.13 (e) (1), it be permitted to make the following test:

After the train brake system is charged to within 15 pounds of the feed valve setting on the locomotive but not less than 60 pounds as indicated at the rear of the train, a 20-pound brake pipe reduction will be made and it will be determined that the brakes on the rear car apply and release properly. Before proceedng it must be known that the brake pipe pressure as indicated in the rear of the train is being restored.

The petitioner contends that this test will insure the brake system is operative and safe for the movement to Proctor. In addition, it claims this test is less hazardous to the trainmen by reducing the amount of walking in an area of high density train movements. The petitioner also claims that the brake test made at Proctor less than 5 hours before insures that the air brakes on each car are fully operative.

The Railroad Safety Board has voted that a public hearing be held before entering its decision in this proceeding. Accordingly, a public hearing is hereby set for 9:30 a.m. on October 17, 1972, Room B–29, Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

The hearing will be an informal one, and will be conducted in accordance with Rule 31 of the FRA Rule Making Procedures (49 CFR 211.31), by a representative designated by the Board. The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The representative of the Board will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary, for the conduct of the hearing will be announced at the hearing.

JOHN E. ROURKE,
Chairman, Railroad Safety Board.

[FR Doc.72–16672 Filed 9–29–72;8:47 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50–329A and 50–330A]

CONSUMERS POWER CO.

Notice and Order for Second Prehearing Conference

In the matter of Consumers Power Co. (Midland Plant, Units 1 and 2).

Take notice that a second prehearing conference will be held in the subject proceeding on October 25, 1972, at 10 a.m., local time, in Room 2008, Federal Office Building No. 7 (enter on 17th Street side), 726 Jackson Place NW., Washington, DC 20506.

The primary purpose of the proposed prehearing conference is to:

1. Determine the present status of discovery between the parties;
2. Establish time-frames for future discovery requests and compliance therewith;
3. Set a date for commencement of the evidentiary hearing; and
4. Discuss such other matters as may aid in the disposition of the instant proceeding.

It is so ordered.

Issued at Washington, D.C., this 25th day of September 1972.

For the Atomic Safety and Licensing Board.

JEROME GARFINKEL,
Chairman.

[FR Doc.72–16654 Filed 9–29–72;8:46 am]

[Docket No. 50–146]

SAXTON NUCLEAR EXPERIMENTAL CORP.

Notice of Issuance of Amended Facility License

The Atomic Energy Commission (the Commission) has issued, effective as of the date of issuance, Amendment No. 8 to Facility Operating License No. DPR–4 dated February 29, 1964. The license as previously issued authorized the Saxton Nuclear Experimental Corp. (SNEC) to possess and operate the Saxton reactor in Bedford County, Pa. The amendment

authorizes the Saxton Nuclear Experimental Corp. to possess, but not to operate, the deactivated facility and incorporates revised Technical Specifications in the amended license. Saxton has been shut down and further operations are not planned. The fuel has been unloaded and transferred to the storage well.

The Commission has found that the application for the amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations published in 10 CFR Chapter I. The Commission has made the findings required by the Act and the Commission's regulations which are set forth in the amendment, and has concluded that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public. The Commission has also found that prior public notice of this amended license is not required since the amendment does not present significant hazards considerations different from those previously evaluated.

Within 15 days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing, and any person whose interest may be affected by the issuance of this amended license may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the provisions of the Commission's Rules of Practice, 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amended facility license see (1) the application dated April 14, 1972, and supplement dated May 30, 1972, and (2) the amended facility license (including the Technical Specifications), which are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC. A copy of item 2 may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 15th day of August 1972.

For the Atomic Energy Commission.

R. DEYOUNG,
Acting Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.72-16655 Filed 9-29-72;8:46 am]

[Docket No. 50-331]

IOWA ELECTRIC LIGHT & POWER CO. ET AL.

Notice of Consideration of Issuance of Facility Operating License and Opportunity for Hearing

In the matter of Iowa Electric Light & Power Co., Central Iowa Power Cooperative and Corn Belt Power Cooperative (Duane Arnold Energy Center).

The Atomic Energy Commission (the Commission) will consider the issuance of a facility operating license to the Iowa Electric Light & Power Co., Central Iowa Power Cooperative and Corn Belt Power Cooperative (the Applicants) which would authorize the Applicants to possess, use, and operate Duane Arnold Energy Center, a boiling water nuclear reactor (the facility), located on the Applicants' site adjacent to and west of the Cedar River near the village of Palo in Linn County, Iowa, about 8 miles northwest of Cedar Rapids, Iowa, at steady-state power levels not to exceed 1658 megawatts thermal in accordance with the provisions of the license and the technical specifications appended thereto, upon the receipt of a report on the Applicants' application for a facility operating license by the Advisory Committee on Reactor Safeguards, the submission of a favorable safety evaluation of the application by the Commission's Directorate of Licensing, the completion of the environmental review required by the Commission's regulations in 10 CFR Part 50, Appendix D, and a finding by the Commission that the application for the facility license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (Act), and the Commission's regulations in 10 CFR Chapter 1. Construction of the facility was authorized by Construction Permit No. CPPR-70, issued by the Commission on June 22, 1970.

Prior to issuance of any operating license, the Commission will inspect the facility to determine whether it has been constructed in accordance with the application, as amended, and the provisions of Construction Permit No. CPPR-70. In addition, the license will not be issued until the Commission has made the findings, reflecting its review of the application under the Act which will be set forth in the proposed license, and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the license, the applicant will be required to execute an indemnity agreement as required by section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

The facility is subject to the provisions of section B of Appendix D to 10 CFR Part 50, which sets forth procedures applicable to review of environmental considerations for production and utilization facilities for which construction permits or operating licenses were issued in the period January 1, 1970–September 9, 1971. Notice is hereby given, pursuant to the Act and the regulations in 10 CFR Part 2, "Rules of Practice," and Appendix D to 10 CFR Part 50, "Implementation of the National Environmental Policy Act of 1969," that a hearing will be held in the captioned proceeding by an Atomic Safety and Licensing Board (Board) at a time and place to be fixed by subsequent order of the Board to consider and make determinations on the matters set forth below.

1. In the event that this proceeding is not a contested proceeding as defined by 10 CFR 2.4(n) of the Commission's "Rules of Practice," the Board will without conducting a de novo evaluation of the application determine whether the environmental review conducted by the Commission's regulatory staff pursuant to Appendix D of 10 CFR Part 50 has been adequate.

2. In the event that this proceeding is a contested proceeding, the Board will decide any matters in controversy among the parties within the scope of Appendix D to 10 CFR Part 50, with regard to whether, in accordance with the requirements of Appendix D to 10 CFR Part 50, the construction permit should be continued, modified, terminated or appropriately conditioned to protect environmental values.

3. Regardless of whether the proceeding is contested or uncontested, the Board will, in accordance with section A.11 of Appendix D of 10 CFR Part 50, (a) determine whether the requirements of section 102(2) (C) and (D) of NEPA and Appendix D to 10 CFR Part 50 of the Commission's regulations have been complied with in this proceeding; (b) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view toward determining the appropriate action to be taken; and (c) determine, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, whether the construction permit should be continued, modified, terminated, or appropriately conditioned to protect environmental values.

The Board will be designated by the Atomic Energy Commission. Notice as to its membership will be published in the FEDERAL REGISTER. Within thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing with respect to issuance of the facility operating license and any person whose interest may be affected by this proceeding may file a petition for leave to intervene (1) with respect to whether, considering those matters covered by Appendix D to 10 CFR Part 50, the construction permit should be continued, modified, terminated, or appropriately conditioned to protect environmental values; and (2) with respect to the issuance of the facility operating license. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice" in 10 CFR Part 2.

A petition for leave to intervene must be filed under oath or affirmation in accordance with the provisions of 10 CFR 2.714. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

A request for a hearing or a petition for leave to intervene must be filed with the Office of the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, or the Commission's Public Document Room, 1717 H Street NW., Washington, DC, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER. A petition for leave to intervene which is not timely filed will not be granted unless the Commission determines that the petitioner has made a substantial showing of good cause for failure to file on time and after the Commission has considered those factors specified in 10 CFR 2.714(a).

If a request for a hearing or petition for leave to intervene with respect to the issuance of a facility operating license is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

Any person who does not wish to, or is not qualified to become a party to this proceeding concerning continuation, modification, termination, or conditioning the construction permit may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715. A person making a limited appearance may only make an oral or written statement on the record, and may not participate in the proceeding in any other way. Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER.

A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above.

In the event that this proceeding concerning continuation, modification, termination, or conditioning the construction permit is not contested, the Board will convene a prehearing conference of the parties within sixty (60) days after this notice of hearing or such other time as may be appropriate, at a time and place to be set by the Board. It will also set the schedule for the evidentiary hearing. Notice of the prehearing conference and the hearing will be published in the FEDERAL REGISTER.

In the event that this proceeding concerning continuation, modification, termination, or conditioning the construction permit becomes a contested proceeding, the Board will convene a special prehearing conference of the parties to the proceeding and persons who have filed petitions for leave to intervene, or their counsel, to be held within sixty (60) days from the date of publication of this notice in the FEDERAL REGISTER, or within such other time as may be appropriate, at a place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.751a.

The Board will convene a prehearing conference of the parties, or their counsel, to be held subsequent to any special prehearing conference and within sixty (60) days after discovery has been completed, or within such other time as may be appropriate, at a place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.752.

Notices of the dates and places of the special prehearing conference, the prehearing conference and the hearing will be published in the FEDERAL REGISTER.

For further details pertinent to the matters under consideration, see the application for the facility operating license dated May 8, 1972, as amended, and the applicants' Environmental Report dated November, 1971, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Reference Service, Cedar Rapids Public Library, 426 Third Avenue SE., Cedar Rapids, IA 52401. As they become available, the following documents also will be available at the above locations: (1) The report of the Advisory Committee on Reactor Safeguards on the application for facility operating license; (2) the Commission's draft detailed statement on environmental considerations pursuant to 10 CFR Part 50, Appendix D; (3) the Commission's final detailed statement on environmental considerations; (4) the safety evaluation prepared by the Directorate of Licensing; (5) the proposed facility operating license; and (6) the proposed technical specifications, which will be attached to the proposed facility operating license. Copies of items (3), (4), and (5) may be obtained by request to Deputy Director for Reactor Projects, Directorate of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

With respect to this proceeding concerning continuation, modification, termination, or conditioning the construction permit, the Commission will delegate to the Atomic Safety and Licensing Appeal Board the authority and the review function which would otherwise be exercised and performed by the Commission. The Commission will establish the Appeal Board pursuant to 10 CFR 2.785 and will make the delegation pursuant to paragraph (a)(1) of that section. The Appeal Board will be composed of a chairman, and two other members to be designated by the Commission. Notice as to the membership of the Appeal Board will be published in the FEDERAL REGISTER.

Dated at Germantown, Md., this 21st day of September 1972.

UNITED STATES ATOMIC ENERGY COMMISSION,
PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.72-16473 Filed 9-28-72;8:45 am]

[Docket No. 50-395]

SOUTH CAROLINA ELECTRIC & GAS CO.

Notice of Availability of Draft Environmental Statement, Applicant's Environmental Report and Supplemental Environmental Reports

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a Draft Environmental Statement related to the proposed issuance of a construction permit to South Carolina Electric & Gas Co. for the proposed Virgil C. Summer Nuclear Station, Unit 1, to be located in Fairfield County, S.C., has been prepared by the Commission's Directorate of Licensing. The draft statement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the Fairfield County Library, Vanderhorst Street, Winnsboro, S.C. The draft statement is also being made available at the Office of the Governor, State Planning and Grants Division, Wade Hampton Office Building, Columbia, S.C. 29201, and at the Central Midlands Regional Planning Council, 1125 Blanding Street, Columbia, SC 29201. Copies of the Commission's Draft Environmental Statement may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

The Environmental Report and Supplements to the Environmental Report submitted by South Carolina Electric & Gas Co. are also available for public inspection at the above-designated locations. Notice of availability of the report was published in the FEDERAL REGISTER on February 17, 1972 (37 F.R. 3556).

Pursuant to 10 CFR Part 50, Appendix D, interested persons may, within forty-five (45) days from date of publication of this notice in the FEDERAL REGISTER, submit comments on the proposed action, the report, and the Draft Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the report and the Draft Environmental Statement (local agencies may

obtain these documents upon request) and, when any comments thereon by Federal, State, and local officials are received, they will be made available for public inspection at the above-designated locations. Comments on the Draft Environmental Statement from interested members of the public should be addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 25th day of September 1972.

For the Atomic Energy Commission.

R. C. DEYOUNG,
Assistant Director for Pressurized Water Reactors, Directorate of Licensing.

[FR Doc.72-16588 Filed 9-29-72;8:45 am]

LEASING OF AEC CONTROLLED URANIUM BEARING LANDS, COLORADO, UTAH, NEW MEXICO

Notice of Availability of Final Environmental Statement

Notice is hereby given that a document entitled, "Environmental Statement—Leasing of AEC Controlled Uranium Bearing Lands, Colorado, Utah, New Mexico" issued pursuant to the Atomic Energy Commission's implementation of section 102(2)(c) of the National Environmental Policy Act of 1969 is being placed in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20545, and in the Commission's Albuquerque Operations Office, Post Office Box 5400, Albuquerque, NM 87115; Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439; Grand Junction Office, Post Office Box 2567, Grand Junction, CO 81501; Idaho Operations Office, Post Office Box 2108, Idaho Falls, ID 83401; New York Office, 376 Hudson Street, New York, NY 10014; Oak Ridge Operations Office, Post Office Box E, Oak Ridge, TN 37830; San Francisco Operations Office, 2111 Bancroft Way, Berkeley, CA 94704. This statement was prepared in support of the Commission's legislative action related to leasing of uranium bearing lands.

This final environmental statement will be furnished upon request addressed to the Director, Division of Environmental Affairs, U.S. Atomic Energy Commission, Washington, D.C. 20545.

For the Atomic Energy Commission.

Dated at Germantown, Md., this 26th day of September 1972.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.72-16689 Filed 9-29-72;8:49 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23333; Order 72-9-94]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Specific Commodity Rates

Issued under delegated authority September 25, 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 Joint Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement, adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated September 20, 1972, names a new specific commodity rate as set forth below. The rate reflects a reduction form the otherwise applicable general cargo rate.

Specific Commodity Item No.	*Description and Rate*
8551	Automatic Controls, 260 U.S. cents per kg., minimum weight 100 kgs. From Bombay to New York City/Montreal.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, *Provided*, That approval is subject to the condition hereinafter ordered.

Accordingly, it is ordered, That:

Agreement CAB 23300 be and hereby is approved, provided that approval shall not constitute approval of the specific commodity description contained therein for purposes of tariff publication; *Provided, further*, That tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

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] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.72-16725 Filed 9-29-72;8:52 am]

[Docket No. 20875]

TRANS INTERNATIONAL AIRLINES, INC. AND TEXAS INTERNATIONAL AIRLINES, INC.

Notice of Hearing Regarding Enforcement Proceeding

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on October 31, 1972, at 10 a.m. (local time), in Room 1031, Universal Building North, 1875 Connecticut Avenue NW., Washington, DC, before Administrative Law Judge Alexander N. Argerakis.

Dated at Washington, D.C., September 27, 1972.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.72-16724 Filed 9-29-72;8:52 am]

[Docket No. 24717; Order 72-9-97]

WIEN CONSOLIDATED AIRLINES, INC.

Order Denying Motion and Amending Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of September 1972.

Amenities and Services for Delayed Passengers provided by U.S. Certificated Carriers.

By motion filed September 8, 1972, Wien Consolidated Airlines, Inc. (Wien), requested that the Board dismiss it as a party to this proceeding. In support of its request Wien noted that its tariff provisions governing the subject matter of this investigation are in conformity with the Board's language in Order 72-9-1, dated September 1, 1972, which instituted the investigation, and were not listed in Appendix A to that order as provisions subject to the investigation.

Wien's motion will be denied. The omission of Wien's tariff in Appendix A of Order 72-9-1 was an inadvertence that will be corrected herein. Although Wien's tariff provisions governing the subject matter under investigation generally appear to be reasonable, they do deny complimentary services to standby passengers who have been cleared for boarding. This is one aspect of the tariffs that we specifically found may constitute an unreasonable distinction based on class of service or fare paid.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That:

1. The motion of Wien Consolidated Airlines, Inc., to be dismissed as a party to Docket 24717 is hereby denied.

2. Appendix A of Order 72-9-1, dated September 1, 1972, is hereby amended to

incorporate therein as subject to this investigation, Rule 380(g)(18) on First Revised Page 174–J of Tariff CAB No. 142 issued by Airline Tariff Publishers, Inc., Agent.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

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

[FR Doc.72–16727 Filed 9–29–72;8:52 am]

[Docket No. 23780; Order 72–9–99]

KOREAN AIR LINES CO., LTD.

Youth and Student Fares in Foreign Air Transportation; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 26th day of September 1972.

By tariffs [1] filed August 25, 1972, to become effective September 24, 1972, Korean Air Lines, Co., Ltd., made itself a party to certain reduced fares for students and student groups in the Pacific. These student fares apply to nationals of the Republic of China flying from Los Angeles and San Francisco, Calif., to Taipei, Taiwan, and to nationals of the Republic of China and Thailand traveling between Los Angeles and San Francisco, Calif., on the one hand, and Bangkok, Thailand, on the other hand.

No complaints have been filed.

These tariffs, including all revisions and reissues thereof, are already under investigation in this proceeding.[2] However, Korean Air Lines Co., Ltd., is not presently a party to the proceeding. We are therefore making Korean Air Lines a party to the investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a) and 1002(f) thereof:

It is ordered, That:

1. Korean Air Lines Co., Ltd., is hereby made a party to this proceeding.

2. A copy of this order will be served upon all parties to Docket 23780, and Korean Air Lines Co., Ltd.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

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

[FR Doc.72–16726 Filed 9–29–72;8:52 am]

[Dockets Nos. 20826; 72–9–91, 72–9–92]

ALASKA SERVICE INVESTIGATION

Bush Routes Phase; Opinion

Decided on September 25, 1972.

Alaska Airlines' certificate for Route 124 amended by realigning segments 1, 2, and 4 through 8, into a single linear segment; and by suspending the carrier's Anchorage-Nome/Kotzebue authority through February 7, 1979.

Wien Consolidated Airlines' certificate for Route 126 amended by realigning segments 1 through 9 into a single linear segment; and by awarding the carrier unrestricted Anchorage-Nome/Kotzebue authority, on a nonsubsidy basis.

Howard J. Mays ordered to resume service in accordance with the terms and conditions of the Mays certificate within 90 days.

In all other respects, proceeding reopened and remanded to an administrative law judge for further evidentiary hearings and the issuance of an initial decision.

Appearances. Same as in the initial decision and, in addition, the following:

George Benesch, for the Alaska Transportation Commission.
Russell E. Arnett, for Polar Airways.
Michael T. Thomas, for the Juneau parties.
Steven P. Lachter, for the Bureau of Operating Rights.

At issue in the bush routes phase of the Alaska Service Investigation [1] is primarily an examination of the pattern of air service at small points (i.e. ranging in population from 50 to 500 persons) served by Alaska Airlines and Wien Consolidated Airlines. These routes include communities served pursuant to air taxi subcontract, the 25-mile rule, and irregular route authority. Also at issue is service between Anchorage, on the one hand, and Nome and Kotzebue, on the other.[2]

In his initial decision,[2a] Administrative Law Judge Merrit Ruhlen found that (a) the best pattern of bush service could be provided by the two regional carriers directly or through equitable subcontracts with air taxis, (b) the Board should institute a separate proceeding to review all Alaskan air taxis' subcontracts, (c) the Board should substitute simplified procedures for authorizing bush service on short notice (i.e., exemptions or certificate amendments pursuant to show cause orders) for the present 25-mile rule and irregular route authority, (d) the Board should establish supervisory procedures to permit early investigation of air service deficiencies, (e) Alaska and Wien should be deleted at those points which do not presently receive scheduled service and/or which neither the Postmaster General nor the Department of Defense has indicated need regular service, (f) the bush routes of both Alaska and Wien should be realigned into single linear routes, (g) Alaska and Wien should both be retained in the Anchorage-Nome/Kotzebue markets, and (h) the Howard J. Mays certificate should be canceled.

The Board has granted petitions for review. Briefs to the Board were filed by Alaska Airlines, Wien Consolidated, Munz Northern Airlines, Parkair, Howard J. Mays, several civic parties,[3] the Postmaster General, and the Bureau of Operating Rights. Oral argument has been heard and the case stands submitted for decision.

While we agree with Judge Ruhlen's decision to realign the bush routes of Alaska and Wien into single linear routes, we have decided to remand all other bush routes issues, except for the future of the Howard J. Mays certificate, to an administrative law judge for further evidentiary hearings and the issuance of an initial decision. We shall order Howard J. Mays to resume service in conformity with the terms and conditions of the Mays certificate within 90 days of the service date of this order. Finally, we will suspend Alaska's Nome/Kotzebue authority and award Wien unrestricted rights in the markets. Except to the extent modified herein, we adopt the findings and conclusions in the initial decision as our own.[4]

Remanded Issues. We have determined to reopen the record and to remand to an administrative law judge the bush route issues in this proceeding—i.e. whether the public convenience and necessity require the alteration, amendment or modification of Alaska's and/or Wien's certificates so as to (1) eliminate or modify irregular route authority and authority to provide service under the 25-mile rule, (2) name in these certificates points actually served under irregular route authority or the 25-mile rule, and (3) delete or suspend authority at points not served by either carrier with its own equipment. In addition, we will expand the scope of the remanded proceeding to consider alternatives to existing bush route services at points that Alaska and Wien are authorized to serve, but where their operations are suspended or subcontracted to air taxis.

The bush route issues now before us formed only a small part of the comprehensive review of Alaskan air transportation that we undertook in the Alaska

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[1] Air Tariffs Corp., Agent, Tariff CAB No. 44.

[2] Orders 71–9–3 and 71–12–84, dated respectively September 1, 1971, and December 17, 1971.

[1] This phase of the Investigation was set aside for separate consideration by Order 71–3–172, March 29, 1972.

[2] Anchorage-Nome/Kotzebue are mainline regional markets. However, because Nome and Kotzebue were included by the administrative law judge on the bush segments of Alaska and Wien, the Anchorage-Nome/Kotzebue issue was reserved for consideration here, rather than in the trunkline and regional route phase, as a matter of administrative convenience.

[2a] The examiner's initial decision referred to herein is not attached to this document because of the wide circulation given at the time of its release. The initial decision is attached to the original of the Board's opinion and to the official copies in the Board's files and may be examined there. It will also be printed as part of the official "Civil Aeronautics Board Reports."

[3] The State of Alaska and the Alaska Transportation Commission (ATC), the Fairbanks parties, and the Ketchikan parties.

[4] The amended certificates of Alaska and Wien, attached hereto, substantially reflect the realignment of these carriers' bush points favored in the initial decision. The realigned segments include only those points now expressly named in the certificates but do not include points either deleted from, or added to, these certificates, and which shall be at issue in the remanded proceeding.

Service Investigation.[5] Not surprisingly, most of the attention and the bulk of the evidence developed in the record focused on the Pacific Northwest-Alaska and intra-Alaska regional markets. The bush route issues, though crucial to many Alaskans, were dwarfed by these larger trunkline and regional market issues. Few bush operators actually participated at the hearings in Alaska. As a result, the record as to bush point services is seriously deficient in many respects and, on the whole, too limited to permit a thorough analysis of the complex questions involved. For example, while air taxis provide a substantial proportion of the services to Alaska's bush points,[6] the existing record evidence does not permit a detailed assessment of their historic and future roles in helping to fill the State's transportation needs. Specifically additional detailed data on the operating costs and general profitability of air taxi services, whether operating independently or as subcontractors for certificated carriers, would be very useful, as would evidence comparing air taxi fares to those charged by Alaska and Wien.

Next, the initial decision to delete 17 bush points from Alaska's certificate and 11 from Wien's was based in some instances on limited and stale information. Because population shifts and changes in economic activity at many of these points are very rapid, we believe that updated passenger, cargo, and mail data, and more recent small station analyses are desirable. Our remand of the bush phase is thus expected to fill evidentiary gaps as to issues already within the scope of the case.

In addition, since the question of bush point air transportation is now severed from the trunkline and regional route issues, we believe it appropriate to broaden the scope of the remanded proceeding to consider possible service alternatives at Alaska's and Wien's bush points which are not now directly served by these certificated carriers. While we will allow the administrative law judge and the parties to shape the precise scope of the service alternatives to be considered, we expect the remanded case to include the following questions: Whether the public convenience and necessity require (a) the establishment of standards for subcontracting arrangements between certificated carriers and air taxis, (b) the certification of air taxis at any of the communities in question, and (c) subsidized services by air carriers, whether or not certificated, operating pursuant to a competitive bid contract.[6a] To encourage participation by Alaskan interests concerned with bush route service, the hearings in the remanded case will be held at several points in Alaska.

Finally, the remanded case will also consider whether Part 298 should be amended to relax the existing 12,500-pound takeoff weight limitation applicable to air taxis operating within Alaska.[7]

The Howard J. Mays Certificate. As Judge Ruhlen noted, Howard J. Mays has not operated any of its certificated services since 1965, when this authority was suspended for a 5-year period largely on the ground that it had been only sporadically used. In addition, he found no indication in the record that the holder intends to make use of its certificate authority in the future. On the contrary, he observed that Howard J. Mays disposed of his interest in the certificate by "selling" it to Richard F. Gallaher.[8] These circumstances raise serious questions as to the necessity and desirability of continuing the effectiveness of the Mays certificate. Judge Ruhlen concluded that the certificate should be canceled, but Mr. Gallaher argues that the Board may not cancel the certificate in the absence of a formal order to the carrier to resume service. Although we do not necessarily agree with Mr. Gallaher's interpretation of our powers under section 401 (f) and (g) insofar as the scope of the issues in this proceeding is concerned, we shall nonetheless formally order the certificate holder to resume service in advance of a final decision as to the disposition of the certificate. Consequently, finding that such action is required by the public convenience and necessity, we order Howard J. Mays to resume services in conformity with the terms and conditions of its certificate within 90 days of the service date of this order. The Board finds that a period of 90 days is a reasonable period to be designated for the resumption of service by Mays before a hearing is held pursuant to the provisions of section 401 (f) and (g) of the Act. In the event Mays is unwilling or unable to resume operations within 90 days, we will consider at an expedited hearing whether the Board should direct that the Mays certificate shall thereafter cease to be effective pursuant to the provisions of section 401(f) of the Act, or shall be revoked pursuant to section 401(g) of the Act.

Anchorage-Nome/Kotzebue. Anchorage-Nome/Kotzebue, one of Alaska's mainline regional routes, is currently served by Alaska Airlines and Wien, the former on an unrestricted basis and the latter via a stop at Fairbanks. The initial decision concluded that while neither Alaska nor Wien has served Nome/Kotzebue at a profit, the status quo should be retained because the two carriers have engaged in substantial promotional activities to attract passengers to these points, and because their respective operations have drawn largely on different traffic pools. We have decided, however, that the basic policy objectives we set forth in the trunkline and regional route phase of this investigation can best be furthered by retaining only a single Anchorage-Nome/Kotzebue carrier and by selecting Wien as that carrier.

Specifically, we stated in that phase of the proceeding that in structuring Alaska's trunkline and regional routes we aimed to "combine and foster two closely related objectives: 1. Improved Pacific Northwest-Alaska and intra-Alaska air service for the traveling public, and 2. a more efficient route pattern that would substantially enhance the financial prospects of Alaska operations, bring them—at least to some degree—closer to economic self-sufficiency, and offer long range promise of subsidy reductions". See Order 71–12–45, pp. 3, 4.

Judge Ruhlen's decision to retain both Alaska and Wien at Nome and Kotzebue was not based on any finding of an affirmative need for competition in these markets; nor do we find persuasive evidence of such a need in the record. The only estimate of O&D—as opposed to segment flow—traffic in the subject markets was that submitted by the Bureau, which projected only 16,427 Anchorage-Nome passengers (or 23 per day each way) and only 22,217 Anchorage-Kotzebue passengers (or 30 per day each way) in 1971, the forecast year.[9] In the absence of compelling evidence of an affirmative need for competition, the existing Anchorage-Nome/Kotzebue service pattern, with two heavily subsidized airlines competing against one another, is economically wasteful, and its preservation would

[5] The bush phase was not severed from the trunkline and regional route phase until after issuance of the initial decision.

[6] At present over 175 air taxi operators are licensed by the State of Alaska and half of the certificated Alaskan bush points are now served by air taxis.

[6a] At the Board's request, a bill has been introduced in the 92d Congress to authorize the Board to enter into contracts on an experimental basis with air carriers to provide air service to small communities.

[7] In the Part 298 Weight Limitation Investigation, Order 72–7–61, July 18, 1972, we decided to replace the general 12,500-pound takeoff weight limitation with a 30-seat/7500-pound payload capacity restriction. However, we did not apply the new rule to intra-Hawaii services and deferred any decision with respect to intra-Alaska operations until our determination of the bush route issues in the Alaska Service Investigation. Accordingly, this deferred issue will be consolidated into the remanded proceeding.

[8] The Board has never approved any transfer of the certificate to Mr. Gallaher and any operations pursuant to the certificate are, in point of fact, defunct.

[9] These figures include traffic moving between points south of Anchorage and Nome/Kotzebue. The Bureau estimated that the total traffic available to support Anchorage-Unalakleet-Nome-Kotzebue services would be about 48,000 passengers in the forecast year. By contrast, Alaska Airlines estimated the total traffic pool at about 86,000. This dramatic difference is attributable only in small part to Alaska's use of a 15 percent annular growth rate, compared to the 10 percent figure employed by the Bureau. Instead, the difference stems primarily from the high base-year traffic reported by Alaska, a factor which has affected all its traffic forecasts in this proceeding. Significantly, while Judge Ruhlen made no estimate of Anchorage-Nome/Kotzebue traffic, his passenger estimates in the other trunkline and regional markets at issue were consistently lower than Alaska's. Under the circumstances, we find the Bureau's projections to be more reasonable than ASA's.

be inconsistent with our efforts to shape a more efficient Alaskan route structure. We emphasize again that this consideration is significant not only because the attainment of an economically sound air transportation system is a fundamental regulatory goal established by the Congress, but also because our own experience demonstrates that federal subsidy payments alone cannot, in the long run, assure the continued vitality of duplicative, wasteful, or otherwise inherently uneconomic operations.

The record evidence offers little hope that either Alaska or Wien can achieve even moderate economic success in the near future if the existing two-carrier network is maintained. While the Bureau estimated that Alaska would earn an operating profit—but suffer a $367,000 subsidy need increase[10]—in 1971, even this less than rosy projection assumes unrealistically low direct operating costs for the carrier's B–727's, failing to reflect that these aircraft are leased rather than owned.[11] For example, while the Bureau calculated Alaska's aircraft operating expenses at $711.88 per block hour in 1971, the carrier actually experienced markedly higher unit costs of $861.14 per block hour by 1970.[12] The use of more appropriate cost figures would raise serious doubts about whether the existing structure of services at Nome/Kotzebue can be expected to move toward economic self-sufficiency.

By contrast, the suspension or deletion of one of the incumbent carriers would, in our judgment, substantially improve the economic prospects of the Anchorage-Nome/Kotzebue route without depriving passengers in these markets of vital public benefits. While we recognize that Alaska and Wien have, to a large extent, relied on different sources of traffic to support their Nome/Kotzebue operations, it nevertheless remains true that they have drawn on common traffic pools, as well, thereby wastefully fragmenting the limited Anchorage-Nome, Anchorage-Kotzebue and Nome-Kotzebue traffic base. Consolidating this fragmented traffic in the hands of a single air carrier would make the route highly profitable, as the Bureau noted,[13] and would substantially reduce the potential Federal subsidy burden. In short, such an action would help advance our goal of rationalizing the Alaskan route structure, without compromising the State's crucial air transportation needs. For all these reasons, we find that the public convenience and necessity require the retention of only one carrier in the Anchorage-Nome/Kotzebue markets.

We now turn to the question of which of the two incumbent airlines should be retained. At first glance, Alaska Airlines, as the unrestricted carrier with the largest share of Anchorage-Nome/Kotzebue traffic, would seem to be the logical choice. Moreover, Alaska offers the further advantage of being able to provide single-carrier service between the lower 48 and Nome/Kotzebue.[14] However, while we believe these factors are entitled to considerable weight, we have decided, on balance, to retain Wien because its selection best responds to our broader aim of rationalizing Alaska's air transportation pattern.

First, there is little difference between the service proposals of Alaska and Wien in the Anchorage-Nome/Kotzebue markets. Both would operate one daily round trip with modern jet aircraft in the off-season and add a second round trip in the summer peak season.[15] As we noted earlier, either airline could achieve a substantial operating profit as the sole carrier in these markets.[16] Since either Alaska or Wien could effectively serve Anchorage-Nome/Kotzebue passengers, we find our decision in the trunkline phase to be a decisive consideration favoring Wien. In that phase, we recognized Alaska's position as a primary Pacific northwest-Alaska airline and awarded it major new responsibility in the form of exclusive authority over the "inside route" between Seattle, Ketchikan, Sitka, Juneau, and Anchorage. We found this new route, which clearly demands a considerable investment of energy and resources on Alaska's part, to represent the soundest course for the carrier's development and for the solution of its serious economic difficulties. On the other hand, the Board refused to extend Wien to Seattle, an award that would have virtually transformed the nature of its operations, feeling instead that it should continue to concentrate on intra-Alaska services and to seek strengthening opportunities in mainline Alaska regional markets.

Accordingly, we conclude that Alaska should concentrate its efforts on its major new Pacific northwest-Alaska route, and should leave the Nome/Kotzebue markets to Wien, for which they represent precisely the kind of opportunity for expansion that we contemplated in the trunkline phase. For all these reasons, we will suspend Alaska's Nome/Kotzebue authority for a period coextensive with the carrier's temporary Seattle-southeast Alaska award, and grant Wien unrestricted Anchorage-Nome/Kotzebue rights, on a subsidy-ineligible basis.

Accordingly, in view of the foregoing and all the facts of record, we find that the public convenience and necessity require that:

1. Alaska Airlines' certificate for Route 124 be amended by:

(a) Realining segments 1, 2, and 4 through 8 into a single linear segment, as set forth in the attached amended certificate, and renumbering other segments.

(b) Adding a new condition suspending the carrier's authority over segment

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[10] See BOR–R–12.

[11] In its brief to the Board (p. 36) in the trunkline phase, the Bureau conceded that by treating Alaska's leased aircraft as owned aircraft it had understated the carrier's expenses because ASA's rental payments greatly exceeded the depreciation cost it would have incurred had it owned these airplanes.

[12] See the Board's Aircraft Operating Cost and Performance Report, August 1971. The Bureau also underestimated Wien's unit costs, although not to the same degree. Specifically, the Bureau used a cost figure of $712.83 per lbock hour for Wien's B–737 operations, compared to the $760.58 per block hour cost actually experienced by the carrier in 1970.

[13] The Bureau estimated, for example, that Alaska's operating results would be improved by over $670,000 in additional profit if it were permitted to operate without competition. Compare BOR–R–11 with BOR–R–12. While we do not, as earlier noted, accept the Bureau's unit cost estimates (identical in both exhibits) the dramatic improvement shown in BOR–R–11, the exhibit which assumes no competition between Anchorage and Nome/Kotzebue, is significant. The Bureau also estimated a sizable operating profit of nearly $600,000 in Wien's operations as the sole carrier in the subject markets. However, neither the Bureau nor any other party projected Wien's results assuming the continuation of the present service pattern.

[14] However, over the past year Alaska has provided single-carrier service in these markets in only one direction—southbound in the peak season and northbound in the off-season.

[15] Wien would operate peak season schedules for several weeks longer than would Alaska. Both carriers would serve Unalakleet on some of their flights. We are also confident that either carrier can be expected to actively promote tourist traffic in these markets. Moreover, while both carriers own hotel properties in this area—Alaska at Nome and Wien at Kotzebue—there is no evidence in the record that the suspension of either would lead to any substantial losses connected with its hotel interests. To the extent that any such losses might occur, they are outweighed as a decisional factor by the need for rationalizing the Anchorage-Nome/Kotzebue route structure.

[16] The Bureau's conclusion (in BOR–R–11) that Alaska's operating profit would be about $100,000 greater than Wien's is based on the assumption that ASA's B–727's and Wien's B–737's would experience about the same direct operating unit costs. As we noted above, actual 1970 experience indicates that ASA's unit costs were considerably higher than Wein's. On the other hand, we recognize that Wien might not attract as many lower 48-Nome/Kotzebue passengers because it lacks single-carrier authority in these markets. Nevertheless, it seems clear that the majority of Seattle-Nome/Kotzebue passengers would continue to travel in these markets via connections at Anchorage.

2 of the attached certificate through February 7, 1979.[17]

2. Wien Consolidated Airlines' certificate for Route 126 be amended by:

(a) Realining segments 1 through 9 into a single linear segment, as set forth in the attached amended certificate, and renumbering subsequent segments.

(b) Eliminating condition (3), and renumbering the subsequent condition.

(c) Providing that two-stop or better operations between Anchorage and Nome or Kotzebue be made ineligible for subsidy.

3. Howard J. Mays be ordered to resume services in accordance with the terms and conditions of the Mays certificate within 90 days of the service date of this order.

4. In all other respects, the bush route phase of the Alaska Service Investigation be remanded to an administrative law judge for further evidentiary hearings and the issuance of an initial decision.[18]

We further find:

1. That Alaska and Wien Consolidated are each citizens of the United States within the meaning of the Act and are fit, willing, and able properly to perform the air transportation herein authorized to be performed by each of them and to conform to the provisions of the Act and the Board's rules, regulations, and requirements thereunder.

2. That, except to the extent granted herein, all applications, requests, and motions involved in this phase of the proceeding be denied.

An appropriate order will be entered.[19]

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[17] Alaska's services to McGrath on this segment have been suspended since 1968. The possible deletion of this point will be at issue in the remanded case.

[18] The scope of the remanded proceeding is discussed above, and the issues on remand are set forth in the attached order. In this connection, we note that there presently is pending before the Board a motion by the Bureau of Operating Rights which requests that the Kodiak-Western Alaska merger application (Docket 23760) be consolidated into this remanded case, together with the renewal applications of both carriers (Dockets 23604 and 23605) and Kodiak's application for new King Salmon-Kodiak authority to link the Kodiak and Western systems (Docket 23757). This motion is primarily in support of the Bureau's position that there should be no decision on the merger application at this time, and that aspect of the motion will be dealt with in the merger proceeding. To the extent that the motion may be directed to the proper scope of this remanded proceeding, it will be denied without prejudice to such further motion or request as the Bureau may seek to file within the time limits specified in our order.

[19] Browne, Chairman, Gillilland, Vice Chairman, Minetti and Murphy, members, concurred in the above opinion and order. Timm, member, did not participate.

[Docket No. 20826; Order 72-9-91]

ALASKA SERVICE INVESTIGATION

(BUSH ROUTES PHASE)

ORDER

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

A full public hearing having been held in the above-entitled proceeding, and the Board having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

It is ordered, That:

1. Amended certificates of public convenience and necessity in the form attached hereto be issued to Alaska Airlines, Inc., for route 124, and to Wien Consolidated Airlines, Inc., for route 126;

2. Said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 25, 1972;

3. The period beginning with the service date of this order and terminating December 24, 1972, be and it hereby is designated as the period within which Howard J. Mays shall resume service in accordance with the terms and conditions of the Mays certificate of public convenience and necessity;

4. In the event that such service is not resumed within said period, the Board shall decide at an expedited hearing whether to direct that Mays' certificate shall cease to be effective, under section 401(f) of the Act, or shall be revoked, under section 401(g) of the Act.

5. Except to the extent indicated in paragraphs 1 through 4, above, the Alaska Service Investigation (Bush Routes Phase), be and it hereby is reopened and remanded to an administrative law judge for further evidentiary hearings and the issuance of an initial decision on the issues specified in paragraph 6, below.[1]

6. The issues on remand shall be:

(a) Whether the public convenience and necessity require the alteration, amendment, or modification of Alaska Airlines' certificate for route 124 and/or Wien Consolidated Airlines' certificate for route 126 so as to (1) eliminate or modify irregular route authority and authority to provide service under the 25-mile rule, (2) name in these certificates points actually served under irregular route authority or the 25-mile rule, and, (3) delete or suspend authority at points not served by Alaska or Wien with its own equipment;

(b) Whether the public convenience and necessity require, and the Board should approve, service alternatives[2] at points at which Alaska Airlines and Wien Consolidated are authorized, pursuant to their certificates for routes 124 and 126, but which are not directly served by these carriers with their own equipment;

(c) Whether Part 298 of the Board's economic regulations should be amended to relax the existing 12,500-pound weight limitation applicable to air taxis operating within Alaska.

7. The intra-Alaska service issues deferred in the Part 298 Weight Limitation Investigation, Order 72-7-61, be and they hereby are consolidated into the remanded proceeding herein.

8. All parties to the original proceeding shall be parties to the reopened and remanded proceeding.

9. Petitions for reconsideration may be filed no later than 20 days after the date of service of this order, and answers to such petitions may be filed no later than 10 days thereafter; additional or amended applications conforming to the scope of the remanded proceeding, together with motions to consolidate such applications for hearing and decision herein, shall be filed within 30 days of the date of service of this order.

This order will be published in the FEDERAL REGISTER.

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[1] The Bureau's motion to consolidate, dated June 28, 1972, be and it hereby is denied.

[2] See of our Opinion.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(As Amended) for Route 124

Alaska Airlines, Inc., is hereby authorized subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations, issued thereunder applicable to air transportation in Alaska, to engage in air transportation with respect to persons, property, and (except as otherwise specified) mail within Alaska:

1. Between the terminal point Fairbanks, Alaska, the intermediate points Nenana, Summit, Talkeetna, Anchorage, Seward, Latouche, Chatham Straits, Port Ashton, San Juan, Oceanic (Thumb Bay), Chenega, Nellie Juan, Granite Mine, Perry Island, North Dutch Island, Peak Island, Ellamar, Tatitlek, Kenny Cove, Cordova, Boswell Bay, Middleton Island, Valdez, Chitina, Gulkana, McCarthy, May Creek, Glacier Creek, Chisana, Northway, Katalla, Cape Yakataga, Icy Bay, Yakutat, Skagway, Haines, Juneau, Funter Bay, Excursion Inlet, Gustavus, Hoonah, Elfin Cove, Port Althorp, Pelican City, Chicagof, Hirst, Cobol, Sitka, Warm Springs, Todd, Chatham, Angoon, Tenakee, Hawk Inlet, Petersburg, Kake, Tyee, Saginaw Bay, Washington Bay, Pillar Bay, Port Walter, Port Armstrong, Port Conclusion, Port Alexander, Point Baker, Wrangell, Edna Bay, Klawak, Craig, Hydaburg, Ketchikan, and the terminal point Annette Island, Alaska;

2. Between the terminal point Anchorage, Alaska, the intermediate points McGrath, Unalakleet, and Nome, Alaska, and the terminal point Kotzebue, Alaska;

3. Over an irregular route between all points in the first Judicial Division of the Territory of Alaska,[1] except with respect to mail.

The service herein authorized is subject to the following terms, conditions, and limitations:

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[1] The First Judicial Division of the Territory of Alaska refers to the area as it existed on July 11, 1958, the date of approval by the President of the certificates issued pursuant to Order E-12780.

(1) The holder shall render service as authorized herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

(2) The holder may, with respect to each segment over which it is authorized to carry mail, include in schedules which it files under section 405(b) of the Federal Aviation Act of 1958, any point not named in any route of any other carrier: *Provided,* That any such point shall be included in such schedules only as an intermediate point and shall be not more than 25 miles off the airline course over the holder's route on which it is named; and *Provided, further,* That the Board may require the holder, without advance notice and without hearing, to defer inauguration of service to any such point, or to suspend indefinitely, or for some other period, further operation of any such service which may have been inaugurated.

(3) The holder shall not, in the course of rendering service over segment 3, engage in air transportation between points between which regular route service is, or hereafter may be, authorized in any outstanding certificate of public convenience and necessity, except on casual, occasional, and infrequent trips which do not result in the establishment of a regular or scheduled service.

(4) The holder shall schedule service to a minimum of two intermediate points between Juneau, and Anchorage or Fairbanks, Alaska.

(5) The holder's authority to serve segment 2 is suspended through February 7, 1979.

(6) The authorization to serve Tatitlek, Eliamar, Peak Island, Perry Island, Oceanic, San Juan, Port Ashton, Chatham Straits, and Latouche shall be effective only between April 1 and October 31, inclusive, of each year.

(7) The total subsidy to be paid to the holder for the transportation of mail over routes 124, 124–F, and 138, and under any exemption authority held by the holder shall not exceed the maximum amounts payable under Orders E–20835, May 19, 1964, E–23290, February 25, 1966, and E–25130, May 11, 1967.

(8) The holder's authority to engage in the transportation of mail on flights between Anchorage and Fairbanks, Alaska, is limited to the carriage of mail on a nonsubsidy basis, i.e., on a service mail rate to be paid entirely by the Postmaster General and the holder shall not be entitled to any subsidy with respect to such operations.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 25, 1972: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of September 25, 1972 (Order 72–9–91), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

In witness whereof, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 25th day of September, 1972.

[SEAL]

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(As Amended) for Route 126

Wien Consolidated Airlines, Inc., is hereby authorized, subject to the provisions hereinafter set forth, the provisions of title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations, issued thereunder applicable to air transportation in Alaska, to engage in air transportation with respect to persons, property, and mail:

1. Between the terminal point Anchorage, Alaska, the intermediate points Skwentna, Farewell, Iliamna, King Salmon, Dillingham, Cape Newenham, Platinum, Goodnews Bay, Kwinhagak, Bethel, McGrath, Stony River, Sleetmute, Red Devil, Flat, Crooked Creek, Napamute, Aniak, Holy Cross, Shageluk, Holikachuk, Anvik, Paimiut, Russian Mission, Fortuna Ledge (Marshall), Pilot Station, St. Mary's, Kalskag, Nyac, Tuluksak, Akiak, Akiachak, Kwethluk, Nunapitchuk, Napakiak, Eek, Kwigillingok, Kipnuk, Tununak, Newtok, Mekoryuk, Hooper Bay, Cape Romanzof, Scammon Bay, Chevak, Mountain Village, Sheldon Point, Alakanuk, Kwiguk, Hamilton, St. Michael, Unalakleet, Shaktoolik, Koyuk, Haycock, Moses Point, Elim, Golovin, White Mountain, Council, Solomon, Nome, Northeast Cape, Gambell, Teller, Tin City, Wales, Shishmaref, Buckland, Candle, Deering, Kotzebue, Noatak, Kivalina, Point Hope, Cape Lisburne, Point Lay, Wainwright, Noorvik, Kiana, Selawik, Shungnak, Kobuk, Hogatza, Hughes, Huslia, Kaltag, Nulato, Koyukuk, Galena, Poorman, Kalakaket, Tatalina, Takotna, Ganes Creek, Ophir, Folger, Cripple Landing, Ruby, Kokrines, Medfra, Lake Minchumina, Tanana, Manley Hot Springs, Rampart, Tolovana, Minto, Utopia, Allakaket, Bettles Village, Bettles, Porcupine Creek, Wiseman, Big Lake, Chandalar, Anaktuvuk Pass, Umiat, Meade River, Barrow-Point Barrow, Prudhoe Bay-Sag River, Barter Island (Kaktovik), Arctic Village, Fort Yukon, Chalkyitsik, Venetie, Beaver, Stevens Village, Livengood, Circle, Central, Circle Hot Springs, Woodchopper, Eagle, Chicken, and the terminal point Fairbanks, Alaska.

2. Between the terminal point Fairbanks, Alaska, and the terminal point Juneau, Alaska;

3. Between the terminal point Kodiak, Alaska, the intermediate points Homer and Kenai, Alaska, and the terminal point Anchorage, Alaska;

4. Between the terminal point Anchorage, Alaska, the intermediate point Fairbanks, Alaska, and the terminal point Prudhoe Bay-Sag River, Alaska.

The service herein authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall render service as authorized herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

(2) The holder may, with respect to each segment over which it is authorized to carry mail (except Segment 2), include in schedules which it files under section 405(b) of the Federal Aviation Act of 1958, any point not named in any route of any other carrier: *Provided,* That any such point shall be included in such schedules only as an intermediate point and shall be not more than 25 miles off the airline course over the holder's route on which it is named; and *Provided, further,* That the Board may require the holder, without advance notice and without hearing, to defer inauguration of service to any such point or to suspend indefinitely, or for some other period, further operation of any such service which may have been inaugurated.

(3) The holder's authority to engage in the transportation of mail on (a) flights between Anchorage and Fairbanks, Alaska, (b) two-stop or better operations between Anchorage, and Nome or Kotzebue, and (c) operations over Segments 3 and 4 is limited to the carriage of mail on a nonsubsidy basis, i.e., on a service mail rate to be paid entirely by the Postmaster General and the holder shall not be entitled to any subsidy with respect to such operations.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations, required by the public interest as may from time to time be prescribed by the Board.

The holder acknowledges and agrees that it is entitled to receive only service mail pay for the mail service rendered or to be rendered solely in connection with operations specified in paragraph (3) and that it is not authorized to request or receive any compensation for mail service rendered or to be rendered for such operations in excess of the amount payable by the Postmaster General.

This certificate shall be effective on November 25, 1972: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either upon its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of September 25, 1972 (Order 72–9–91), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

In witness whereof, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 25th day of September, 1972.

Part 298 Weight Limitation

[SEAL]

Investigation

[Docket 21761; Order]

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

By Order 72–9–91, issued contemporaneously herewith, we have consolidated the intra-Alaska issues deferred by Order 72–7–61, in the above-entitled case, into the remanded *Alaska Service Investigation* (Bush Routes Phase), Docket 20826. Additional or amended applications conforming to the scope of the remanded investigation, together with motions to consolidate such applications for hearing and decision therein, shall be filed in Docket 20826 within 30 days of the service date of this order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.72–16723 Filed 9–29–72;8:32 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Public Availability

Environmental impact statements received by the Council on Environmental Quality, September 18–September 22, 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 STAB. AND CONSERV. SERVICE

Final, September 18

Wheat, Feed Grain, and Cotton Set-Aside Program. The statement discusses a program, established under the Agricultural Act of 1970, which instructs the Secretary of Agriculture to provide a set-aside of cropland if he determines that the total supply of wheat, feed grain, or cotton is likely to be excessive. Approximately 60 million acres have been so set aside in 1972. Impacts discussed are those of uses of the set-aside land, including use as wildlife food plots or habitat. (205 pages) Comments made by: EPA, DOI, USDA, and various State agencies. (ELR Order No. 05289) (NTIS Order No. EIS 72 5289F)

FOREST SERVICE

Draft, September 19

Bergland Hill, Mich., county: Ontonagon. The statement refers to the proposed granting of a special use permit to a private developer for the development of a ski complex, with an ultimate capacity of 3,000 skiers per day. Approximately 280 acres of federally owned lands are involved. Completion of the project would necessitate the modification of timber management plans on 12,000 acres of land; the lack of zoning could result in uncontrolled local development; soil and water quality will be affected. Solid waste disposal will require the development of sanitary landfill. (None presently exist.) (48 pages) (ELR Order No. 05292) (NTIS Order No. EIS 72 5292D)

Mount Hood Meadows, Oreg., county: Hood River. The statement refers to the proposed construction of an additional chairlift, a network of intermediate ski runs, toilet facilities, and a parking area at the Mount Hood Meadows ski area. The project will have impacts upon water, air, soil, and noise. (32 pages) (ELR Order No. 05291) (NTIS Order No. EIS 72 5291D)

RURAL ELECTRIFICATION SERVICE

Final, September 20

Transmission line, Midway to Limon, Colo., counties: El Paso, Elbert, and Lincoln. The statement refers to an application by Tri-State Generation and Transmission Assoc., for a loan of $3,708,000 from REA, in order to construct 80 miles of 230 kv. transmission line from Midway to Limon, including a substation at Limon. The line will be an intrusion upon the landscape. (85 pages) Comments made by: USDA, EPA, and DOI. (ELR Order No. 05316) (NTIS Order No. EIS 72 5316F)

ATOMIC ENERGY COMMISSION

Contact: For nonregulatory matters: Mr. Robert J. Catlin, Director, Division of Environmental Affairs, Washington, D.C. 20545, 202—973–5391.

For regulatory matters: Mr. A. Giambusso, Deputy Director for Reactor Projects, Directorate of Licensing, Washington, D.C. 20545, 202—973–7373.

Draft, September 19

Hutchinson Island Plant Unit 1, Fla., county: St. Lucie. The statement refers to the proposed continuation of a construction permit and the issuance of an operating license to the Florida Power & Light Co., for the startup and operation of the 2,444 MWt, 850 MWe pressurized reactor unit. Cooling water will be drawn from the Atlantic Ocean (where fish and planktonic organisms will be entrained on the intake system); discharge, again in the Atlantic, will be at 6° above ambient. Hutchinson Island is an important sea turtle nesting area and concern is expressed over possible adverse effects to the turtle population from plant lighting, thermal discharge, etc. (180 pages) (ELR Order No. 05295) (NTIS Order No. EIS 72 5295D)

DEPARTMENT OF DEFENSE

AIR FORCE

Contact: Colonel Cliff M. Whitehead, Room 5E 425, The Pentagon, Washington, D.C. 20330, 202—695–2889.

Final, September 18

Elgin Air Force Base, Fla. The statements consider the outleasing of land to the Gulf Power Co. in order to install new 230,000 volt transmission lines as backup to the existing power net. Approximately 820 acres of land would be required; under certain weather conditions the project would introduce ozone into the atmosphere; some vegetation would be lost. (81 pages) Comments made by: USDA, EPA, HUD, FPC, DOI, and State and local agencies. (ELR Order No. 05286) (NTIS Order No. EIS 72 5286F)

ARMY CORPS

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs, Attn: 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, September 21

Murderers Creek, N.Y., county: Greene. The statement considers the issuance of a permit to Sleepy Hollow Lakes, Inc., for the construction of an earth-fill dam and a 323-acre lake which will be the central feature of a recreational-residential development. The overall development would cause impacts on the local economy, land use, water quality, and biological resources; added loads would be placed on existing public services. (59 pages) (ELR Order No. 05321) (NTIS Order No. EIS 72 5321D)

Buena Vista, Va. The statement refers to a proposed flood protection project consisting of an 11,700' long levee and floodwall, a 200' wide 2,800' channel, a 5,700' drainage canal and three closures. The covering of 65 acres with levee and the dredging of 850,000 cu. yds. of fill will adversely affect local biota. (48 pages) (ELR Order No. 05327) (NTIS Order No. EIS 72 5327D)

Final, September 18

Kehoe Lake, Tygarts Creek, Ky., county: Carter and Greenup. The statement considers the construction of a dam and related facilities for the purpose of flood control, recreation, fish and wildlife enhancement, and water quality control. Approximately 9,813 acres, of which 845 acres will be inundated, will be required for the project. (76 pages) Comments made by: USDA, EPA, DOI, and State agencies. (ELR Order No. 05290) (NTIS Order No. EIS 72 5290F)

Chesapeake Bay Hydraulic Model, Maryland, county: Queen Annes. This statement refers to the proposed construction of a building to house a hydraulic model of the Chesapeake Bay and a technical center. The shelter and attendant parking areas will cover approximately 17.5 acres. (36 pages) Comments made by: USDA, DOC, EPA, HEW, DOI, DOT, and State agencies of Maryland and Virginia. (ELR Order No. 05284) (NTIS Order No. EIS 72 5284F)

Spring River and tributaries, Missouri, Kansas, and Oklahoma. The proposed project would involve the construction of a dam and reservoir on Center and Jones Creek, for the purposes of flood control and recreation. Approximately 9 miles of stream and 1,880 acres of land will be permanently inundated; an additional 3 miles and 1,400 acres could be inundated with the storage of flood flows. A total of 5,600 acres, including cropland, pastureland, and woodland will be acquired for the project. (36 pages) Comments made by: USDA, EPA, FPC, HEW, DOI, DOT, and State agencies of Kansas, Missouri, and Oklahoma. (ELR Order No. 05277) (NTIS Order No. EIS 72 5277F)

Perry Count Drainage and Levee District, Missouri and Illinois. The statement refers to the proposed construction of four pumping stations and two new drainage ditches, totaling 13,900', in order to control flooding. Construction activities will affect local wildlife populations. (46 pages) Comments made by: USDA, EPA, HEW, DOI, DOT, and State agencies of Missouri and Illinois. (ELR Order No. 05279) (NTIS Order No. EIS 72 5279F)

Final, September 21

Little River Inlet, N.C. The statement refers to a legislative proposal for authorization of a navigation project which would consist of channels, jetties, dikes, and sand transition. The purpose of the action is that of improving facilities for commercial and recreational boating. Temporary turbidity will adversely affect marine biota. (42 pages) Comments made by: DOC, EPA, DOI, HEW, DOT, and State agencies of North Carolina and South Carolina. (ELR Order No. 05324) (NTIS Order No. EIS 72 5324F)

Final, September 18

Thompson Creek, N.Y., county: Oneida. The statement refers to a flood protection project which would consist of a diversion structure, channel works, culverts, etc. The channel will act as a barrier in restricting the circulation of wildlife. (19 pages) Comments made by: USDA, EPA, DOI, and State and local agencies. (ELR Order No. 05285) (NTIS Order No. EIS 72 5285F)

Willow Island Locks and Dam, Ohio and West Virginia. The statement considers the construction and operation of a high-lift nonnavigable gated dam with a main and auxiliary lock, and related actions, on the Ohio River. Approximately 790 acres of land will be inundated; spoil will be deposited on river islands and banks. There will be a resultant loss of biotic habitat. (60 pages) Comments made by: USDA, EPA, DOI, USCG, and State agencies of Ohio and West Virginia. (ELR Order No. 05278) (NTIS Order No. EIS 72 5278F)

Final, September 20

Birch Lake, Okla., county: Osage. The statement refers to the proposed construction of a dam and reservoir, for the purposes of flood control, water supply and quality control, recreation, and fish and wildlife enhancement. Approximately 3,900 acres will be required for the project, of which 1,137 will be permanently inundated and an additional 1,202 will be subject to period inundation. This land currently provides habitat for wildlife. (175 pages) Comments made by: USDA, EPA, HEW, and DOT. (ELR Order No. 05319) (NTIS Order No. EIS 72 5319F)

Final, September 21

Edwards Underground Reservoir, Tex., counties: Hays and Comal. The statement refers to the proposed construction of a multipurpose reservoir at the Cloptin Crossing Site on the Blanco River. Approximately 13.5 miles of free flowing stream would be inundated along with 7,730 acres of land. Total acreage required for the project is 10,000. (85 pages) Comments made by: USDA, EPA, FPC, HEW, and DOT. (ELR Order No. 05323) (NTIS Order No. EIS 72 5323F)

Virginia Beach, Va. The statement considers a hurricane protection and beach erosion control project which would consist of sheet pile walls capped with concrete, the raising and widening of the beach, and certain other nonstructural measures. Marine life will be damaged due to dredging operations. (31 pages) Comments made by: EPA, HEW, DOT, and State agencies. (ELR Order No. 05322) (NTIS Order No. EIS 72 5322F)

Final, September 18

Wahkiakum Diking District No. 1, Washington county: Wahkiakum. The statement considers the raising of portion of levees, the addition of a new pumping station and the reconstruction of three existing stations and related activities, for the purpose of flood control. The project will eliminate an unspecified amount of wildlife habitat. (60 pages) Comments made by: DOC, EPA, USCG, and State agencies of Washington and Oregon and concerned citizens. (ELR Order No. 05280) (NTIS Order No. EIS 72 5280F)

Mill Creek at Ripley, W. Va., county: Jackson. The statement refers to the proposed snagging and clearing of 2.5 miles of stream channel with the intent of reducing flood damages at Ripley. An unspecified amount of riparian habitat will be lost. (16 pages) Comments made by: USDA, DOI, and one local agency. (ELR Order No. 05281) (NTIS Order No. EIS 72 5281F)

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

Final, September 20

North Loup, Pick-Sloan Project, Nebr., county: several. The statement considers a dam and reservoir project which is intended to provide irrigation for 52,570 acres, recreation, and fish and wildlife conservation. Other physical features include canals, pumping stations, substations, transmission lines and recreation facilities. Approximately 13 miles of the Calamus River and 5,148 acres of land would be inundated. Nine farm residences and two schoolhouses would be displaced. There will be adverse effects upon local wildlife population, the prairie chicken in particular. (164 pages) Comments made by: EPA, DOI, and State and local agencies and concerned citizens. (ELR Order No. 05308) (NTIS Order No. EIS 72 5308F)

NATIONAL PARK SERVICE

Draft, September 19

Theodore Roosevelt National Memorial Park, N. Dak. The statement refers to a proposal that 28,335 acres of the park be designated by Congress as wilderness. Enactment of the proposal could result in restrictions on back country facility development, the construction of mass recreational needs in other areas, and restricted resource management practices. (29 pages) (ELR Order No. 05296) (NTIS Order No. EIS 72 5296D)

DEPARTMENT OF JUSTICE

Contact: Mr. William Cohen, Land and Natural Resources Division, Room 2129, Department of Justice, Washington, D.C. 20530, 202—737-2730.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Draft, September 20

Green Springs Reception and Medical Center, Va., county: Louisa. The document is an addendum to a draft statement for a proposed reception and medical center for the Virginia Division of Corrections. The original statement was received by the council on July 17, 1972; its NTIS order number is EIS 72 4900D. (3 volumes), (ELR Order No. 05317) (NTIS Order No. EIS 72 5317D)

TENNESSEE VALLEY AUTHORITY

Contact: Dr. Francis Gartrell, Director of Environmental Research and Development, 720 Edney Building, Chattanooga, Tenn. 37401, 615—755-2002.

Final, September 18

New Lock, Pickwick Landing Dam, Tenn., county: Hardin. The statement refers to the proposed construction of a new main lock at Pickwick Landing Dam on the Tennessee River. Approximately 2.7 million cu. yds. of material would be excavated. There will be temporary turbidity of the river and a temporary removal from production of 30 acres of wildlife habitat. (25 pages) Comments made by: EPA, COE, DOI, and State agencies. (ELR Order No. 05288) (NITS Order No. EIS 72 5288F)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Quality, 400 Seventh Street SW., Washington, DC 20590, 202—426-4355.

FEDERAL AVIATION AGENCY

Draft, September 20

Columbia-Adair County Airport, Ky., county: Adair. The statement refers to the proposed construction of a new airport capable of accommodating propeller aircraft under 12,500 pounds on a 24-hour basis. The project will provide for a 4000'x75' paved runway and future development of a 1000' extension, medium intensity lights, apron and taxiway. The airport will be constructed on predominately city-owned land with approximately 40 acres acquired from private property owners. Air and noise pollution levels will increase. (18 pages) (ELR Order No. 05307) (NTIS Order No. EIS 72 5307D)

Final, September 18

Kokomo Municipal Airport, Ind., county: Howard. The statement considers the extension of a runway from 4,000' to 5,200', the construction of a taxiway and apron, the installation of VASI and lighting and related facilities for the airport. An unspecified amount of land will be acquired for the new development; noise levels will increase. (45 pages) Comments made by: USDA, COE, DOC, EPA, DOI, and DOT. (ELR Order No. 05306) (NTIS Order No. EIS 72 5306F)

FEDERAL HIGHWAY ADMINISTRATION

Draft, September 12

Route 2, Massachusetts. The statement is a revised draft for the proposed reconstruction of 11.3 miles of 2-lane Route 2 in Lexington, Lincoln, Concord, and Acton, to freeway standards. Eighty-seven residences would be displaced by the project. Several 4(f) statements will be filed, as the highway would affect the Minute Man National Historic Park, the Walden Pond State Preservation, one town forest and two conservation areas. (245 pages) (ELR Order No. 05256) (NTIS Order No. EIS 72 5256D)

Draft, September 18

Nebraska 2, Nebraska, county: Custer. The proposed action is the reconstruction of an 8-mile segment of Nebraska Highway No. 2. The improvement includes grading, full safety section, roadway drainage structures, and bridging of Mud Creek. An unspecified amount of agricultural land is required for right-of-way. (21 pages) (ELR Order No. 05287) (NTIS Order No. EIS 72 5287D)

Draft, September 15

Legislative Route 1033, Section A02, Pennsylvania, counties: Mifflin and Juniata. The statement refers to the proposed reconstruction of a section of existing three-lane L.R. 1033 into a four-lane limited access highway. Length of project is 6.4 miles. An unspecified number of businesses and low income families will be displaced. Temporary sedimentation and siltation of the Juniata River; dust and increased noise levels will occur during construction. (68 pages) (ELR Order No. 05271) (NTIS Order No. EIS 72 5271D)

Draft, September 18

LR 1022 (Traffic Route 219), Pennsylvania, county: Cambria. The project discussed in this statement consists of approximately 15-mile-length of four-lane relocation of traffic Route 219. Approximately 18 residences, 61 mobile homes, six barns, and several businesses will be affected; 130 to 280 acres of woodland will be committed to right-of-way. (40 pages) (ELR Order No. 05282) (NTIS Order No. EIS 72 5282D)

Final, September 15

FAP 77 (Illinois Route 59), Illinois, county: Du Page. The statement provides for the proposed widening of Illinois Route 59 from two to four lanes from the East-West Tollway to Illinois 64. Project length is 7.81 miles. Additional right-of-way will be acquired along the existing alignment. Section 4(f) land from the Illinois Prairie Path, a pedestrian and equestrian path used for recreational purposes will be crossed. (142 pages) Comments made by: USDA, AEC, EPA, HEW, HUD, DOI, and OEO. (ELR Order No. 05274) (NTIS Order No. EIS 72 5274F)

Final, September 20

U.S. Highway 30, Indiana, county: Allen. The proposed project is the reconstruction of a segment of U.S. 30 from a point southeast of New Haven to the Indiana-Ohio State line. Length of project is approximately 9.5 miles. Approximately 300 acres of farmland will be required for right-of-way; three families will be displaced. (54 pages) Comments made by: USDA, EPA, GSA, and DOI. (ELR Order No. 05318) (NTIS Order No. EIS 72 5318F)

Kansas Route 7, Kansas, county: Johnson. The project is the proposed reconstruction of 12 miles of K-7, including bridge construction. Construction activities will cause temporary air and surface water pollution; some wildlife cover will be lost. (87 pages) Comments made by: USDA, COE, USCG, EPA, HEW, ICC, DOI, OEO, and DOT. (ELR Order No. 05320) (NTIS Order No. EIS 72 5320F)

Final, September 12

Truck Weigh Station on I-85, N.C., county: Gaston. The proposed project is the construction of a truck weigh station on I-85. Four acres will be committed to the action. The statement mentions no effects as a result of this project. (35 pages) Comments made by: USDA, DOC, EPA, HUD, DOI, DOT, USA, and State and local agencies. (ELR Order No. 05246) (NTIS Order No. EIS 72 5246F)

Final, September 20

U.S. 73, Nebraska, county: Richardson. The statement considers the proposed reconstruction of 15.9 miles of U.S. 73 between Dawson and Falls City. The project provides for improvements to eight bridges including new bridges spanning Muddy Creek and Goalsky Creek and a new viaduct over the Missouri Pacific Railroad. Six families will be displaced; 196 acres of land is required for right-of-way. (31 pages) Comments made by: USDA, COE, EPA, and DOI. (ELR Order No. 05312) (NTIS Order No. EIS 72 5312F)

S.R. 60 Bypass, Tennessee, county: Bradley. The statement refers to the proposed construction of the last connecting link of the S.R. 60 bypass which when completed, will connect with the S.R. 40 bypass to provide a continuous loop highway around the central area of Cleveland. Project length is approximately 2.2 miles. Three businesses and 16 residences; eight of which are mobile homes, will require relocation. Approximately 90 acres of pasture and wood land will be committed to right-of-way. (41 pages) Comments made by: USDA, COE, EPA, HEW, and DOT. (ELR Order No. 05313) (NTIS Order No. EIS 72 5313F)

Final, September 12

Route 164 (Western Freeway), Virginia. The proposed project is the reconstruction and relocation of a 0.958 mile segment of Route 164, including a bridge spanning the Elizabeth River. Two families will be displaced. (55 pages) Comments made by: EPA, HUD, and DOI. (ELR Order No. 05249) (NTIS Order No. EIS 72 5294F)

BRIAN P. JENNY,
Acting General Counsel.

[FR Doc.72-16663 Filed 9-29-72;8:47 am]

FEDERAL COMMUNICATIONS COMMISSION

FCC TECHNICAL STANDARDS SUBCOMMITTEE

Notice of Meeting

SEPTEMBER 21, 1972.

In accordance with Executive Order No 11671, dated June 7, 1972, announcement is made of a public meeting of the Technical Standards Subcommittee of the PBX Advisory Committee to be held October 18 and 19, 1972. The subcommittee will meet at 1229 20th Street NW., Room A-110 at 10 a.m.

1. *Purpose.* The purpose of the subcommittee is to prepare recommended standards to permit the interconnection of customer provided and maintained PBX equipment to the public switched network.

2. *Membership.* The subcommittee is chaired by John L. Wheeler and is composed of the following: H. G. Nold, M. J. Birck, G. Jahn, F. W. Warden, J. E. Merkel, J. F. Holmes, L. M. Hartwell, W. C. Hunkele, W. G. Pracejus, B. L. Troutman, J. J. Grumblatt, G. F. Orelli, P. Bennett, J. R. Mineo, and L. 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 interconnection.

4. *Agenda.* The agenda for the October 18 and 19 meetings will be as follows:

A. Report of Task Groups: (1) Nonbarrier PBX Standards (G. Orelli); (2) On-Site Inspection Standard for Nonbarrier PBX (L. A. Hohmann); (3) Interface Criteria (M. J. Birck); (4) Follow-up Program for Continued Manufacturing Conformance (W. G. Pracejus); and (5) Glossary (T. F. Lysaught).

B. Review of tasks, priorities and schedules;

C. Task Group meetings as required.

It is suggested that those desiring more specific information about the meeting call the Domestic Rates Division on (202) 632-6457.

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

[FR Doc.72-16714 Filed 9-29-72;8:50 am]

FEDERAL HOME LOAN BANK BOARD

[No. 72-1112]

MORATORIUM ON SAVINGS AND LOAN CONVERSIONS FROM MUTUAL TO STOCK FORM

Notice of Termination

SEPTEMBER 22, 1972.

Whereas, the Board has maintained, since December 5, 1963, a moratorium on conversions of insured savings and loan associations from the mutual to stock form;

Whereas such period is an extensive period for the withholding of a statutorily authorized function;

Whereas, the Board has consistently favored a policy allowing associations to choose freely their forms of organization and the Board recognizes that the moratorium has effectively frozen the major part of the savings and loan industry into the mutual form regardless of the wishes of account holders and management; and

Whereas, the Board believes that, as a result of careful study of conversions, a recently conducted test case and review of several study applications, it now has the information and experience to be able to process conversions in a manner that is equitable and in the public interest;

Now, therefore, it is hereby resolved, That the moratorium on conversions from mutual to stock form established on December 5, 1963, is terminated effective upon the final adoption by the Board of revised regulations governing conversions; and

It is further resolved, That the staff is directed to prepare, for submission to the Board no later than October 31, 1972, suggested regulatory amendments and processing procedures for applications for such conversions with a view to final adoption of regulations and procedures by a target date of April 30, 1973;

It is further resolved, That the Board will not accept further study applications under its announcement of July 26, 1972, but that applications received to date under such announcement will be reviewed for priority treatment following final adoption of revised conversion regulations; and

It is further resolved, That the Board reiterates its concern over the inadequacies of existing statutory provisions regarding conversions, particularly the lack of authority for Federal stock associations, and the Board reaffirms its intent to submit to the Congress at an early date, detailed statutory amendments to correct such inadequacies.

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[FR Doc.72-16739 Filed 9-29-72;8:53 am]

FEDERAL POWER COMMISSION

[Docket No. CS66-15]

DALPORT OIL CORP.

Notice of Petition for Waiver of Regulations

SEPTEMBER 26, 1972.

Take notice that by letter filed September 12, 1972, Dalport Oil Corp., 3471 First National Bank Building, Dallas, Tex. 75202, small producer certificate holder in Docket No. CS66-15, requests that it be permitted to sell natural gas under its small producer certificate from reserves acquired in place from Cities Service Oil Co., a large producer. Dalport proposes to sell to El Paso Natural Gas Co., casinghead and dry gas produced from the Dalport, Winters "B" lease in Lea County, N. Mex., at a rate not to exceed the area rate prescribed by the Commission.

Section 157.40(c) of the regulations under the Natural Gas Act (18 CFR 157.40(c)) provides in part that sales may not be made pursuant to a small producer certificate from reserves acquired by a small producer by purchase of developed reserves in place from a large producer. The subject letter is being construed as a petition for waiver of Commission regulations under § 1.7 (b) of the Commission's rules of practice and procedure (18 CFR 1.7(b)). Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than October 17, 1972, views and comments in writing

concerning the petition for waiver. An original and 14 conformed copies should be filed with the Secretary of the Commission. The Commission will consider all such written submittals before acting on the petition.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-16707 Filed 9-29-72;8:50 am]

[Docket No. CI73-168]

GULF OIL CORP.

Notice of Petition

SEPTEMBER 25, 1972.

Take notice that on September 1, 1972, Gulf Oil Corp. (Petitioner), 712 Main Street, Houston, TX 77002, filed in Docket No. CI73-168 a petition pursuant to section 16 of the Natural Gas Act and § 1.7(c) of the Commission's rules of practice and procedure (18 CFR 1.7(c)) requesting the Commission to issue a declaratory order to the effect that liquid hydrocarbons, more specifically naphtha, to be sold and delivered by Petitioner to Transco Energy (Energy) and used by Energy in the manufacture of synthetic natural gas (SNG), which will be sold in interstate commerce to Transcontinental Gas Pipe Line Corp. (Transco), is not a sale of natural gas within the scope of the Natural Gas Act and as such is not subject to Commission jurisdiction, all as more fully set forth in the subject petition which is on file with the Commission and open to public inspection.

Petitioner states that it has entered into an agreement with Energy to sell certain quantities of naphtha, which will constitute feedstock used by Energy in a proposed synthetic natural gas plant known as the Twin Oaks Naphtha Gasification Plant in Delaware County, Pa. Energy has filed in Docket No. CP73-20 an application for authorization, among other things, to sell the SNG manufactured at said plant to its parent company, Transco, and Transco has filed in Docket No. CP73-21 an application for authorization to install necessary facilities to receive said SNG.

Petitioner would show that the produce it proposes to sell Energy is naphtha and not a natural gas and that the agreement under which it offered to sell such naphtha to Energy is subject to the issuance of a declaratory order that the Commission has no jurisdiction over Petitioner's sale (including the price thereof) of the naphtha to be delivered. Further, Petitioner states that for the sake of expediency and to afford cohesion to the treatment of the pending proceedings on the applications of Energy and Transco, Petitioner would further petition the Commission to consolidate this petition for a declaratory order with said applications for consideration on a common record.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 16, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-16706 Filed 9-29-72;8:50 am]

[Docket No. E-7734]

MID-CONTINENT AREA POWER POOL AGREEMENT

Order Accepting Rate Schedules for Filing, Granting Petitions To Intervene, and Setting Matters for Hearing

SEPTEMBER 26, 1972.

The Mid-Continent Area Power Pool Agreement (MAPP) was filed by Northern States Power Co. on May 23, 1972.[1] On June 9, 1972, the Commission published a notice of filing for Power Pool Agreement and set July 10, 1972, as the last date upon which protests or petitions to intervene were to be filed.

On July 27, 1972 (which is considered the official filing date), participants to the proposed MAPP Agreement submitted a Memorandum of Understanding[2] by which they agreed:

(1) Any interchange of power and energy between any of the parties to the MAPP Agreement as defined and described by the service schedules of that agreement shall be in accordance with and at the rates specified in those Service Schedules.

(2) The Memorandum of Understanding does not affect any exchange of power and energy between the various parties not covered by the service schedules of the MAPP Agreement or any agreements with power suppliers who are not parties to the MAPP Agreement.[3]

The objective of the MAPP Agreement is to coordinate installation and operation of the generating and transmitting facilities of the participants in order to provide reliable and economical electric service to the customers of each of the parties throughout their combined service areas. The agreement lists 10 service schedules which cover the operating function of the pool.[4] Specified charges for these services, along with specified charges for similar services under related agreements, are shown in Exhibit B.[4a]

Membership as a participant or an associate participant in MAPP is open to any electric utility operating in the Mid-Continent area which owns or leases, and controls the operation of, one or more generating units and is electrically interconnected with one or more other parties to the Agreement. In order to be a participant, a party must also operate a system directly interconnected with two or more other electric systems; own or operate transmission facilities which form an integral part of the regional network and operate at 115kv. or higher; "contribute significantly" to the reliability of the interconnected system; and operate, or participate in the operation of, a 24-hour dispatch center on the communication networks connecting the participants.

Each participant must maintain each month an accredited capability[5] equal to its monthly maximum system demand plus a reserve capacity equal to 12 percent (10 percent for predominantly hydro system) of its annual system demand.

Each participant is required to maintain spinning and nonspinning reserve[6] in an amount greater than or equal to its operating reserve obligation as established by the pool administrative committee. Such obligation shall be a percentage of the total operating reserve obligation of the entire pool, based on the size of the participant's largest unit and its annual system demand. The total operating reserve obligation is initially specified as 150 percent of the capacity

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[1] Northern States filed the MAPP Agreement on behalf of itself and 10 other investor-owned utilities. Eight cooperatives and 3 public power agencies are also participants in the MAPP Agreement. In addition, 8 municipals and 1 investor-owned utility have executed the Agreement as associate participants. (A listing of participants and associate participants is filed as part of the original document).

[2] Designated as Exhibit A to the rate schedule designations, which are filed as part of the original document.

[3] Pool memberships of utilities operating in the Mid-Continent Area are shown on Exhibit A, filed as part of original document.

[4] "A" Participation Power Interchange Service; "B" Seasonal Participation Power Interchange Service; "C" Emergency and Scheduled Outage Interchange Service; "D" Operating Reserve Interchange Service; "E" Economy Energy Interchange Service; "F" Wheeling Services and Losses; "G" Operational Control Energy Interchange Service; "H" Peaking Power Interchange Service; "I" Short Term Power Interchange Service; "J" Firm Power.

[4a] Exhibit B filed as part of the original document.

[5] Accredited capability of a participant for any month shall mean (a) the net generating capability of such participant, plus (b) the value in kilowatts assigned to such participant's purchases under service schedules A, B, H, I, and J hereof, and to commitments for power from electric suppliers under separate contracts now existing or hereafter created, and minus (c) the value in kilowatts assigned to any commitment of such participant to deliver power to another participant under service schedules A, B, H, I, and J hereof, or to any electric supplier or suppliers pursuant to any valid order or under separate contract or contracts now existing or hereafter created. The accredited capability of such participant will be determined and assigned by the pool administrative committee in accordance with the provisions of Paragraph 15.03 hereof.

of the largest generating unit in operation by any of the participants.

To obtain its objectives, and to manage its operations, the MAPP Agreement provides for seven committees.

(1) *Management.* The management committee consists of one representative from each party, and shall elect a chairman and vice chairman from its members, and a secretary, who need not be a member of the committee. The number of votes allocated to each representative is based on the annual MW demand of the system represented.[7] Authorization of any action, determination or recommendation of the management committee may be accomplished only by a majority vote.

The management committee is responsible for the general administration of the pool, and supervises the development of plans and procedures which will attain the objectives of the agreement. Also, to the extent that such are not set forth in the agreement, it specifies the duties and authorities of the remainder of the committees established by the agreement. Finally, it reviews and rules on appeals from both the pool administrative committee and from decisions made by the executive committee.

(2) *Executive.* The executive committee consists of nine voting and two nonvoting members. The chairman and vice chairman of the management committee must be included in the voting members and must be the chairman and vice chairman of the executive committee. The remainder of the voting members must be elected by and from the management committee.

The executive committee performs the functions of the management committee when it is not in session. Any action must be affirmed by a two-thirds vote of the voting members, and may be appealed to the management committee by any of the parties, provided that the sum of the annual system demand [8] of such parties is equal to 1 percent of the sum of the annual system demand of all the parties for that fiscal year.

(3) *Pool Administrative Committee.* The pool administrative committee, consisting of one representative of each participant, is responsible for administering the planning and operating functions for the bulk power supply called by the agreement.[9]

(4) *Planning.* The planning committee consists of one representative of each participant, and shall coordinate the planning of the bulk power generation and transmission facilities of the parties in keeping with the MAPP agreement.[10]

(5) *Operating.* The operating committee consists of one representative of each participant, and is responsible for establishing the procedures for coordination of operations and pool accounting of bulk power generation and transmission facilities of the parties.[11]

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[6] Nonspinning reserve is defined as capacity not spinning but available in 10 minutes or less.

[7] Method of allocation of votes, and number of votes per party on a 1971 system demand basis are shown in Exhibit C, which is filed as part of the original document.

[8] *Annual system demand* of a party shall mean the highest system demand of such party occurring during the 12-month period ending with the current month. The system demand of a party shall mean that number of kilowatts which is equal to the kilowatthours required in any clock hour, attributable to energy required by such hour for supply of firm energy to the party's consumers, including system losses, and also including any wheeling losses occuring on other systems and supplied by such party for transmission of such firm energy, but excluding generating station uses and excluding wheeling losses supplied by another system.

[9] The duties of the pool administrative committee includes, but is not limited to the following:

a. Establish and revise as necessary reliability standards for the bulk power supply of MAPP. Review and approve planning and operating studies made to show conformance with reliability standards.

b. Approve revisions to the total operating reserve obligation and the formulae for determining the operating reserve obligation of each participant as required from time to time.

c. Approve revisions to the reserve capacity obligation of the participants as required from time to time.

d. Review long range plans developed by the planning committee and establish annually a plan for the ensuing 10 years or longer period covering:

i. The size and type of the generating units to be installed, and the voltage and capacity of each high voltage transmission facility.

ii. The location of such facilities,

iii. The time when such facilities should be placed in operation,

iv. The entity or entities which should install such facilities, and

v. The purchases and sales between participants under service schedules listed in Paragraph 18.01 to enable each of the participants to maintain its accredited capability equal to or greater than its annual system demand plus its reserve capacity obligation.

e. Review on a continuing basis the load and capability forecasts of the participants and make the necessary determinations associated therewith in accordance with Paragraph 15.04.

f. Review plans and procedures relating to the coordination of the bulk power production and transmission facilities and operations with adjoining systems, pools and regional power coordinating groups.

g. Establish and revise rules relating to the effect of abnormal conditions on system demand, reserve capacity obligation and related operating conditions.

h. Establish and revise rules for the determination of accredited capability of the participants and recommended by the planning committee.

i. Cause studies to be made as necessary for administration of the aforesaid duties.

j. Establish procedures for the use of service schedules.

k. Establish pool accounting and billing procedures as recommended by the operating committee.

[10] The duties of the planning committee include the following:

a. Provide for the representative of each party to submit to the chairman of the planning committee at least 1 month in advance of the regularly scheduled annual meeting of the planning committee, a monthly load and capability forecast for such party's system for the ensuing 10-year or longer period as the planning committee may designate.

b. Review the load and capability forecasts and the reserve capacity obligations of the participants periodically and collect other statistical data and other information which would be of assistance to the planning committee.

c. Develop and annually update plans for the following 10 years or longer and make recommendations to the pool administrative committee relating to such plans covering:

i. The size and type of the generating units to be installed and the voltage and capacity of each new high voltage transmission facility,

ii. The location of such facilities,

iii. The time when such facilities should be placed in operation,

iv. The entity or entities which should install such facilities, and

v. The purchases and sales between participants under service schedules listed in paragraph 18.01 to enable each of the participants to maintain its accredited capability equal to or greater than its annual system demand plus its reserve capacity obligation.

The planning committee shall give consideration to system reliability, system economy, the size and anticipated rate of growth of each party's load, the size of each party's largest generating unit, the excess reserve capacity of each party, and the equitable staggering of future investments by the parties in generation and transmission facilities. The planning committee shall also give consideration to the plans of any entity, not eligible to be a party hereto, for the construction of generation or transmission facilities, when such facilities would contribute significantly to the reliability of the regional interconnected system operation, and such plans are made available to the planning committee. Representatives of such entities may attend the meetings of the planning committee considering long-range plans hereunder.

[11] The duties of the Operating Committee include the following:

a. Coordinate the operation of the bulk power generation and transmission facilities of the parties so as to effect optimum reliability and economy of service;

b. Establish methods, standards, and procedures for the determination of costs associated with transactions hereunder;

c. Periodically review the total operating reserve obligation and the formulae for establishing the operating reserve obligation of a participant and make recommendations to the pool administrative committee for revisions as required;

d. Make studies and collect and analyze operating data pertinent to the interconnected operation of the systems of the participants and arrange for conducting such transmission network studies as may be necessary in the performance of its duties hereunder;

e. Coordinate the maintenance schedules of the participants so as to maintain at all times the total operating reserve obligation;

f. Establish procedures for the use of the service schedules necessary in performing its functions hereunder;

g. Determine and periodically review the procedures to be followed by the participants in restoring the total operating reserve obligation in the event of a large generator failure or other comparable contingency;

h. Coordinate the periods of reporting scheduled and actual power and energy flows; and

i. Establish methods and procedures for accounting and billing of bulk power and energy interchanges hereunder.

(6) *Environmental.* The environmental committee consists of representatives of at least four participants. It is responsible for all matters relating to air and water quality, land use, and aesthetics. An environmental liaison group consisting of one representative of each participant serves as liaison between each party and the environmental committee.

(7) *Area Relations.* The area relations committee consists of one representative from each participant, and may include one representative from each associate participant. It is responsible for advising the parties on preparing progress reports, public presentations and educational materials relating to the activities of the parties pursuant to the agreement.

In addition to the above committees, the agreement also provides for a MAPP coordination center (center). The management committee selects a participant to act as an independent contractor responsible for the establishment and operation of the center, who shall supply the facilities, manpower, and administration necessary for the operation of the center.

Associate participants may be represented by nonvoting members on the pool administrative, planning, operating, and area relations committees and may designate a representative as a member of the environmental liaison group.

Protests and petitions to intervene. On July 10, 1972, the city of St. Paul, Minn. (St. Paul) timely filed a protest and petition to intervene, in which it alleged certain defects in the MAPP agreement and requested that it be permitted to intervene.

Also on July 10, 1972, a protest and petition to intervene and for rejection of power pool agreement tendered for filing was jointly filed by the Alexandria Board of Public Works, Minnesota, Basin Electric Power Corp., various other municipal and cooperative electric utilities, other associations, and an individual (Alexandria et al. or Basin). Alexandria et al. allege numerous defects in the MAPP agreement, and, among other things, request intervention; compliance with Part 35 of Commission regulation; that hearings be held on the MAPP agreement; and that the proposal, pending hearing, be suspended for a period of 5 months The protest states in part as follows:

> Basin Electric is a generation and transmission cooperative. Its first unit, which is now in operation, is a 216,000-kw. lignite-fueled generating station. It has under construction a 450,000-kw. unit and many hundreds of miles of associated high voltage transmission line. It serves more than one hundred cooperatives. The first unit is backed up by pooling arrangements with the Bureau of Reclamation developed under the MBSG arrangement.
>
> Basin Electric and its members are greatly concerned that back-up for its second unit will be available only through MAPP. It has not joined MAPP because of its anti-public interest aspects which are set forth in this petition. It also fears that in doing so, it would seriously impair the effectiveness of MBSG, which has been most useful to it and its members. Basin Electric also fears incurring legal liability if it participates in an anticompetitive arrangement such as is now provided for in the MAPP agreement. (pp. 19–20)

On July 28, 1972, Alexandria et al. filed a motion seeking leave to amend its petition in order to add 12 more parties to the original petitioners.

On July 25, 1972, a joint answer to the petition of Alexandria et al. was filed by some 20 of the participants in the MAPP agreement (joint answer). On July 26, 1972, Northern States Power Co. filed an answer to the petition of St. Paul. On July 27, 1972, Corn Belt Power Cooperative, which had joined in the joint answer, filed a supplemental answer to the petition of Alexandria et al.

On August 9, 1972, Alexandria et al. filed a response to petitioners' joint answer (response) which generally extends previous arguments, and on August 21, 1972 filed a letter correcting certain parts of the response.

On August 25, 1972, the Department of the Interior filed a letter commenting on the MAPP agreement.

Protest and petition to intervene of the city of St. Paul. St. Paul does not operate an electric utility system, but it is empowered to regulate electric rates within its jurisdiction.

St. Paul alleges that the MAPP agreement, in its present form, will inevitably curtail competition in the local power field, which will bring pressure to bear on the price of the electricity which is pooled and interchanged, and sold to the citizens of St. Paul.

St. Paul strongly objects to the allocation of voting strength within the management committee, and contends that basing voting strength on company size will give Northern States the greatest number of votes in the management committee and hence monopolistic control over MAPP.

It further alleges that the plans for construction, location, and installation of generating facilities will adversely affect the cost of capital, which is viewed as a significant element of rate-setting in St. Paul.

Northern States answers the contentions of St. Paul by claiming that the allocation of votes in the management committee will not enable it to monopolize the committee. It shows its votes as contrasted with the total number of votes based on a 1971 system demand, then points out that it requires a majority of the total votes to authorize any action by the management committee.[12]

Protest and petition to intervene and for rejection of power pool agreement tendered for filing, filed by Alexandria *et al.* A. Alexandria, *et al.* contend that the commission must reject the MAPP Agreement because its filing does not comply with Commission regulations.

Their argument is predicated on the contention that since the MAPP agreement only makes minor changes in the rates now in effect in the Upper Mississippi Valley power pool agreement (UMVPP), and apparently supersedes the Iowa power pool argeement (Iowa), it does no more than represent changes in existing rate schedules, and consequently cannot be accepted until § 35.13 of Commission regulations have been complied with.

It is further argued that even in the event the filing is treated as an initial rate filing, it is deficient as it has not met the requirements of § 35.2 of Commission regulations, which requires the filing of a rate schedule to include "all * * * practices, rules [or] regulations * * * which in any manner affect or relate to the [subject] service, rates, and charges." It is then contended that because the MAPP filing does not include handbooks on pool operations, it is incomplete and does not meet the requirements of § 35.2.

Finally, Alexandria et al. contend that the agreement may not be accepted for filing because no statement of revenue was attached.

In their joint answer, petitioners acknowledge MAPP does provide services which are identical in many instances to UMVPP and Iowa [13] and that specified charges are substantially the same.[14] However, it is pointed out that not all parties to MAPP are parties to either the Iowa pool or UMVPP.[15]

It should be further noted that UMVPP will continue to function, as all of its parties have not joined MAPP, and that transactions entered into prior to the effective date of the MAPP agreement will continue to take place under UMVPP and other prior pooling agreements.

As regards the allegation that the filing, if it is an initial filing, is deficient because the pool operation handbook was not included, participants point out that the filed pooling agreement is complete on its face, and cannot be modified by the Handbook.

Finally, participants contend that failure to provide an estimate of revenues is not fatally defective, as it is unlikely that an accurate estimate of revenues could be made for an agreement involving 22 participants.

B. Alexandria, et al., formally protest the filing of the MAPP agreement because it: (1) does not provide for a pooling arrangement compatible with the public interest; (2) contains numerous unreasonable restraints on competition which conflict with sections 1 and 2 of the Sherman Act and section 10(h) of the Federal Power Act; and (3) is in violation of the "preference clause" contained in certain Federal power marketing acts.

(1) *MAPP is not a genuine power pool and therefore is contrary to the public interest.* This allegation focuses on three main points: MAPP makes no provision for joint ownership of generating facilities; MAPP will not create a supply of

[12] See Exhibit C, which is filed as part of the original document.

[13] For a comparison of the MAPP schedule of services with those of the Iowa power pool and UMVPP, see Exhibit B, filed as part of the original document.

[14] For a comparison of the MAPP charges with those of the Iowa pool and UMVPP, see Exhibit B, filed as part of original document.

[15] See Exhibit A, filed as part of the original document.

bulk power available to all parties; and MAPP does not provide for the same participation by all utilities regardless of size.

Participants point out that the proper definition of power pool depends on who is defining it; that the MAPP agreement does not preclude any utility from contracting either with a participant or a nonparticipant for any service for which it now contracts; and further that the agreement does not preclude any utility from undertaking steps to become eligible for membership in MAPP.

(2) *MAPP contains unreasonable restraints on competition and is therefore in conflict with section 1 and 2 of the Sherman Act and section 10(h) of the Federal Power Act.* Alexandria, et al., contend that several violations of the antitrust laws are embodied in the MAPP agreement:

(a) It is alleged that most municipal and rural electric cooperative systems are excluded from participation in the allocation of existing power supplies or in the planning of new generation and transmission. Since this is the case, they say, those provisions of the MAPP agreement relating to membership are anticompetitive in nature.

Participants answer that MAPP does not prevent any party from entering a contractual relationship with any other entity for facilities or service, and that the agreement does not allocate power supply.

(b) Alexandria, et al., allege that the methods of weighing the votes on the management committee place the "effective and dominant control" of the pool under the larger systems.

Participants point out that the voting breakdown based on the 1971 load appears to refute this allegation.[16]

(c) Petitioners allege that the MAPP Agreement is anticompetitive in that it does not require participants to provide transmission facilities—"wheeling"—for nonparticipants and that it allows a participant to refuse transmission services to other participants when in its sole judgment those services might endanger or interfere with its obligations.

Participants answer by saying that, on the one hand, no petitioner would be worse off under the MAPP agreement than it was before, and on the other, that the owner of the individual facilities should be allowed to manage them when its utility obligations may be in danger.

(d) Petitioners allege that the provision requiring a utility objecting to a charge to pay it before it may dispute the charge is anticompetitive.

Participants allege that this is a matter within the discretion of management and is a typical feature of business agreements.

(e) Petitioners claim that the MAPP agreement is designed to allow its participants to continue anticompetitive practices against cooperatives and municipal systems.

Participants, however, allege that petitioners do not support their contentions by reference to the MAPP agreement, and that the context of this proceeding is not the proper forum in which to air their grievances.

(f) Finally, petitioners contend that the MAPP agreement will provide a "valuable business service" because the MAPP agreement governs the opportunity to acquire generating facilities, or purchase bulk power supplies, and therefore to be consistent with judicial interpretation of the antitrust laws [17] all utilities must be allowed to participate equally in the MAPP pool.

Participants say this is not true. They claim that the agreement does not restrict ownership of generation or transmission facilities, but only places upon Participants a responsibility for "orderly planning" of new bulk power facilities.

(3) *MAPP agreement conflicts with "preference" law.* Alexandria et al.'s final contention is that the Bureau of Reclamation's participation in the MAPP agreement is a violation of the customer preference expressed in section 5 of the Flood Control Act of 1944 and section 4 of the Fort Peck Act.

Participants, however, claim that the agreement not only specifically recognizes the obligation of the Bureau of Reclamation to preference customers under the above acts but also—insofar as the agreement permits the Bureau to share reserves and obtain emergency energy and spinning reserves—puts the Bureau in a better position to meet the needs of those customers.

By letter dated August 24, 1972, the U.S. Department of the Interior stated that it was satisfied that the MAPP agreement neither conflicts with nor prejudices the preference clauses in the applicable statutes governing the power marketing activities of that Department in the Missouri River Basin. The Department of Interior is charged with marketing responsibilities for Federal power development and not this Commission. The Commission would welcome the participation of the Department of Interior in these proceedings.

With respect to the plea of Alexandria, et al. to reject the MAPP agreement, we believe that such an action would be contrary to the public interest. The arguments which are advanced by Alexandria with respect to noncompliance with § 35.2 of Commission regulations are unconvincing.

Petitioners contend that the lack of a detailed handbook on pool operation renders the filing fatally defective. However, the handbook is not yet complete, and when complete will not go to the substance of the MAPP agreement, but is merely an administrative guide. Even if the handbook, when available, did make some modification in the MAPP agreement, the Commission could consider any such modification to be a change in rate schedule and treat the matter under § 35.13 of its regulations.

Section 202(a) of the Federal Power Act states that for the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy. Further, it shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts.

The stated objective of MAPP is to provide reliable and economical electric service to the customers of each of its Parties consistent with reasonable utilization of natural resources and effect on the environment. In order to accomplish this goal, the Parties shall endeavor to coordinate the installation and operation of generation and transmission facilities.

The satisfactory performance of a power supply network requires close cooperation among component systems for accurate control of frequency, sharing of load regulating responsibility, and maintenance of power system stability. Financial benefits are often realized from staggered construction of large generating units, short-term capacity transactions, and interchanges of economy energy. Reduction of installed reserve capacity is made possible by mutual emergency assistance arrangements and associated coordinated transmission planning. Bulk power supply reliability is enhanced by interconnection agreements covering reserves, reactive kilovolt-ampere requirements, emergency service, coordination of day-to-day operations, and coordination of maintenance schedules. Also, operating costs may be reduced through coordinated operation of interconnected systems.

Electric utilities, which are unable individually to construct and take full advantage of large bulk power supply facilities, are able to obtain economic and operational benefits from such facilities, inter alia, by joining with neighboring systems in coordination arrangements. A high degree of coordination is achievable when a group of utilities operate their bulk power supply facilities under a single system planning concept. It is desirable for coordinating groups to be large enough to take full advantage of efficient generating units and EHV transmissions made available by modern technology, yet be of manageable size with all participants capable of sharing the responsibilities of the coordinated effort.

In conducting proceedings with regard to intervenors' allegations the Commission will do so within its own rules and regulations under the Federal Power Act. The Commission finds that the

[16] See Exhibit C, filed as part of the original document.

[17] U.S. *v.* Terminal Railroad Association, 224 U.S. 383 (1912). Silver *v.* New York Stock Exchange, 373 U.S. 341 (1963).

tendered MAPP agreement is an initial rate filing under the Commission's rules and regulations and is complete and in conformity therewith and therefore not subject to the Commission's rejection or suspension.

While the Commission's procedure does not contemplate rejection or suspension of complete initial rate filings under their rules and regulations, we shall consider the petitions of intervenors as complaints pursuant to section 306 of the Federal Power Act, to be set for hearing.

It is our responsibility inter alia to determine whether the areas of coordination included in an agreement meet the standards of section 206(a) of the Federal Power Act.[18] These standards must, however, be determined within the context of the duties placed upon us by section 202(a) which provides:

SEC. 202. [As amended Aug. 7, 1953.] (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations. [49 Stat. 848; 16 U.S.C. 824a(a)]

A review of the protests, petitions to intervene, and motions filed in response thereto indicates that the MAPP proposed tariff should be accepted for filing as an initial rate schedule, and that the issues raised by the pleadings should be resolved on the basis of an evidentiary record to be established upon hearing under sections 202, 205, 206, 306, 307, 308, and 309 of the Federal Power Act. It must be understood that acceptance for filing of tendered rate schedules does not constitute a determination regarding the justness and reasonableness of rates.

The petitioners should be afforded the opportunity to present evidence in support of their allegations and to show under Part II of the Federal Power Act what, if any, relief the Commission can grant. The issues to be explored, on the basis of an evidentiary hearing, shall include but not be limited to, the following:

(a) Whether any of the provisions of MAPP constitute violations of Part II of the Federal Power Act;

(b) Whether the proposed design and operation of MAPP will tend toward a proliferation of small, inefficient generating plants and avoidable transmission facilities;

(c) Whether the agreement is contrary to antitrust law and policy.

The Commission further finds:

(1) Good cause has been shown for accepting the filing of the tendered MAPP agreement.

(2) It is necessary and appropriate in the proper exercise of the Commission's responsibilities under the Federal Power Act that the above described issues raised by intervenors in their protest and petitions filed in docket No. E-7734 be investigated in the context of a complaint proceeding and set for hearing under sections 202, 205, 206, 306, 307, 308, and 309 of the act to determine what relief, if any may be granted by the Commission under Part II of the Federal Power Act.

(3) Intervention by any party having filed a petition may be in the public interest for purposes of Commission consideration of their petition.

The Commission orders:

(A) The rate schedules attached hereto are hereby acepted for filing effective December 1, 1972.

(B) Such acceptance shall only extend to the first step of those charges were stepped rates are specified in Exhibit B.[18a]

(C) All parties filing petitions to intervene are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission. *Provided, however,* that the admission of these petitioners shall not be construed as recognition by the Commission that the petitioners might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(D) Pursuant to the authority of the Federal Power Act, particularly sections 202, 205, 206, 307, 308 and 309 thereof and the Commission's rules of practice and procedure, an investigation of the issues raised in the protest and petitions filed by intervenors is hereby instituted to determine what relief, if any, is appropriate and necessary under the Federal Power Act.

(E) The expeditious disposition of this proceeding will be furthered by the submission of prepared testimony and exhibits by the intervenors St. Paul and Alexandria et al. in support of their allegations on or before November 30, 1972. Applicants shall file prepared testimony and exhibits in support of their positions on or before December 29, 1972. Staff shall file testimony on or before January 22, 1973. Rebuttal evidence shall be served no later than February 15, 1973. Cross-examination of all evidence shall commence March 5, 1973.

(F) The administrative law judge, to be designated for that purpose, shall preside at the prehearing conference on March 1, 1973, in matters not herein provided, and shall control this proceeding in accordance with the policies expressed in § 1.27 of the Commission's rules of practice and procedure.

(G) This order is without prejudice to any findings or orders which have been made or may hereafter be made by this Commission in this proceeding.

(H) All other requests or motions not specifically granted in this order are hereby denied.

(I) To the intent that the tariffs set forth in the MAPP agreement provide similar rates and services to parties identical to those in other agreements, the appropriate parties shall file notice of cancellation of the previous rate schedules within 60 days of the issuance date of this order.

By the Commission.

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

[FR Doc.72-16709 Filed 9-29-72;8:50 am]

[Docket No. CP73-75]

NEW ENGLAND LNG CO., INC.

Notice of Application

SEPTEMBER 27, 1972.

Take notice that on September 19, 1972, New England LNG Co., Inc. (Applicant), 95 East Merrimack Street, Lowell, MA 01853, filed in Docket No. CP73-75 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of liquefied natural gas (LNG) to Greenwich Gas Co. (Greenwich), Greenwich, Conn., and the transportation of said LNG to Southern Connecticut Gas Co. (Southern Connecticut) at New Haven, Conn., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell to Greenwich 25,000 Mcf of LNG to be delivered for Greenwich's account to Southern Connecticut by Applicant's affiliate, Gas Inc., by over-the-road cryogenic semitrailers. Southern Connecticut will vaporize up to 3,000 Mcf of gas per day into its distribution system and will reduce its purchases from Tennessee Gas Pipeline Co., a Division of Tenneco, Inc. (Tennessee), by a like amount. Tennessee will deliver an equivalent amount of gas to Greenwich at an existing point of interconnection. Sales and deliveries are proposed to commence by Applicant by November 1, 1972, in order to meet immediate requirements on Greenwich's system.

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[18] SEC. 206. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. [49 Stat. 852; 16 U.S.C. 824e(a)]

[18a] Exhibit B filed as part of the original document.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before October 10, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-16705 Filed 9-29-72;8:50 am]

[Docket No. CP73-74]

NEW ENGLAND LNG CO., INC.

Notice of Application

SEPTEMBER 28, 1972.

Take notice that on September 19, 1972, New England LNG Co., Inc. (Applicant), 95 East Merrimack Street, Lowell, MA 01853, filed in Docket No. CP73-74 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and transportation of liquefied natural gas (LNG) to Manchester Gas Co. (Manchester), Manchester, N.H., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell to Manchester up to two 11,000-gallon trailer loads of LNG per day until such time as the annual storage quantity of 8,250 Mcf has been delivered. The LNG would be sold pursuant to Applicant's rate schedule LNG-3 and delivered by Applicant's affiliate, Gas Inc., by over-the-road cryogenic semitrailers. Sales and deliveries are limited to the term October 1, 1972, through March 31, 1973, and are proposed in order to meet immediate requirements on Manchester's system.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before October 11, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-16751 Filed 9-29-72;8:54 am]

[Docket No. RP71-119]

PANHANDLE EASTERN PIPELINE CO.

Notice of Motion for Waiver or Modification of Settlement and Agreement

SEPTEMBER 28, 1972.

Take notice that on September 25, 1972, Battle Creek Gas Co. (Movant), 23 East Michigan Avenue, Battle Creek, MI 49016, filed in Docket No. RP71-119 a motion for an order modifying or waiving the flexibility requirements set forth in the settlement and agreement dated May 8, 1972, in the instant proceeding. The details of Movant's proposal are more fully set forth in the motion which is on file with the Commission and open to public inspection.

Movant, a natural gas distributor in the city of Battle Creek and environs, states that Panhandle Eastern Pipe Line Co. (Panhandle) is its only source of natural gas, that it has two propane plants capable of producing 8,500 Mcf of gas per day for peak shaving, and that it has a strict curtailment policy under which it has not added any new space heating customers since December 1970 and under which it has curtailed all new service to industrial customers and has limited existing firm customers to increases in existing contracts. Movant states further that for the past 2 years it has been engaged in a program of developing a salt cavern for the storage of natural gas in Johnstown Township, Mich., and that engineering problems and environmental considerations have required the leaching of the cavern at a slower rate than anticipated so that the cavern will not be ready to receive gas until fall of 1973.

The motion indicates that, based upon the anticipated curtailment of Panhandle as set forth in its schedule of July 1972, Panhandle's peak day responsibility to Movant in January 1973 will be 45,994 Mcf of natural gas which, when added to Movant's propane production, provides a peak day availability of 54,494 Mcf of gas. Movant states that its peak day requirements for firm gas might reach 62,356 Mcf in the winter of 1972-73 and that it will have a deficiency, based upon a winter colder than normal, of 7,862 Mcf of gas. If such a winter colder than normal does in fact occur, Movant alleges that it will be required to curtain its firm industrial customers and large commercial users which will cause many businesses in the area to cease operations and will cause extreme hardship upon the citizens of the area.

In order to alleviate its supply problem for the 1972-73 heating season, Movant has contracted with Michigan Consolidated Gas Co. (Consolidated) to receive from Panhandle at Consolidated's River Rouge Station in Melvindale, Mich., up to 200,000 Mcf of Movant's gas between October 1, 1972, and November 30, 1972, at a rate not to exceed 10,000 Mcf per day. Movant would cause such gas to be available by interrupting its interruptible customers earlier than it would otherwise do. Consolidated would redeliver gas to Panhandle for delivery to Movant at a rate not to exceed 8,000 Mcf per day from December 1972 through April 1973. The gas would be delivered by displacement of other gas delivered by Panhandle at the River Rouge station during the heating season. Any gas not utilized by Movant by April 30, 1973, would be redelivered to it as soon as practical thereafter. Movant alleges that no gas delivered by Panhandle and stored by Consolidated will reenter interstate commerce, that such gas will be used exclusively within Michigan, and that all physical facilities necessary to carry out the proposal are in existence.

Movant requests that the Commission approve the subject proposal as an exception to the flexibility provisions of the Stipulation and Agreement of May 8, 1972, order Panhandle to deliver the gas as proposed and find that the proposal will not affect the nonjurisdictional status of Movant or Consolidated under the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said motion should on or before October 16, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-16752 Filed 9-29-72;8:54 am]

[Project No. 135]

PORTLAND GENERAL ELECTRIC CO.

Notice of Issuance of Annual License

SEPTEMBER 26, 1972.

On February 19, 1970, Portland General Electric Company, Licensee for Project No. 135, located in Clackamas County, Oregon, on the Clackamas River, filed an application for a new license under section 15 of the Federal Power Act and Commission Regulation thereunder (§ 16.1–16.6).

The license for Project No. 135 was issued effective September 27, 1922, for a period ending September 26, 1972. In order to authorize the continued operation of the project pursuant to section 15 of the Act, pending completion of Licensee's application and Commission action thereon, it is appropriate and in the public interest to issue an annual license to Portland General Electric Co. for continued operation and maintenance of Project No. 135.

Take notice that an annual license is issued to Portland General Electric Co. (Licensee) under section 15 of the Federal Power Act for the period September 27, 1972, to September 26, 1973, or until Federal takeover or the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 135, subject to the terms and conditions of its present license.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-16708 Filed 9-29-72;8:50 am]

FEDERAL RESERVE SYSTEM

DYNAMERICA CORP.

Acquisition of Bank

Dynamerica Corp., Richardson, 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 57 percent or more of the voting shares of American National Bank of Garland, Garland, 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 Reserve Bank, to be received not later than October 20, 1972.

Board of Governors of the Federal Reserve System, September 25, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16688 Filed 9-29-72;8:49 am]

EQUITABLE BANCORPORATION

Acquisition of Bank

Equitable Bancorporation, Baltimore, Md., 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 not less than 41 percent of the voting shares of University National Bank, Rockville, Md. 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 Richmond. 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 October 16, 1972.

Board of Governors of the Federal Reserve System, September 26, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16686 Filed 9-29-72;8:48 am]

FIRST SECURITY CORP.

Acquisition of Bank

First Security Corp., Salt Lake City, Utah, 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 97.5 percent of the voting shares of First Security Bank of Price, National Association, Price, Utah, a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of San Francisco. 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 October 16, 1972.

Board of Governors of the Federal Reserve System, September 25, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16687 Filed 9-29-72;8:48 am]

EQUITABLE BANCORP.

Order Approving Acquisition of Bank

Equitable Bancorp., Baltimore, Md., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Farmers and Merchants Bank of Hagerstown, Md., Hagerstown, Md. (Bank).

Notice of the application, 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 application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, with two subsidiary banks holding aggregate deposits of $702.5 million, is the second largest banking organization in Maryland with 11.8 percent of the commercial bank deposits in the State. (All banking data are as of December 31, 1971, unless otherwise indicated, and reflect bank holding company formations and acquisitions approved by the Board through August 31, 1972.) Acquisition of Bank ($28.6 million in deposits) would increase applicant's share of statewide deposits by only 0.5 percent and would leave Applicant as the second ranking banking organization in Maryland. Consummation of the transaction would not result in a significant increase in the concentration of banking resources in Maryland.

Bank is the third largest of 11 banks serving the Washington County banking market, holding about 16.1 percent of market deposits (as of June 30, 1970). This proposal represents Applicant's initial entry into Washington County and the western part of the State and, inasmuch as the closest offices of Applicant and Bank are 47 miles apart, would not result in the elimination of any significant existing competition. The likelihood that future competition would develop appears remote. The Maryland Commissioner of Banking recently denied a request by Applicant's lead bank to establish a branch in Washington County near Hagerstown on the ground

that Washington County was overbanked (county average of 3,461 persons per banking office versus the statewide average of 5,286 persons per banking office). Bank is the smaller of the two banks headquartered in Hagerstown, and acquisition of Bank by Applicant would provide added competition for the nine branches of the State's largest and third largest banking organizations located in the Hagerstown market. It does not appear, therefore, that significant competition would be eliminated or significant potential competition foreclosed by consummation of Applicant's proposal, or that there would be undue adverse effects on any bank in the area involved.

The financial and managerial resources and future propects of Applicant, its subsidiaries, and Bank are all regarded as generally satisfactory and consistent with approval of the application. It appears that the banking needs of the residents of Washington County are being met; however, customers of Bank should benefit from the higher lending limits and additional services that Applicant will be able to provide. This increase in the competitive capacity of Bank would be in the public interest. Convenience and needs considerations are consistent with approval of the application. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the 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 Richmond pursuant to delegated authority.

By order of the Board of Governors,[1] effective September 21, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16657 Filed 9-29-72;8:46 am]

GRAHAM-MICHAELIS FINANCIAL CORP.

Order Approving Formation of Bank Holding Company

Graham-Michaelis Financial Corp., Wichita, Kans., 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)) of formation of a bank holding company through acquisition of 80 percent or more of the voting shares of Wichita State Bank, Wichita, Kans. ("Bank").

Notice of receipt of the application has been given in accordance with section 3 (b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and finds that:

Applicant is a newly formed organization and has no operating history. Bank (deposits of $19.9 million) is the eighth largest of 14 banks located in Wichita. (All banking data are as of December 31, 1971.) The Board notes that the principals of Applicant also hold an interest in another bank in Wichita with deposits of approximately $22 million. However, consummation of the proposed transaction is not likely to adversely affect existing competition in that there is little overlap in the service areas of the two banks. Furthermore, common ownership of the two banks will continue to exist, irrespective of Board action on this application.

Applicant's principals presently own 83 percent of the outstanding shares of Bank. With the exception of 6 percent of those outstanding shares, which the principals acquired subsequent to obtaining majority control, all sellers received an identical price for their shares, and Applicant intends to make this same offer to remaining shareholders of Bank. Those shares purchased subsequently at a lower price were purchased from brokers without any prior solicitation from Applicant. The Board therefore concludes that the offers made to Bank's shareholders by Applicant and its principals are substantially equivalent.

Applicant's financial resources and future prospects are dependent upon those of Bank. Its projected earnings appear to be sufficient to service the debt which it will incur upon consummation of the proposed transaction without adversely affecting Bank's capital structure. Consummation of the proposal would insure continuation of local ownership and management of Bank. Therefore, considerations relating to the financial and managerial resources and future prospects of Bank weigh toward approval of the application. Considerations relating to the convenience and needs of the communities to be served are consistent with approval of the application. It is the Board's judgment that the transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the 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 Kansas City pursuant to delegated authority.

By order of the Board of Governors,[1] effective September 21, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16658 Filed 9-29-72;8:46 am]

INDEPENDENT BANKSHARES CORP.

Order Approving Formation of Bank Holding Company

Independent Bankshares Corp., San Rafael, Calif., 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)) of formation of a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successors by merger to Bank of Marin, San Rafael, Calif. (Marin Bank), and Bank of Sonoma County, Sebastopol, Calif. (Sonoma Bank); and through the acquisition of up to 100 percent of the voting shares (less directors' qualifying shares) of The First National Bank of Cloverdale, Cloverdale, Calif. (Cloverdale Bank). The banks into which Marin Bank and Sonoma Bank are to be merged have no significance except as a means of acquiring all of the shares of Marin Bank and Sonoma Bank; accordingly, the proposed acquisitions of the shares of the successor organizations are treated herein as the proposed acquisitions of the shares of Marin Bank and Sonoma Bank.

Notice of the application, 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 application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a newly organized corporation. Consummation of the proposal herein would result in Applicant controlling approximately $112 million in deposits, representing 0.2 percent of total commercial bank deposits in the State, and Applicant would become the ninth largest bank holding company in California. (Unless otherwise noted, all banking data are as of December 31, 1971, adjusted to reflect bank holding company formations and acquisitions approved by the Board through August 31, 1972.)

Marin Bank ($72.0 million in deposits), the proposed lead bank, is headquartered in San Rafael and has six branches serving the Marin County banking market. Marin Bank controls 9.4 percent of commercial bank deposits in the Marin County banking market, and is the fourth largest bank in the market. (Banking data concerning market control are as of June 30, 1970.) It competes with eight other banks, four of which are branches of organizations which rank among the four largest banking organizations in California, each of which has over $4.2 billion in deposits.

Sonoma Bank ($27.8 million in deposits) operates three offices in the sparsely populated Sebastopol area of central Sonoma County in which market Sonoma Bank controls 54.8 percent of market deposits. This seeming market dominance is mitigated by the fact that the Sebastopol area supports only three banks; Sonoma Bank's principal competitor is a branch of Bank of America; and those

[1] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns.

[1] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns.

Sebastopol residents who work in nearby Santa Rosa can choose from among six banks in Santa Rosa.

Cloverdale Bank ($12.6 million in deposits) has three branches which operate in sparsely populated northern Sonoma County and southern Mendocino County. Cloverdale Bank's head office and Healdsburg branch compete with offices of the largest and fourth largest bank holding companies in California, with Cloverdale Bank being the smallest bank in both communities.

The record indicates that banks do not compete with each other, and the development of such competition in the future appears unlikely. The nearest offices of the three banks are 14 miles apart, and although California's unlimited branching laws would permit any of the three banks to establish a de novo branch in any of the other banks' service areas, there is little probability of such a move in view of the relatively small size of the banks involved and the low population density per banking office for the areas involved. It appears that the affiliation of the three banks in a holding company would not have any adverse effects on other banks in these markets. Affiliation may actually promote competition by creating a larger institution which can then operate in an environment in which large banking systems are very prominent. On the basis of the record before it, the Board concludes that consummation of the proposal would not have an adverse effect on competition in any relevant area.

The financial and managerial resources of each bank appear generally satisfactory. It appears that Applicant would begin operations in generally satisfactory condition and with competent management. In addition, Applicant has indicated an intention to increase the capital accounts of Marin Bank and Cloverdale Bank by a combined $1.6 million upon affiliation. Applicant's future prospects, which are largely dependent upon those of its subsidiary banks, also appear favorable. Although there is no evidence that existing banking needs of the communities involved are not being met, affiliation of the three banks with Applicant would lead to the availability of larger lines of credit than either bank could offer and other services offered by each bank would be expanded. These considerations relative to the convenience and needs of the communities to be served lend some weight toward approval. It is the Board's judgment that the proposed transaction is in the public interest and should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the 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 San Francisco pursuant to delegated authority.

By order of the Board of Governors,[1] effective September 21, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16659 Filed 9-29-72;8:46 am]

L&L HOLDING CO.

Order Approving Formation of Bank Holding Company and Acquisition of Insurance Agency

L&L Holding Co., Fort Collins, Colo., 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)) of formation of a bank holding company through the acquisition of 56 percent or more of the voting shares of Rocky Mountain Bank and Trust Co., Fort Collins, Colo. (Bank).

At the same time Applicant has applied for the Board's approval under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y to engage in insurance agency activities through the acquisition of the assets of W&W Insurance Agency, Fort Collins, Colo. (Agency).

Notice of receipt of the applications has been given in accordance with sections 3 and 4 of the Act, and the time for filing comments and views has expired. The Board has considered the applications and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)), and the considerations specified in section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and finds that:

Applicant is a nonoperating corporation formed for the purpose of acquiring Bank and Agency. Bank, with deposits of $4.3 million, controls 2.5 percent of deposits in the Fort Collins banking market and is the smallest of six banking organizations in that market. Since the transaction involves only a change from individual to corporate ownership, consummation of the proposal will have no adverse effects on existing or potential competition.

Considerations relating to the financial and managerial resources and prospects of Applicant and Bank are satisfactory and consistent with approval. In this connection the Board has determined that the offers to be made to majority and minority shareholders, while not identical, are substantially equivalent. Considerations relating to the convenience and needs of the communities to be served are consistent with approval of the application. It is the Board's judgment that consummation of the transaction would be in the public interest and that the acquisition of Bank should be approved.

Agency operates on the premises of Bank and is engaged in selling credit life and accident and health insurance in connection with lending activities of Bank. The Board has previously determined by regulation that this activity is closely related to banking (12 CFR 225.4(a)(9)).

There is no evidence in the record indicating that consummation of the proposal would result in any undue concentration of resources, unfair competition, conflicts of interest, unsound banking practices, or other adverse effects on the public interest. It does appear that Applicant's acquisition of both Bank and Agency will enable those shareholders of Bank who accept the exchange offer to share in the income of Agency as well as Bank. Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors that the Board is required to consider regarding the acquisition of Agency under section 4(c)(8) is favorable and that the application should be approved.

On the basis of the record, the applications to acquire Bank and Agency are approved for the reasons summarized above. The acquisition of Bank 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 Kansas City pursuant to delegated authority. The determination as to Agency's activities is subject to the Board's authority to require reports by, and make examinations of, holding companies and their subsidiaries and to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[1] effective September 21, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16660 Filed 9-29-72;8:46 am]

SOUTHEAST BANKING CORP.

Order Approving Acquisition of Bank

Southeast Banking Corp., Miami, Fla., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Manatee National Bank of Bradenton, Bradenton, Fla. (Manatee Bank).

Notice of the application, 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

[1] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns.

[1] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns.

considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls 15 banks with aggregate deposits of $1.17 billion, representing 7.21 percent of the total commercial bank deposits held by Florida banks, and is the largest banking organization in the State. (All banking data are as of December 31, 1971, and reflect holding company formations and acquisitions approved through July 31, 1972.) The acquisition of Manatee Bank ($58.8 million deposits) would increase applicant's share of Florida deposits by 0.38 percentage points. Consummation of the acquisition would not result in a significant increase in the concentration of banking resources on a local or a statewide basis. Manatee Bank is the second largest of nine banks located in the Bradenton banking market, where it controls 23.3 percent of area deposits. However, two of Florida's large multibank holding companies together control over 50 percent of the market. It appears that consummation of the proposal would not adversely affect any of the area banks.

Manatee Bank is affiliated at the present time, through common ownership and management, with two smaller area banks. This common shareholder relationship would be substantially eliminated by consummation of the acquisition since it is proposed that the majority shares of Manatee Bank would be exchanged for applicant's stock. Applicant also states that the common officer and director relationship between the three banks would be terminated upon consummation of the proposal. Accordingly, it appears that disaffiliation of the three banks would have a procompetitive effect on area banking.

The nearest subsidiary banking office of applicant is located 40 miles north of Manatee Bank, and no significant competition exists between any of applicant's offices and Manatee Bank at the present time, nor does it appear that the proposed acquisition would eliminate future competition in view of the distances involved and Florida's restrictive branching laws. Based on the foregoing, competitive considerations are consistent with approval of the application. Moreover, it appears that the ability of Manatee Bank to compete with the area's large banking organizations would be enhanced by the proposed affiliation.

The financial condition of applicant and its subsidiaries is considered to be generally satisfactory in view of applicant's commitment to inject additional capital into its subsidiaries by December 31, 1972, thereby assuring adequate capital for each bank in its group. Applicant's management is deemed capable and prospects for the group are favorable. The financial condition and management of Manatee Bank are considered to be satisfactory, and prospects for the bank are favorable. Banking factors are consistent with approval of the application.

Present banking services in the area appear to be adequate. However, the development of nearby Port Manatee will probably give rise to a greater need for international banking services which applicant proposes to introduce at Manatee Bank. Applicant also proposes to assist Manatee Bank in establishing a mortgage financing section, to expand present trust services, and to enable it to satisfy larger loan demands. Considerations relating to the convenience and needs of the communities to be served are consistent with and lend some support toward approval of the application. It is the Board's judgment that the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the 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 Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] effective September 21, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16661 Filed 9-29-72;8:46 am]

THIRD NATIONAL CORP.

Order Approving Acquisition of Friendly Finance, Inc.

Third National Corp., Nashville, Tenn., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire all of the voting shares of Friendly Finance, Inc., Paducah, Ky. (Friendly), a company that engages in the activities of making installment loans direct to borrowers, discounting installment notes receivable issued to dealers by purchasers, and acting as agent for credit life, accident and health insurance in connection with such loans. Such activities have been determined by the Board to be closely related to the business of banking (12 CFR 225.4(a)(1) and (9)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (37 F.R. 153). The time for filing comments and views has expired, and the Board has considered all comments received in the light of the public interest factors set forth in section 4(c)(8) of the Act (12 U.S.C. 1843(c)).

Applicant's banking subsidiary, Third National Bank in Nashville (Bank), is the fourth largest bank in Tennessee and the second largest bank in Nashville with deposits of $540.1 million, representing 30 percent of total commercial deposits in the Davidson County banking market. (All deposit data and market share data are as of December 31, 1971.) Bank operates 20 offices, all in Davidson County. (Tennessee law prohibits a bank from branching outside of the county in which its principal office is located.) Bank makes consumer installment loans through its principal office and branch offices in Davidson County. As of August 1, 1972, Bank's total volume of consumer loans approximated $12.5 million.

Friendly is a consumer finance company that operates 19 offices in the States of Kentucky, Tennessee, Oklahoma, and Mississippi, one of which is located in the service area of Bank. Friendly makes installment loans up to $5,000 directly to borrowers, most of which are secured by automobiles, household goods, other chattels or real estate, and sells credit insurance in connection with its lending activities. It had total loans outstanding of $10.6 million as of April 30, 1972, of which $0.5 million were derived from Davidson County.

Although Bank and Friendly both compete for consumer loan business in Davidson County, Tenn., consummation of the proposed acquisition would not have a significant adverse effect on existing competition since the market share of Bank would be increased only slightly. A substantial number of independent competitors would remain in the market. Moreover, since Tennessee law precludes the establishment of branches by Bank outside Davidson County, the development of competition between Bank and Friendly in other markets is unlikely. Applicant has the resources to enter markets served by Friendly through formation of its own consumer loan companies. However, there are numerous active competitors in these markets; in addition, the existence of many potential entrants diminishes any possible adverse effects that consummation of the proposed acquisition might have upon potential competition. The Board concludes that consummation of the proposed acquisition would not have a serious adverse effect upon existing or potential competition between Applicant and Friendly. Further, there is no significant possibility that the acquisition will have adverse effects on credit currently available to independent finance companies by Bank.

It is anticipated that Friendly's affiliation with Applicant, by providing access to the greater financial resources of Applicant, will enable Friendly to compete more effectively with other consumer finance lenders in the areas in which it operates. There is no evidence in the record indicating that consummation of the proposed acquisition would result in any undue concentration of resources, unfair competition, conflicts of interest, unsound banking practices or other adverse effects.

Based upon the foregoing and other considerations reflected in the record,

[1] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns.

the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[1] effective September 21, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16662 Filed 9-29-72;8:46 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs., Temporary Reg. E-24]

FEDERAL ADP SIMULATION CENTER

Simulation and Performance Evaluation Services

1. *Purpose.* This regulation sets forth policies and procedures for obtaining ADP simulation and performance evaluation services.

2. *Effective date.* This regulation is effective upon publication in the FEDERAL REGISTER (9-30-72).

3. *Expiration date.* This regulation expires February 28, 1973, unless sooner revised or superseded. Prior to that date, this regulation will be codified, as appropriate, in the permanent regulations of GSA appearing in Title 41, CFR, Public Contracts and Property Management.

4. *Applicability.* The provisions of this regulation apply to all Federal agencies.

5. *Background.* The Acting Administrator of General Services delegated authority on March 3, 1972, to the Secretary of the Air Force to operate a Federal Data Processing Center (FDPC) for ADP Simulation (FPMR Temporary Regulation E-22). The delegation is in accordance with an interagency agreement between GSA and the Department of the Air Force for operating the FDPC for ADP Simulation. The interagency agreement assigns responsibility to the FDPC for obtaining required ADP simulation services from commercial sources through the appropriate Department of the Air Force procurement support office when the FDPC cannot satisfy these requirements internally. The Federal Data Processing Center for ADP Simulation was given a delegation of procurement authority by GSA on March 9, 1972, to accomplish such procurement responsibilities.

6. *Designation of Federal ADP Simulation Center and its functions.* The Federal Data Processing Center for ADP Simulation shall be referred to as the Federal ADP Simulation Center. It will provide technical assistance, support, and services on a reimbursable basis throughout the Federal Government for simulation, analysis, and performance evaluation of automatic data processing systems.

7. *Services available.* Services available from the Federal ADP Simulation Center include in-house and contract services for computer performance simulation and evaluation, ADP modeling, and hardware and software monitor analysis. These services include the availability of personal services support such as simulation analysts.

8. *Policy direction.* A Joint Policy Committee for ADP Simulation has been established to provide overall policy guidance for management of the Federal ADP Simulation Center. Representatives from the Department of Defense, Department of the Air Force, National Bureau of Standards, and the General Services Administration are permanent members of this committee. Temporary membership will be extended to agencies which are large users of the service provided by the Center. The Joint Policy Committee will review and approve rates for services provided by the Center and will approve requests for equipment or services required for operation. Disagreements arising between users of the Center which cannot be resolved will be referred to the Joint Policy Committee for resolution.

9. *Procurement of ADP simulation and computer performance evaluation software and services*—a. *Policy.* (1) The Federal ADP Simulation Center is the primary source of supply for Federal agencies for ADP simulation and computer performance evaluation requirements. Activities of the Center will be directed to providing using agencies with these ADP services at the least cost to the Government.

(2) Government contracts for all ADP simulation and performance evaluation systems will be issued by the Federal ADP Simulation Center.

(3) The Federal ADP Simulation Center will also issue contracts for software and hardware computer performance monitors.

(4) The Federal ADP Simulation Center will advise whether a particular contract or Federal Supply Schedule is an appropriate source of supply or if a new negotiated or sole source procurement is necessary for services which the Center cannot provide.

(5) Until the Federal ADP Simulation Center has determined and advised GSA of the adequacy of the Department of the Air Force procurement capability to undertake contracting for all ADP simulation services, including software and hardware performance monitors, GSA may negotiate such contracts or Federal Supply Schedules. Any ADP simulation contracts/schedules issued by GSA will include provisions requiring that agencies contact the Federal ADP Simulation Center for authorization prior to ordering from these contracts/schedules.

b. *Procedures.* (1) Agencies requiring ADP simulation or computer performance evaluation assistance shall contact the Federal ADP Simulation Center at the following address:

Department of the Air Force
Federal ADP Simulation Center
2461 Eisenhower Avenue
Alexandria, VA 22314
Telephone: 703 325-0607
Autovon: 221-0607

(2) The Center will provide the requested service or will take appropriate action to obtain the resources required for the agency. If the requested services cannot be furnished by the Center, then such services may be procured for the agency from a commercial source (pursuant to the aforementioned March 9, 1972, delegation of authority) or purchased by the agency from a current Government contract/schedule. If these actions will not satisfy the requirements or if the requirements are outside of the March 9, 1972, delegation of authority, the Federal ADP Simulation Center will advise GSA to issue a delegation of procurement authority.

(3) GSA will periodically reimburse the Department of the Air Force from the Automatic Data Processing Fund for its costs applicable to the operation of the Federal ADP Simulation Center. GSA will bill users for services rendered by the Federal ADP Simulation Center.

10. *Agency comments.* Comments concerning the effect or impact of this regulation on agency operations or programs should be submitted to the General Services Administration (CP), Washington, DC 20405, no later than November 30, 1972, for consideration and possible incorporation into the permanent regulation.

ARTHUR F. SAMPSON,
Acting Administrator of General Services.

SEPTEMBER 26, 1972.

[FR Doc.72-16697 Filed 9-29-72;8:51 am]

SECURITIES AND EXCHANGE COMMISSION

[812-3242]

THE COLONIAL FUND, INC., ET AL.

Notice of Application for an Order Exempting Applicants

SEPTEMBER 26, 1972.

Notice is hereby given that the Colonial Fund, Inc., Colonial Growth Shares, Inc., Colonial Equities, Inc., Colonial Ventures, Inc., and Colonial Income Fund, Inc. (hereinafter somtimes individually "Fund" or collectively "Funds"),

[1] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns.

all open-end management investment companies registered under the Investment Company Act of 1940 (Act), and Colonial Distribtors, Inc. (Colonial), 75 Federal Street, Boston, MA 02110, a Delaware corporation (hereinafter Funds and Colonial collectively "Applicants") have filed an application pursuant to section 6(c) of the Act for an order exempting Applicants from section 22(d) of the Act. All interested persons are referred to the application, as amended, on file with the Commission for a statement of the representations made therein, which are summarized below.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus.

Applicants propose to offer to persons who redeem shares of any of the Funds a one-time privilege to reinstate their accounts by repurchasing either shares of the Fund out of which they were redeemed or the shares of the other Funds at net asset value without a sales charge up to the amount of the prior liquidated proceeds plus an amount necessary to round off the purchase to full shares if a fractional share is not purchased. The reinstatement is to be made provided a written order to purchase the shares of the designated Fund is received by the Fund or Colonial postmarked within 15 calendar days after the request for redemption and accompanied by an executed stock power with signatures of the shareholder properly guaranteed. The repurchase price per share is to be at the Fund's net asset value next determined following receipt of the shareholders' written purchase order designating the Fund to be purchased. Neither the Fund nor Colonial nor any broker-dealer is to receive compensation of any kind in connection with the reinvestment and no service charge is to be levied with respect to this reinstatement.

Applicants assert that speculation for gains will be minimized by the requirement that the reinvestment privilege is exercisable only once and then within a 15-day period. Moreover, it is contended that there will be little inducement to persuade shareholders to reinstate their account with the Funds in that no additional compensation of any kind is to be paid for such reinstatement. Finally, Applicants argue that the proposed privilege will enable investors to be reminded of features of their investment which they may have overlooked or of which they may have been unaware at the time they redeemed.

Notice of the proposed reinstatement privilege will be placed in the Funds' prospectuses and Colonial will communicate with shareholders having redeemed their shares to advise them of this privilege.

Section 6(c) of the Act provides, among other things, that the Commission by order upon application, may conditionally or unconditionally exempt any person from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than October 20, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the 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 address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Company Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-16666 Filed 9-29-72;8:47 am]

INTERSTATE COMMERCE COMMISSION

[Notice 88]

ASSIGNMENT OF HEARINGS

SEPTEMBER 27, 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. No amendments will be entertained after the date of this publication.

MC 111812 Sub 436, Midwest Coast Transport, Inc., now assigned October 2, 1972, at Philadelphia, Pa., is canceled and the application is dismissed.

AB 49, Ann Arbor Railroad Company Abandonment Entire Line of Railroad, Including All of Its Car Ferry Routes, In Benzie County, Mich., and Kenwaunee and Manitowoc Counties, Wis., now assigned October 24, 1972, at Frankfort, Mich., hearing will be held in Eagle Hall, Highway M-22, East End.

MC-136761, Hugh Loden & Alvin Vinson DBA Loden & Vinson Garage & Wrecker Service, now being assigned hearing December 11, 1972, (2 days), at Memphis, Tenn., in a hearing room to be later designated.

MC-20783 Sub 88, Tompkins Motor Lines, Inc., now being assigned hearing December 13, 1972 (3 days), at Memphis, Tenn., in a hearing room to be later designated.

MC-3062 Sub 33, L. A. Tucker Truck Lines, Inc., now being assigned hearing December 18, 1972 (1 week), at Memphis, Tenn., in a hearing room to be later designated.

MC 119777 Sub 228, Ligon Specialized Hauler, Inc., now assigned November 8, 1972, at Birmingham, Ala., hearing is canceled and application dismissed.

MC 111812 Sub 441, Midwest Coast Transport, Inc., now assigned November 7, 1972, at New York, N.Y., is canceled and the application is dismissed.

MC 136741, Quick Service Drivers Exchange, Inc., now being assigned hearing November 7, 1972 (1 day), at New York, N.Y., in a hearing room to be later designated.

MC 124211 Sub 211, Hilt Truck Line, Inc., now assigned October 10, 1972, at Los Angeles, Calif., hearing is canceled and application dismissed.

MC 115703 Sub 6, Kreitz Motor Express, Inc., now being assigned December 11, 1972 (2 days), at Cleveland, Ohio, in a hearing room to be later designated.

MC 134738 Sub 1, Lawrence D. Willoughby and Robert Fritz, Dba Solon Equipment, now being assigned December 13, 1972 (3 days), at Cleveland, Ohio, in a hearing room to be later designated.

MC-F-11483, Lattavo Brothers, Inc.—Purchase—Crown Cartage and Storage Co., MC 45194 Sub 12, Lattavo Brothers, Inc., now being assigned December 18, 1972 (2 days), at Columbus, Ohio, in a hearing room to be later designated.

MC-F-11504, Indianhead Truck Line, Inc.—Control & Merger—Dundee Truck Line, Inc., et al., now being assigned December 20, 1972 (3 days), at Columbus, Ohio, in a hearing room to be later designated.

MC 115162 Sub 224, Poole Truck Line, Inc., now being assigned hearing November 8, 1972 (1 day), at Birmingham, Ala., in a hearing room to be later designated.

MC 61592 Sub 276, Jenkins Truck Line, Inc., now assigned October 2, 1972, at Chicago, Ill., hearing is canceled and the application is dismissed.

MC 105566 Sub 53, Sam Tanksley Trucking, Inc., Extension—Bananas, now assigned November 7, 1972, at New Orleans, La., hearing is postponed indefinitely.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-16730 Filed 9-29-72;8:52 am]

FOURTH SECTION APPLICATION FOR RELIEF

SEPTEMBER 27, 1972.

Protests to the granting of an application must be prepared in accordance

with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42535—*Sulphur (Brimstone) from McKamie, Ark. and West Lake Charles, La.* Filed by Southwestern Freight Bureau, Agent (No. B-348), for interested rail carriers. Rates on sulphur (brimstone), crude, unground and unrefined, in carloads, as described in the application, from McKamie, Ark. and West Lake Charles, La., to points in southern territory.

Grounds for relief—Market competition.

Tariff—Supplement 93 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4904.

By the Commission.

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

[FR Doc.72-16729 Filed 9-29-72;8:52 am]

[Notice 131]

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-73747. By order entered September 14, 1972 the Motor Carrier Board approved the transfer to Boston Commuter Lines, Inc., doing business as Bos-Com, Haverhill, Mass., of that portion of the operating rights set forth in certificate No. MC-94742 (Sub-No. 19), issued April 16, 1965, to Michaud Bus Lines, Inc., Salem, Mass., authorizing the transportation of passengers and their baggage, and express and newspapers in the same vehicle with passengers, between Georgetown, Mass., and Exeter, N.H., over specified routes, serving all intermediate points. Frank Daniels, 15 Court Square, Boston, MA 02108, attorney for applicants.

No. MC-FC-73759. By order of September 18, 1972, the Motor Carrier Board approved the transfer to C & H Transit, Inc., Fulton, Mo., of the operating rights in Certificates No. MC-110129 and MC-110129 (Sub-No. 1) issued November 25, 1964, and July 6, 1960, respectively to Northeastern Missouri Lines, Inc., Mexico, Mo., authorizing the transportation of passengers and their baggage, and express, newspapers, and mail in the same vehicle as passengers between specified points in Missouri and Illinois. G. Andy Runge, 123 East Jackson Street, Mexico, MO 65265, attorney for applicants.

No. MC-FC-73870. By order of September 19, 1972, the Motor Carrier Board approved the transfer to Quality Moving & Storage Co., Inc., 456 South Pickett Street, Alexandria, VA 22304, of the operating rights in certificate No. MC-94146 issued April 9, 1970, to Rogers Moving Co., Inc., 5816 Seminary Road, Baileys Cross Roads, VA 22041, authorizing the transportation of household goods, emigrant movables, carnival and show equipment, between points as specified in Virginia, Maryland, Pennsylvania, Delaware, New York, New Jersey, North Carolina, South Carolina, West Virginia, Tennessee, Indiana, Illinois, Ohio, Kentucky, and the District of Columbia.

No. MC-FC-73889. By order of September 15, 1972, the Motor Carrier Board approved the transfer to J. O. Schumacher, Inc., Pinckneyville, Ill., of certificate No. MC-114830 (Sub-No. 2) issued to John Otho Schumacher, doing business as J. O. Schumacher, Pinckneyville, Ill., authorizing the transportation of: Gasoline and fuel oil, in bulk, in tank vehicles, from specified facilities at Cape Giradeau, Mo., to points in a specified area of Illinois. Ernest A. Brooks, II, Attorney, 1301 Ambassador Building, St. Louis, Mo. 63101.

No. MC-FC-73908. By order entered September 18, 1972, the Motor Carrier Board approved the transfer to Home Run, Inc., Jamestown, Ohio, of the operating rights set forth in permits Nos. MC-134388 (Sub-No. 2) and MC-134388 (Sub-No. 3), issued October 1, 1970, and February 25, 1972, respectively, authorizing the transportation of buildings, complete, knocked down, or in sections, and component parts, materials, supplies and fixtures, used in the erection or assembly thereof, from Jamestown, Ohio, to points in Indiana and Kentucky, under a continuing contract with Ryan Homes, Inc., of Jamestown, Ohio; and buildings and component parts, materials, supplies and fixtures used in the erection or assembly of buildings, from Wampum, Pa., to points in Indiana, Kentucky, and Ohio, under a continuing contract with Ryan Homes, Inc., of Pittsburgh, Pa. James W. Muldoon, 50 West Broad Street, Columbus, OH 43215, attorney for applicants.

No. MC-FC-73926. By order of September 15, 1972, the Motor Carrier Board approved the transfer to Cheshire-Brown Trucking Co., Inc., Huntington Station, N.Y., of the operating rights in certificate No. MC-40408 issued May 29, 1941, to Charles E. Cheshire, East Northport, N.Y., authorizing the transportation of various commodities from and to specified points and areas in New York and New Jersey. Arthur J. Piken, One LeFrak Plaza, Flushing, NY 11368, attorney for applicants.

No. MC-FC-73931. By order of September 18, 1972, the Motor Carrier Board approved the transfer to Windecker, Inc., doing business as Windecker Truck Line, Denver, Colo., of Certificate of registration No. MC-99869 (Sub-No. 1) issued November 3, 1970 to John B. Windecker, doing business as Windecker Truck Line, Denver, Colo., evidencing a right to engage in transportation in interstate commerce as described in PUC 996 issued by Public Utilities Commission of the State of Colorado.

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

[FR Doc.72-16732 Filed 9-29-72;8:53 am]

[Notice 130]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 26, 1972.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 65941 (Sub-No. 38 TA), filed September 15, 1972. Applicant: TOWER LINES, INC., Post Office Box 6010, Wheeling, WV 26003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products, vehicle body sealer, and sound-deadening compounds* (except in bulk), from Congo and St. Marys, W. Va., to points in New York, New Jersey, Delaware, Maryland, Pennsylvania (points east of U.S. Highway

[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.

219 only), Virginia, Florida, Alabama, Tennessee, Kentucky, North and South Carolina (points east of U.S. Highway 1) and Georgia, south and east of a line extending from the South Carolina State line at Augusta, Ga., over U.S. Highway 1 to Louisville, Ga., thence over Georgia Highway 24 to junction of Georgia Highway 22 near Milledgeville, Ga., thence over Georgia Highway 22 to Georgia-Alabama State line and the District of Columbia, for 180 days. Supporting shipper: Quaker State Oil Refining Corporation, Oil City, Pa. 16301. Send protests to: Joseph A. Niggemyer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 416 Old Post Office Building, Wheeling, WV 26003.

No. MC 69371 (Sub-No. 3 TA), filed September 14, 1972. Applicant: NORMAN TRANSPORTATION LINES, INC., 6201 Lee Road, Maple Heights, OH 44137. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail and chain grocery and food business houses and, in connection therewith, *equipment*, materials and supplies used in the conduct of such business under special and individual contracts or agreements with persons (as defined in section 203(a) of the Interstate Commerce Act), who operate retail stores, the business of which is the sale of food, of the commodities indicated and in the manner specified below: (1) From Buffalo, N.Y., to Youngstown, Ohio and (2) from Cleveland (Maple Heights), Ohio to Burgettstown (Washington County), Pa., and points in the counties of Allegheny, Beaver, and Butler, all in the Commonwealth of Pennsylvania for 180 days. Note: Applicant states that the territory being sought joins outer perimeter of present territory and would be joined to a portion of present area. Supporting shipper: The Great Atlantic & Pacific Tea Co., Inc., 950 Stuyvesant Avenue, Union, NJ 07083. 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 93840 (Sub-No. 9 TA), filed September 12, 1972. Applicant: W. W. GLESS, doing business as: GLESS BROS., Post Office Box 216, Blue Grass, IO 52726. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, IO 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid feed and liquid feed supplements*, in bulk, from the plantsite of Cargill, Inc., located in Scott County, Iowa, to points in Missouri on and north of Interstate Highway 44, points in Illinois on and north of Interstate Highway 70, points in Wisconsin on and south of U.S. Highway 8, and points in Minnesota on and south of U.S. Highway 12; and (2) *molasses*, in bulk, from the plantsite of Cargill, Inc., located in Scott County, Iowa, to points in Illinois on and north of Interstate Highway 70, and points in Wisconsin on and south of U.S. Highway 8, for 180 days. Supporting shipper: Cargill Molasses Department, Commodity Marketing Division, Cargill, Inc., Cargill Building, Minneapolis, MN 55402. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, IO 50309.

No. MC 112014 (Sub-No. 17 TA), filed September 11, 1972. Applicant: SKAGIT VALLEY TRUCKING CO., INC., Post Office Box 400, 1417 McLean Road, Mount Vernon, WA 98273. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, WA 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, machinery parts and castings*, between Sedro Woolley, Wash., and the International Boundary line between the United States and Canada at or near Blaine and Sumas, Wash., for 180 days. Supporting shipper: Skagit Corp., Post Office Box 151, Sedro Woolley, WA 98284. Send protests to: E. J. Casey, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 6130 Arcade Building, Seattle, WA 98101.

No. MC 112801 (Sub-No. 135 TA), filed August 23, 1972. Applicant: Transport Service Co., Post Office Box 50272, 5100 W. 41st Street, Chicago, IL 60650. Applicant's representative: Robert H. Levy, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn products*, in bulk, from the plantsite and warehouse facilities of CPC International, Inc., at Argo, Ill., to points in Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin, for 180 days. Supporting shipper: CPC International, Inc., Argo, Ill. Send protests to: District Supervisor R. G. Anderson, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL 60604.

No. MC 113024 (Sub-No. 123 TA), filed September 14, 1972. Applicant: ARLINGTON J. WILLIAMS, INC., Rural Delivery No. 2, South Du Pont Highway, Smyrna, DE 19977. Applicant's representative: Samuel E. Earnshaw, 833 Washington Building, Washington, DC 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Garden and industrial hose*, from Wilmington, Del., to Tucker, Ga., and (2) *Materials and supplies*, used in the manufacture thereof from points in Aiken County, S.C., to Wilmington, Del., for the account of Electric Hose & Rubber Co., Wilmington, Del., for 180 days. Supporting shipper: Mr. Fred H. Evick, Electric Hose & Rubber Co., Post Office Box 910, Wilmington, DE 19899. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 814–B Federal Building, Baltimore, MD 21201.

No. MC 115935 (Sub-No. 3 TA), filed September 13, 1972. Applicant: EXPLOSIVES TRANSPORTS, INC., 233 Southwest 21st Street, Post Office Box 94787, Oklahoma City, OK 73109. Applicant's representative: Goldie E. Skaggs, 2701 South Prospect, Oklahoma City, OK 73109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Class A and B explosives*, from the Naval Ammunition Depot, Crane, Ind., to Naval Weapons Station, Concord, Calif., and Naval Ammunition Depot, Bangor, Wash., for 180 days. Supporting shipper: Curtis L. Wagner, Chief Regulatory Law Office, Office of the Judge Advocate General, Department of the Army, Washington, D.C. 20410. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 116254 (Sub-No. 130 TA), filed September 13, 1972. Applicant: CHEM-HAULERS, INC., Post Office Box 245, 1510 Martin Avenue, Sheffield, AL 35660. Applicant's representative: Douglas O. Logue (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron oxide*, in bulk, in tank vehicles, from Gadsden, Ala., to Toledo, Ohio, for 180 days. Supporting shipper: Ferro Corp., 1 Erieview Plaza, Cleveland, OH 44114. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 814, 2121 Building, Birmingham, AL 35203.

No. MC 116874 (Sub-No. 2 TA), filed September 15, 1972. Applicant: CLINCH CO., INC., Hamilton National Bank Building, Morristown, TN 37814. Applicant's representative: C. L. Walker (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Zinc ores and concentrates*, in bulk, in dump vehicles and trailers, from American Smelting & Refining Co.'s, mines at Mascot, New Market, Tenn., and from company's Young Mine off U.S. Highway 11E in Jefferson County, Tenn., to the loading docks of American Limestone Division, American Smelting & Refining Co., on the Tennessee River, Knoxville, Tenn., for subsequent out-of-State movement by barge, for 180 days. Supporting shipper: American Smelting and Refining Co., 720 Olive Street, St. Louis, MO 63101. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 803, 1808 West End Building, Nashville, TN 37203.

No. MC 124211 (Sub-No. 221 TA), filed September 14, 1972. Applicant: HILT TRUCK LINE, INC., Post Office Box 988 DTS, Omaha, NE 68101. Authority sought to operate as a *common carrier* by motor

vehicle, over irregular routes, transporting: *Cellular paper products*, from Michigan City, Ind., to points in the United States (except Alaska, Hawaii, Illinois, Indiana, Michigan, Ohio, and Wisconsin), for 180 days. Supporting shipper: Bell Fibre Products Corp., Post Office Box 3333, Marion, IN 46952. Send protests to: Carroll Russell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 711 Federal Office Building, Omaha, NE 68102.

No. MC 125918 (Sub-No. 13 TA), filed September 11, 1972. Applicant: JOHN A. DI MEGLIO, INC., White Horse Pike, Ancora, N.J. 08037. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contractor carrier*, by motor vehicle, over irregular routes, transporting: *Brick*, from Iona, N.J. (Gloucester County) to points in Pennsylvania, Maryland, Delaware, Virginia, New York, Connecticut, Rhode Island, Massachusetts, and the District of Columbia, under contract with Grays Ferry Brick Co., for 180 days. Supporting shipper: Grays Ferry Brick Co., 129 Fayette Street, Conshohocken, PA 19428. Send protests to: Richard M. Regan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 127962 (Sub-No. 3 TA), filed September 11, 1972. Applicant: J. W. POOLE, INC., Box 408, Wytheville, VA 24382. Applicant's representative: Howard Haynes, Washington, D.C. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal threaded screws, bolts, nuts, and wire*, from Norfolk, Va., to Elk Creek, under contract with American Screw Co., for 180 days. Supporting shipper: American Screw Co., Wytheville, Va. 24382. Send protests to: Clatin M. Harmon, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 215 Campbell Avenue SW., Roanoke, VA 24011.

No. MC 133032 (Sub-No. 3 TA), filed September 15, 1972. Applicant: BURKETT TRUCKING CO., INC., 2508 East Roosevelt Road, Mailing: Post Office Box 4173 (72204) Little Rock, AR 72202. Applicant's representative: Donald R. Partney, 35 Glenmere Drive, Little Rock, AR 72204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fruit and vegetable shipping containers*, from Nashville, Ark., to points in Denver, Boulder, Weld, Adams, Arapahoe, Larimer, Jefferson, Douglas, Gilpin, Clear Creek, Park, Costilla, Alamosa, and Conejos Counties, Colo., points in Florida and points in Texas on and east of a line beginning at the Texas-Mexico border at Del Rio, Tex., and extending north along U.S. Highway 377 to junction with U.S. Highway 90, thence west along U.S. Highway 90 to junction with U.S. Highway 285, thence north along U.S. Highway 285 to the Texas-New Mexico State line, for 180 days. Supporting shipper: Little Rock Crate & Basket Co., 1623 East 14th Street, Little Rock, AR 72202. Send protests to: District Supervisor William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 133095 (Sub-No. 35 TA), filed September 18, 1972. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., Post Office Box 434, 2603 W. Eulees Boulevard, Euless, TX 76039. Applicant's representative: Rocky Moore (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol and alcoholic beverages* requiring protective service, from Hammondsport, N.Y., to Tulsa, Ponca City, Oklahoma City, Lawton, and McAlister, Okla., for 180 days. Supporting shipper: Carl Sterling, Southwest Division Manager, Gold Seal Vineyards, Inc., Southwest Division Office, 13709 Brookgreen Circle, Dallas, TX 75240. 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 133168 (Sub-No. 1 TA), filed September 11, 1972. Applicant: DELTA EXPRESS, INC., Post Office Box 776, River Road, Natchitoches, LA 71457. Applicant's representative: John Schwab, Post Office Box 3036, 617 North Boulevard, Baton Rouge, LA 70821. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill and forest products, poles, and piling*, to and from points in Louisiana within a radius of 75 miles from Natchitoches, La., to and from points in Alabama, Arkansas, Florida, Georgia, Indiana, Illinois, Kentucky, Missouri, Mississippi, Oklahoma, Tennessee, and Texas (subject to the exceptions as listed below). Applicant does not seek authority to transport plywood from plantsite of Wilmar Plywood Co., located at or near Natchitoches, La., to points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Missouri, Mississippi, Oklahoma, Tennessee, and Texas; nor to transport lumber and veneer lumber stock from Joyce, La., to points in Mississippi and those points in Texas on and east of U.S. Highway 281; nor to transport treated poles and piling from the plantsite of American Creosote Works, at Winnfield, La., for 180 days. Supporting shippers: Biddle Purchasing Co., Meridian, Miss., 39301; Dick Landers Lumber Co., Post Office Box 57011, Dallas, TX 75207; Slaughter Brothers, Inc., Post Office Box 12165, Dallas, TX 75225; Southern Pacific Lumber Co., Inc., Post Office Box 8658, Jackson, MS 39204; Tremont Lumber Co., Joyce, La. 71440; and Willamette Industries, Inc., Natchitoches, La. 71457. Send protests to: Paul D. Collins, District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038 Federal Building, 701 Loyola Avenue, New Orleans, LA 70112.

No. MC 134599 (Sub-No. 54 TA), filed September 13, 1972. Applicant: INTERSTATE CONTRACT CARRIER CORP., Post Office Box 748, Salt Lake City, UT 84110, Office: 265 W. 27th South (84115). Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Muskegon, Mich., and its commercial zone to points in Tennessee, Louisiana, Arkansas, Texas, and Oklahoma, under continuing contract with Scott Paper Co., for 180 days. Supporting shipper: S. D. Warren Co., a division of Scott Paper Co., Muskegon, Mich. (Donald DeGlopper, traffic manager). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, 125 South State Street, Salt Lake City, UT 84111.

No. MC 136291 (Sub-No. 2 TA), filed September 11, 1972. Applicant: CUSTOMIZED PARTS DISTRIBUTION, INC., 2701 South Bayshore Drive, Miami, FL 33133. Applicant's representative: Frank G. Sutherland (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicle parts and accessories and related publications, advertising material, packaging and shipping supplies*, under continuing contract, or contracts, with Ford Marketing Corp. (Autolite-Ford Parts Division), between the hereinafter described points: (1) Between the Autolite Parts Division Center at Teterboro, N.J., on the one hand, and, on the other, Newark Airport, Newark, N.J., and Teterboro Airport, Teterboro, N.J.; (2) between Newark Airport, Newark, N.J., and Teterboro Airport, Teterboro, N.J., on the one hand, and, on the other, Natick, Mass., Harrisburg, Pa., and Pennsauken, N.J.; (3) between Newark Airport, Newark, N.J., and Teterboro Airport, Teterboro, N.J., and (4) between Newark Airport, Newark, N.J., and Baltimore, Md., on the one hand, and, on the other, Baltimore Friendship Airport, Md., Richmond, Va., and Ford Motor Co. dealers in Baltimore and Marlowe Heights, Md., and Alexandria and Falls Curch, Va., for 180 days. NOTE: Applicant states it intends to perform same service from Newark Airport as it is now performing from the Teterboro New Jersey Airport. Supporting shipper: Ford Marketing Corp. (Autolite-Ford Parts Division), Post Office Box 3000, Livonia, MI 48151. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, 5720 SW. 17th Street, Room 105, Miami, FL 33155.

No. MC 136418 (Sub-No. 1 TA), filed September 15, 1972. Applicant: McDANIEL TRUCKING, INC., Route 1, Box 178, Orange, VA 22960. Applicant's representative: Calvin F. Major, 200 West Grace Street, Richmond, VA 23220. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and pallets*,

from Orange, Va., to points in New York, New Jersey, Pennsylvania, Maryland, North Carolina, and West Virginia, for 180 days. Supporting shipper: Orange Wood Products, Inc., Orange, Va. 22960. Send protests to: Robert W. Waldron, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 10–502 Federal Building, Richmond, Va. 23240.

No. MC 136758 (Sub-No. 1 TA), filed September 11, 1972. Applicant: KENNETH OLSEN, doing busines as MESA TRANSPORT, 2412 East Edgewood Street, Mesa, AR 85204. Applicant's representative: Pete H. Dawson, 4453 E. Piccadilly Road, Phoenix, AR 85018. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dwellings and cabin; prefabricated and pre-cut components; fixtures and appliances, including floors, walls, roofing, hardware, sections, porches, plumbing fixtures, paint; jacks, electric fixtures; refrigerators; stoves; heaters, and cooling systems necessary for the assembly of prefabricated and pre-cut buildings*, from the plantsite of Forest Homes, Inc., Mesa, Ariz., to points in California, Colorado, Nevada, New Mexico, and Utah; and (2) *lumber*, from points in California, Colorado, and New Mexico to the plant site of Forest Homes, Inc., Mesa, Ariz., for 180 days. Supporting shipper: Forest Homes, Inc., 1313 McKellips Road, Mesa, AR 85203. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 3427 Federal Building, 230 N. First Avenue, Phoenix, AR 85025.

No. MC 136925 (Sub-No. 1 TA), filed September 12, 1972. Applicant: ROSS CLARK FREIGHTWAYS, LTD., Box 169, Madoc, ON, Canada. Applicant's representative: Robert D. Gunderman, Statler Hilton, Suite 1708, Buffalo, N.Y. 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Terrazzo chips and marble dust*, in bags, from ports of entry on the International Boundary line between the United States and Canada in New York, and Michigan, to points in New York, New Jersey, Ohio, Michigan, and Illinois, restricted to shipments originating at or destined to the plantsites or storage facilities of Stoklosar Marble Quarrier (1969) limited at Madoc, Ontario, Canada, for 180 days. Supporting shipper: Robert Nash, President Stoklosar Marble Quarriers (1969) limited, Madoc, Ontario, Canada. Send protests to: Morris H. Gross, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 104 O'Donnell Building, 301 Erie Boulevard West, Syracuse, NY 13202.

No. MC 138001 (Sub-No. 1 TA), filed September 11, 1972. Applicant: WILLIAM SCHMIDT, doing business as A.I.D.S., 95 Schuyler Avenue, North Arlington, NJ 07032. Applicant's representative: Larsh B. Mewhinney, 235 Mamaraneck Avenue, White Plains, NY 10605. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Polyethylene tape*, from Madison, Conn., to points in Alabama, Arkansas, Arizona, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming, traversing the States of New York, Pennsylvania, Maryland, and Ohio for operating convenience only, for 180 days. Supporting shipper: Shore Line Industries, 25 Greenwich Avenue, Greenwich, CT 06830. Send protests to: District Supervisor Joel Morrows, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 138005 (Sub-No. 1 TA), filed September 14, 1972. Applicant: J. C. CLIFT TRUCK LINE, INC., Route 1, Box 468, Malvern, AR 72104. Applicant's representative: Don T. Jack, Jr., 1550 Tower Building, Little Rock, AR 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Woodchips, wood shavings, and sawdust*, from plantsite of B. G. Wilson Lumber Co. at or near Hot Springs, Ark., and the plantsite of H. G. Toler & Son Lumber Co., Inc., Leola, Ark., to the plantside of Weyerhaeuser Co., at or near Craig, Okla., for 180 days. Supporting shippers: H. G. Toler Lumber Co., Inc., Leola, Ark.; B. G. Wilson Lumber Co., Inc., Route 6, Box 515, Hot Springs, AR 71901. Sent protests to: William H. Land, Jr., Bureau of Operations, Interstate Commerce Commission, 2519 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

By the Commission.

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

[FR Doc.72–16731 Filed 9–29–72;8:52 am]

[Rev. S.O. 994; Rev. ICC Order 71, Amdt. 6]

RAILROADS OPERATING IN STATES OF MARYLAND, DELAWARE, PENNSYLVANIA, AND NEW YORK

Rerouting or Diversion of Traffic

Upon further consideration of Revised ICC Order No. 71 (railroads operating in the States of Maryland, Delaware, Pennsylvania, and New York) and good cause appearing therefor:

It is ordered, That:

Revised ICC Order No. 71 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., October 31, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., September 30, 1972, and that this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, office of the Federal Register.

Issued at Washington, D.C., September 26, 1972.

INTERSTATE COMMERCE COMMISSION,

[SEAL] R. D. PFAHLER, *Agent.*

[FR Doc.72–16728 Filed 9–29–72;8:52 am]

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SATURDAY, SEPTEMBER 30, 1972
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PART II

DEPARTMENT OF LABOR

Employment Standards Administration

■

Black Lung Benefits Program

Title 20—EMPLOYEES' BENEFITS

Chapter VI—Employment Standards Administration, Department of Labor

SUBCHAPTER B—FEDERAL COAL MINE HEALTH AND SAFETY, ACT OF 1969, AS AMENDED

BLACK LUNG BENEFITS PROGRAM

On September 7, 1972 notice of proposed rule making to amend 20 CFR Chapter VI by adding thereto new Parts 715, 718, and 720 was published in the FEDERAL REGISTER (37 F.R. 18152–18167). Some comments, objections, and recommendations concerning the proposed Parts 715, 718, and 720 were received from interested parties. Each of these comments recommendations and objections was carefully and fully considered and changes in the proposed Parts 715, 718, and 720 were made where appropriate. The proposed Parts 715, 718, and 720 are hereby adopted subject to the changes set forth below.

In view of the short period during which comments were received, the Employment Standards Administration of the Department of Labor will continue to receive and consider comments from interested parties until November 20, 1972, and, where appropriate, amend these Parts 715, 718, and 720 to incorporate pertinent recommendations or objections.

1. The proposed Part 715 is hereby adopted subject to the following changes.

A. In Part 715 a new center heading and a new § 715.1 are added before the center heading "Meaning and Use of Terms in the Act and This Subchapter" as follows, and conforming changes are made in the table of contents.

B. In § 715.101 paragraphs (a) (2), (10), (12), and (22) are revised to read as set forth below.

C. In § 715.201 paragraph (b) is revised to read as set forth below.

D. In § 715.206 paragraph (c) is revised to read as set forth below.

E. In § 715.211 paragraph (a) (5) is revised to read as set forth below.

F. In § 715.215 paragraphs (a) (3) and (4) (i) are revised to read as set forth below.

G. In § 715.217 paragraphs (a) and (b) are revised as set forth below.

2. The proposed Part 718 is hereby adopted subject to the change in § 718.2 as set forth below.

3. The proposed Part 720 is hereby adopted subject to the following changes:

A. In § 720.111 paragraphs (c) and (d) are revised to read as set forth below.

B. Section 720.112 is revised to read as set forth below.

C. In § 720.210 paragraphs (a) (2) and (3) and paragraph (c) are revised to read as set forth below.

D. In § 720.250 paragraph (a) is revised as set forth below.

E. In § 720.620 the section heading, paragraphs (a), (b), and (c) are revised and new paragraphs (d) and (e) are added to read as set forth below.

F. Section 720.640 is revised to read as set forth below.

6. In § 720.685 paragraphs (e) and (f) are revised to read as set forth below.

4. In addition, a number of typographical errors have been corrected in Parts 715, 718, and 720.

Effetcive date. These parts shall become effective on September 30, 1972.

Signed at Washington, D.C., this 27th day of September 1972.

RICHARD J. GRUNEWALD,
Assistant Secretary for Employment Standards.

PART 715—BLACK LUNG BENEFITS PROGRAM UNDER TITLE IV OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT; GENERAL PROVISIONS

INTRODUCTION

AUTHORITY: The provisions of this Part 715 issued under title IV, Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742, 30 U.S.C. 901, et seq., as amended by Public Law 92–303, 86 Stat. 156.

INTRODUCTION

§ 715.1 Purpose and scope of this part.

(a) *General.* It is the purpose of this part to set forth certain rules having general application to the parts in this subchapter dealing with the claims of coal miners and their survivors for pneumoconiosis benefits pursuant to those provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969 (as amended by the Black Lung Benefits Act of 1972) for which the Act places responsibilities in the Secretary of Labor.

(b) *Statutory provisions.* Title IV of such Act makes provision for the payment of disability benefits to coal miners in cases of total disability from pneumoconiosis and death benefits to their survivors as therein provided in cases of a miner's death due to or while totally disabled by pneumoconiosis (coal workers' black lung disease). In section 415 of Part B and in Part C of the title, the Act assigns to the Secretary of Labor specified functions in the administration of the benefits program with respect to claims for disability and death benefits filed on and after July 1, 1973. The Act also makes applicable, for the determination and payment of those claims for which the Act imposes liability on coal mine operators or on the Federal Government in lieu thereof, many of the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended. The federally administered program applicable on and after January 1, 1974, under Part C of the title applies to new claims of miners or their survivors only during periods when no State workmen's compensation law providing adequate coverage for pneumoconiosis is available for determination and payment of such claims. The Act makes the Secretary of Labor responsible for determining which workmen's compensation laws of the States provide adequate coverage for pneumoconiosis and the periods in which such coverage is provided, and charges the Secretary with the responsibility for publishing and keeping current a list of such laws which, in accordance with specified criteria, he has determined to provide adequate coverage for periods on and after January 1, 1974.

(c) *Matters included in this part.* For application in connection with the rules and procedures set forth in the parts of this subchapter with respect to the filing of benefit claims under Title IV of the Act and the processing and adjudication of such claims, there are included in this part (1) definitions and general rules with respect to use of terms in this subchapter, (2) a description of the types of benefits provided by the Act and rules governing eligibility therefor, and (3) rules with respect to access to information in program records.

MEANING AND USE OF TERMS IN THE ACT AND THIS SUBCHAPTER

§ 715.101 General definitions and use of terms.

(a) *Definitions.* For purposes of this subchapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) "The Act" means the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91–173) as amended by the Black Lung Benefits Act of 1972 (Public Law 92–303) as enacted May 19, 1972, and as it may hereafter be amended.

(2) "Benefits" means benefits paid or payable under or pursuant to section 415 or Part C of Title IV of the Act on account of the total disability or death of a miner due to pneumoconiosis, including the death of such a miner while totally disabled by such disease.

(3) "Pneumoconiosis" means a chronic dust disease of the lung arising out of employment in a coal mine, and includes the diseases listed in § 410.110(o) of this title.

(4) The term "total disability" has the meaning given it by regulations of

the Secretary of Health, Education, and Welfare as set forth in Subpart D of Part 410 of this title. (See Part 718 of this subchapter.)

(5) "Miner" or "coal miner" means any individual who is or was employed in a coal mine, performing functions in extracting the coal or preparing the coal so extracted.

(6) "Operator" means any owner, lessee, or other person who operates, controls, or supervises, a coal mine.

(7) "Prior operator" means an operator who has transferred a coal mine or substantially all the assets of a coal mine to another person after December 30, 1969.

(8) "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface, of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite, from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(9) "Underground coal mine" means a coal mine in which the earth and other materials which lie above the natural deposit of coal (overburden) is not removed in mining. In addition to the natural deposit of coal in the earth, the underground coal mine includes all land, buildings, and equipment, appurtenant thereto.

(10) "The Nation's coal mines" comprises all coal mines as defined in subparagraph (8) of this paragraph, located in a State as defined in subparagraph (11) of this paragraph.

(11) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and prior to January 3, 1959, and August 21, 1959, respectively, the territories of Alaska and Hawaii.

(12) The "Social Security Act" means the Social Security Act (49 Stat. 620, 42 U.S.C. 301 et seq.) as amended from time to time.

(13) The "Longshoremen's Act" means the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901 et seq.) as amended from time to time.

(14) "Secretary" means the Secretary of Labor or a person authorized by him to perform his functions under title IV of the Act.

(15) "Department" means the Department of Labor.

(16) "Office" or "OWCP" means the Office of Workmen's Compensation programs, Employment Standards Administration, Department of Labor.

(17) "Deputy commissioner" means a person appointed as provided in sections 39 and 40 of the Longshoremen's Act and designated by the Director of the Office of Workmen's Compensation Programs as having authority to make final determinations in respect to claims for total disability or death due to pneumoconiosis and to hold hearings prior to such determinations.

(18) A "workmen's compensation law" means a law providing for payment of compensation by employers to employees (and their dependents) for injury (including occupational disease), or death suffered in connection with his employment.

(19) "State agency" means, with respect to any State, the agency, department, or officer designated by the workmen's compensation law of the State to administer such law. In any case in which more than one agency participates in the administration of a State workmen's compensation law, the Governor may designate which of such agencies shall be the State agency for purposes of this subchapter.

(20) "Insurer" means any private company, corporation, mutual association, reciprocal or interinsurance exchange, or any other person or fund, including any State fund, authorized under the laws of a State to insure an employer's liability under workmen's compensation laws.

(21) "Claimant" means an individual whose claim to entitlement for benefits under title IV of the act has been filed in accordance with the provisions of the act and the applicable regulations issued thereunder. As used in Part 720 of this subchapter, the term means such an individual whose claim is subject to the provisions of section 415 of Part B of such title and has been filed as provided in Part 717 of this subchapter.

(22) "Claim" means an assertion in writing of an individual's entitlement to benefits under or pursuant to Title IV of the Act, submitted in any form and manner authorized by the regulations in this subchapter. The term includes claims of living miners for total disability benefits and claims of those miners' widows, children, parents, brothers, and sisters whose entitlement to benefits on the death of a miner is provided for by the Act. As used in Parts 717 and 720 of this subchapter, the term refers to those claims for benefits payable under Part B of Title IV of the Act which are filed before the cutoff date specified in sections 413(a) and 414 for entitlement under Part B and which are subject to the provisions of section 414(b) and section 415 of the Act because they were not filed prior to July 1, 1973. Such claims include new claims of living miners for disability benefits filed after June 30, 1973, and death benefit claims of surviving dependents of miners who were not receiving benefits at the time of death, filed after such date. (Because of questions of interpretation raised by the regulations and those of the Department of Health, Education, and Welfare concerning the application of sections 414 (b) and 415 to such survivor claims, the issue as to the proper construction of the statute with respect to such survivor claims is being referred to the Attorney General for opinion. This subparagraph will be amended to accord with such opinion if it differs from the position stated herein.)

(23) "Beneficiary" means a miner or a surviving widow, child, parent, brother, or sister, who is entitled to a benefit as defined in subparagraph (2) of this paragraph.

(24) "Entitlement" means entitlement to benefits as determined pursuant to the provisions of the act and the procedures set forth in this subchapter. A beneficiary is "entitled" to benefits as so determined when the determination is final.

(b) *Statutory terms.* The definitions contained in these regulations shall not be considered to derogate from the terms of the Federal Coal Mine Health and Safety Act of 1969, as amended.

(c) *Dependents and survivors.* Part A of title IV of the Act in section 402 (a), (e), and (g), defines the terms "dependent," "widow," and "child." In section 412(a)(5) of Part B of title IV, the Act provides for determination of the relationship of parent, brother, or sister to a miner by standards consistent with those applicable to relationship determination under Title II of the Social Security Act. For purposes of this subchapter, the determination of the individuals who possess the required relationship to, or who have the status of dependents of, a miner under the provisions of title IV of the act shall be made in accordance with the rules set forth in the Social Security Administration's regulations in Part 410, Subpart C of this title.

(d) *Inclusive terms.* Masculine gender includes the feminine, and the singular includes the plural.

Benefits Provided by the Act and Eligibility Therefor

§ 715.201 Types of benefits; general.

(a) Title IV of the act provides for the payment of periodic benefits:

(1) To a miner who is determined to be totally disabled due to pneumoconiosis; or

(2) To the widow or child of a miner (i) who was receiving benefits at the time of his death; or (ii) who is determined to have been totally disabled due to pneumoconiosis at the time of his death; or (iii) whose death was due to pneumoconiosis; or

(3) To the child of a widow of a miner who was receiving benefits at the time of her death; or

(4) To the surviving dependent parents, where no widow or child survives, or the surviving dependent brothers or sisters, where there is no surviving widow, child, or parent, of a miner who was receiving benefits at the time of his death; or who was totally disabled due to pneumoconiosis at the time of his death; or whose death was due to pneumoconiosis.

(b) The following sections set out the conditions of entitlement to benefits for a miner or for a widow, child, parent, brother, or sister, and describe the events which terminate or preclude entitlement

to benefits. Also see Subpart C of Part 410 of Chapter III of this title for regulations relating to the relationship and dependency requirements applicable to claimants for benefits as widow, a child, parent, brother, or sister and to beneficiaries with dependents.

§ 715.205 Conditions of entitlement; miner.

(a) An individual is eligible for benefits under this subchapter if such individual

(1) Is a miner as defined in § 715.101 (a)(5);

(2) Is totally disabled due to pneumoconiosis (see Part 718 of this subchapter); and

(3) Has filed a claim for benefits in accordance with the provisions of Part 717 (or, after December 31, 1973, Part 725) of this subchapter.

(b) An individual is entitled to have his eligibility for benefits determined under this subchapter if such individual

(1) Is a miner as defined in § 715.101 (a)(5); and

(2) Has filed a claim for benefits (i) in accordance with the provisions of Part 717 of this subchapter after June 30, 1973, but before January 1, 1974, or (ii), after December 31, 1973, in accordance with the provisions of Part 725 of this subchapter.

§ 715.206 Duration of entitlement; miner.

(a) An individual is entitled to benefits as a miner for each month beginning with the first month in which all of the conditions for entitlement prescribed in § 715.205 are satisfied.

(b) The last month for which such individual is entitled to benefits is the month during which either of the following events first occurs:

(1) The miner dies; or

(2) The miner's disability ceases.

(c) A miner's entitlement to Federal payment of benefits under section 415 of Part B of Title IV of the Act on a claim filed after June 30, 1973, and before January 1, 1974, shall terminate on December 31, 1973, unless terminated sooner under paragraph (b) of this section. If not so terminated under paragraph (b) of this section the payment of benefits after December 31, 1973, shall be as provided in Part C of Title IV and section 415 of Part B of such title and Part 725 of this subchapter.

§ 715.207 Conditions of entitlement; widow or surviving divorced wife.

(a) An individual is eligible for benefits if such individual:

(1) Is the widow or surviving divorced wife of a miner;

(2) Is not married;

(3) Was dependent on the miner at the pertinent time (see § 715.101(c)); and

(4) The deceased miner either:

(i) Was receiving benefits at the time of his death; or

(ii) Died before January 1, 1974, and it is determined that he was totally disabled due to pneumoconiosis at the time of his death, or that his death was due to pneumoconiosis. (See Part 718 of this subchapter.)

(b) An individual meeting the foregoing requirements is entitled to have her eligibility for benefits determined under this subchapter upon filing a claim for such benefits in accordance with the applicable provisions of this subchapter.

§ 715.208 Duration of entitlement; widow or surviving divorced wife.

(a) An individual is entitled to benefits as a widow, or as a surviving divorced wife, for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 715.207 are satisfied;

(b) The last month for which such individual is entitled to such benefit is the month before the month in which either of the following events first occurs:

(1) The widow or surviving divorced wife marries; or

(2) The widow or surviving divorced wife dies; or

(3) Where the individual qualifies as the widow of a miner under § 410.320 (d) of this title, she ceases to qualify as provided therein.

§ 715.211 Conditions of entitlement; child.

(a) An individual is eligible for benefits if such individual:

(1) Is the child of:

(i) A deceased miner or,

(ii) The widow of a miner who was receiving benefits at the time of her death;

(2) Meets the dependency requirements in § 410.370 of this title;

(3) Is a child of a miner, and the deceased miner:

(i) Was receiving benefits at the time of his death, or

(ii) His death was due to pneumoconiosis (see Part 718 of this subchapter), or

(iii) At the time of his death was totally disabled by pneumoconiosis;

(4) A child is not entitled to benefits for any month for which a widow of a miner establishes entitlement to benefits.

(5) A child is eligible for survivor benefits on death of a miner only under Part C of Title IV of the Act if the miner died after December 31, 1973.

(b) An individual meeting the foregoing requirements is entitled to have his eligibility for benefits determined under this subchapter upon filing a claim for such benefits in accordance with the applicable provisions of this subchapter.

§ 715.212 Duration of entitlement; child.

(a) An individual is entitled to benefits as a child for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 715.211 are satisfied;

(b) The last month for which such individual is entitled to such benefit is the month before the month in which any one of the following events first occurs:

(1) The child dies;

(2) The child marries;

(3) The child attains age 18, and

(i) Is not under a disability at that time, and

(ii) Is not a student (as defined in § 410.370 of this title) during any part of the month in which he attains age 18;

(4) If the child's entitlement is based on his status as a student, the earlier of:

(i) The first month during no part of which he is a student, or

(ii) The month in which he attains age 23 and is not under a disability at that time;

(5) If the child's entitlement is based on disability, the first month in no part of which such individual is under a disability.

(c) A child whose entitlement to benefits terminated with the month before the month in which he attained age 18, or later, may thereafter (provided he is not married) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after such termination in which he is a student and has not attained the age of 23.

§ 715.215 Conditions of entitlement; parent, brother or sister.

(a) An individual is eligible for benefits if:

(1) Such individual is the parent, brother, or sister of a deceased miner;

(2) Such individual was dependent on the miner at the pertinent time; and

(3) Proof of support must be filed before June 1, 1974, or within 2 years after the miner's death, whichever is later, unless it is demonstrated to the satisfaction of the Secretary that there is good cause for the failure to timely file such proof (see § 715.217).

(4) In the case of a brother, he also:

(i) Is under 18 years of age; or

(ii) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), which began before he attained age 18, or in the case of a student, before he ceased to be a student (see § 410.370(c) of this title); or

(iii) Is a student (see § 410.370(c) of this title); or

(iv) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), at the time of the miner's death;

(5) The deceased miner:

(i) Was entitled to benefits at the time of his death; or

(ii) His death is determined to have been due to pneumoconiosis; or

(iii) At the time of his death he was totally disabled by pneumoconiosis.

(b)(1) A parent is not entitled to benefits if the deceased miner was survived by a widow or child at the time of his death.

(2) A brother or sister is not entitled to benefits if the deceased miner was

survived by a widow, child, or parent, at the time of his death.

(3) A parent, brother, or sister is eligible for survivor benefits on death of a miner only under Part C of Title IV of the Act if the miner died after December 31, 1973.

(c) An individual meeting the foregoing requirements is entitled to have his eligibility for benefits determined under this subchapter upon filing a claim for such benefits in accordance with the applicable provisions of this subchapter.

§ 715.216 Duration of entitlement; parent, brother, or sister.

(a) A parent, brother, or sister is entitled to benefits beginning with the month all the conditions of entitlement described in § 715.215 are met.

(b) The last month for which such parent is entitled to benefits is the month before the month in which the parent dies.

(c) The last month for which such sister is entitled to benefits is the month before the month in which any of the following events occurs:

(1) She dies;

(2) (i) She marries or remarries; or

(ii) If already married, she receives support in any amount from her spouse.

(d) The last month for which such brother is entitled to benefits is the month before the month in which any of the following events first occurs:

(1) He dies;

(2) (i) He marries or remarries; or

(ii) If already married, he received support in any amount from his spouse;

(3) He attains age 18, and

(i) Is not under a disability at that time, and

(ii) Is not a student (see 410.370(c) of this title) during any part of the month in which he attains age 18;

(4) If his entitlement is based on his status as a student, the earlier of:

(i) The first month during no part of which he is a student; or

(ii) The month in which he attains age 23 and is not under a disability at that time;

(5) If his entitlement is based on disability the first month in no part of which such individual is under a disability.

§ 715.217 "Good cause" for delayed filing of proof of support.

(a) *What constitutes "good cause."* "Good cause" may be found for failure to file timely proof of support where the parent, brother, or sister establishes to the satisfaction of the Office that such failure to file was due to:

(1) Circumstances beyond the individual's control, such as extended illness, mental or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Office; or

(3) Efforts by the individual to secure supporting evidence without a realization that such evidence could be submitted after filing proof of support.

(b) *What does not constitute "good cause."* "Good cause" for failure to file timely proof of support (see § 715.215 (a)(3)) does not exist when there is evidence of record in the Office that the individual was informed that he should file within the prescribed period and he failed to do so through negligence or intended not to file.

§ 715.220 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

An individual who has been finally convicted by a court of competent jurisdiction of the felonious and intentional homicide of a miner or of a widow shall not be entitled to receive any benefits payable because of the death of such miner or widow, and such felon shall be considered nonexistent in determining the entitlement to benefits of other individuals with respect to such miner or widow.

INFORMATION IN PROGRAM RECORDS

§ 715.301 Disclosure of program information and records.

(a) Disclosure of any file, record, report, or other document or information in the custody of the Department of Labor or any of its officers or employees or in the custody of any person, agency, or organization with whom the Office of Workmen's Compensation Programs has entered into an agreement to perform certain functions with respect to the administration of provisions of Title IV of the Act which in any way relates to or is in connection with the administration of such title, shall be made in accordance with the regulations of the Department contained in 29 CFR Part 70, and § 1.22 of this title.

(b) All records, data, or information of any kind relating to the disability or death of a miner or other person entitled to benefits under the Act and all amendments or extensions thereof, are the official records of the Office of Workmen's Compensation Programs and are not records of any other agency, establishment, or department, or of any other component unit of the Department of Labor, making or having the care or use of such records or information. Such records and information are confidential and shall not be disclosed except upon the written approval of the Director of the Office.

PART 718—STANDARDS FOR DETERMINING COAL MINER'S TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

Sec.
718.1 Statutory provisions.
718.2 The applicable standards.

AUTHORITY: The provisions of this part issued under authority of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, 83 Stat. 792; 86 Stat. 150, and Secretary of Labor's Order No. 13-71, 36 F.R. 8755.

§ 718.1 Statutory provisions.

Under sections 415 and 422 of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, the Secretary of Labor is charged with the duty of adjudicating disability and death claims of coal miners and their surviving dependents for the pneumoconiosis benefits which the Act provides for such individuals. Under section 421 of the Act, the Secretary of Labor is charged with the duty of establishing criteria for determining whether workmen's compensation laws of the States provide adequate coverage for pneumoconiosis and for determining which such laws meet these criteria. The Act requires the Secretary of Labor, in his performance of these functions, to apply or provide for application of standards for determining whether a coal miner is totally disabled due to pneumoconiosis, was totally disabled due to pneumoconiosis at the time of his death, or died from pneumoconiosis which accord with those promulgated by the Secretary of Health, Education, and Welfare pursuant to and in conformity with the provisions of sections 402(f) and 411 of Title IV of such Act.

§ 718.2 The applicable standards.

The standards applicable for determining, under the provisions of this subchapter and sections 415 and 422 of the Federal Coal Mine Health and Safety Act, as amended, whether a coal miner is totally disabled due to pneumoconiosis, was totally disabled due to pneumoconiosis at the time of his death, or died from pneumoconiosis, are those promulgated by the Secretary of Health, Education, and Welfare as set forth in Subpart D of Part 410 of Chapter III, Title 20, Code of Federal Regulations. Except that the interim adjudicatory rules promulgated by the Secretary of Health, Education, and Welfare which are published at 20 CFR 410.490 shall not apply to any claim adjudicated by the Secretary of Labor under sections 415 or 422 of the Act. Pursuant to section 421 of such Act and Part 722 of this subchapter, a workmen's compensation law of a State will not be considered to provide adequate coverage for pneumoconiosis unless its standards for making the foregoing determinations are substantially equivalent to those set forth in Part 410 of this title.

PART 720 — DETERMINATION OF BLACK LUNG BENEFITS CLAIMS UNDER SECTION 415 OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT AND PAYMENT OF BENEFITS TO CLAIMANTS

Subpart A—General

INTRODUCTION

Sec.
720.100 Statutory provisions.
720.101 Scope of this part.
720.102 Applicability of other parts in this subchapter.

PREPARATION AND FILING OF CLAIMS FOR ADJUDICATION

720.110 Action to be taken by the Office—General.
720.111 Action to be taken by the Office—Miner's claim.

Authority: The provisions of this Part 720 issued under Title IV, Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742, 30 U.S.C. 901, et seq., as amended by Public Law 92-303, 86 Stat. 156.

Subpart A—General

Introduction

§ 720.100 Statutory provisions.

(a) Title IV of the Federal Coal Mine Health and Safety Act of 1969 as amended by the Black Lung Benefits Act of 1972 provides for the payment of prescribed benefits to coal miners who are totally disabled due to pneumoconiosis and to surviving widows, children, parents, brothers, and sisters as provided in the Act in case of death of a coal miner who is receiving disability benefits under the Act or is totally disabled by pneumoconiosis at the time of his death or whose death is due to pneumoconiosis.

(b) Part B of Title IV of the Act provides for the determination and the payment by the Federal Government of such benefits on disability claims filed before January 1, 1974, and on death claims filed before such date or within 6 months of the death of a miner who dies before such date, whichever is the later date. In the case of claims filed before such terminal date, Federal payment of benefits to which entitlement is established under Part B of Title IV of the Act continues beyond such terminal filing date so long as the claimant remains eligible therefor, except in those cases which are subject to special provisions terminating liability for Federal payment of benefits under Part B at the end of the Part B filing period with respect to claims therefor which were not filed before July 1, 1974.

(c) In the case of claims for benefits under Part B of Title IV of the Act filed after June 30, 1973, and subject to the special provisions mentioned in paragraph (b), section 415 of Part B provides for the filing of such claims at the places and in the manner provided by joint regulations of the Secretary of Labor and the Secretary of Health, Education, and Welfare and for the transfer of such claims to the Secretary of Labor who is to determine such claims in accordance with the procedures provided in section 415 and regulations promulgated thereunder by the Secretary after consultation with the Secretary of Health, Education, and Welfare. Under section 415, benefits to which the claimant is determined to be entitled under Part B of Title IV are to be paid by the Secretary of Labor for the period from the filing date to the date of termination of Federal Part B payments as provided in the special provisions mentioned in paragraph (b) of this section. For periods thereafter, liability for continued payment of benefits is placed in the responsible coal mine oprators as determined in accordance with Part C of Title IV of the Act and section 422 thereof or, if a workmen's compensation law of a State is found by the Secretary to provide adequate coverage for pneumoconiosis, under such workmen's compensation law as provided in section 421 of Part C. (The Department has determined, pending an opinion by the Attorney General as to the meaning of section 422(e) of the Act, that the Federal Government shall be required to pay all benefits to which an individual is entitled for any period subsequent to December 31, 1981: *Provided*, That a claim for benefits has been filed with the Department prior to January 1, 1982). For any periods after December 31, 1973 when the payment by a responsible operator of benefits to which the claimant is found entitled pursuant to section 415 of the Act is not assured, or the payment of equivalent or greater benefits under an applicable State workmen's compensation law is not assured, the Secretary of Labor is to make benefit payments from Federal funds pur-

suant to the provisions of section 415 of Part B and section 424 of Part C as appropriate. These provisions are intended to assure the uninterrupted receipt of benefits by claimants filing therefor on or after July 1, 1973 during the period of transition from full Federal liability for benefits under Part B of Title IV to mine operators' liability under Part C or under adequate State workmen's compensation laws identified as provided in Part C.

(d) Part C of title IV of the Act makes provision for payment of pneumoconiosis disability and death claims filed on or after January 1, 1974. Under the provisions of Part C, in States having a workmen's compensation law meeting the criteria set forth in Part 722 of this subchapter, such claims are to be filed pursuant to such State law. In periods when no such law is applicable, the Secretary of Labor is charged with administering a program following the provisions of the Longshoremen's and Harbor Workers' Compensation Act under which responsibility for payment of pneumoconiosis benefits is placed upon operators of coal mines in which the miners who contracted pneumoconiosis were employed. Benefit payments by the Secretary of Labor are made in cases where payments to which a claimant is entitled are not available from the sources specified.

§ 720.101 Scope of this part.

This part sets forth in Subpart B of this part, the rules which will be applied by the Secretary of Labor in the adjudication, under section 415 of Part B of title IV of the Act, of claims for pneumoconiosis benefits under such Part B which are filed within the period permitted for filing of such claims but after June 30, 1973. Subpart C of this part sets forth the rules under which the Secretary of Labor will provide for payment of benefits to claimants determined to be entitled thereto pursuant to the rules in Subpart B of this part.

§ 720.102 Applicability of other parts in this subchapter.

(a) Part 715 of this subchapter contains general provisions, including definitions of terms, which are applicable to the rules set forth in this part.

(b) Part 717 of this subchapter contains the joint regulations of the Secretary of Labor and the Secretary of Health, Education, and Welfare with respect to the place and manner of filing claims under Part B of title IV of the Federal Coal Mine Health and Safety Act, as amended, on and after July 1, 1973, for determination by the Secretary of Labor under the adjudicatory process set forth in Subpart B of this part and for payment of benefits as provided in Subpart C of this part and section 415 of the Act.

(c) Part 718 of this subchapter identifies the standards which will be applied by the Secretary of Labor in the adjudicatory process under title IV of the Act as set forth in Subpart B of this part, in making determinations as to whether a coal miner is totally disabled due to pneumoconiosis was totally disabled due to pneumoconiosis at the time of his death, or died from pneumoconiosis.

Preparation and Filing of Claims for Adjudication

§ 720.110 Action to be taken by the Office—General.

When a claim filed pursuant to the provisions of Part 717 of this subchapter has been received by the Office from the filing office it shall be examined together with the supporting evidence transmitted with respect thereto, The Office shall promptly take such further action as may be necessary to assure that sufficient information, medical evidence, and a properly executed claims form have been submitted and that the claim is complete and ready for adjudication. The claim and supporting documents shall then be filed with the deputy commissioner. In the following sections the action to be taken in circumstances described therein is set forth in more detail.

§ 720.111 Action to be taken by the Office—miner's claim.

(a) Upon receipt by the Office of Workmen's Compensation Programs of a completed medical report form CM–904, the Office shall tentatively determine whether the medical evidence of record indicates an impairment for which benefits may be paid as determined with reference to standards promulgated by the Secretary of Health, Education, and Welfare as Subpart D of Part 410 of this title (see Part 718 of this subchapter, which incorporates these standards).

(b) If it appears that the claimant may be considered disabled in accordance with the standards published in Subpart D of Part 410 of this title, then the claim shall be prepared for filing and filed with the deputy commissioner as provided in § 720.112 pending the receipt of any additional evidence developed and obtained pursuant to § 717.123 of this subchapter and the notification and reply of any possibly responsible operator as provided in §§ 720.113 and 720.114.

(c) In cases where the medical evidence received by the Office in respect to any claim does not indicate an impairment sufficient under the Department of Health, Education, and Welfare medical criteria (see Part 718 of this subchapter) to support a claim for benefits, the claimant will be advised of the deficiency in his claim and invited to submit any additional medical evidence. Any additional reasonably necessary medical evidence shall be secured at the Department's expense (see § 717.125 of this subchapter).

(d) In the event that the medical evidence received by the Office pursuant to § 717.122 of this subchapter does not provide credible support for the miner's claim for benefits, any further evidentiary investigations shall be discontinued until further notice.

(e) If a miner whose claim is not considered to be supported by the medical evidence desires a formal hearing on the issue of his disability under the standards set forth in Subpart D of Part 410 of this title, the claim will be made ready for filing with the deputy commissioner and filed with him as provided in § 720.112. Thereafter a hearing or informal conference may be arranged pursuant to Subpart B.

§ 720.112 Filing of claim with deputy commissioner.

After the Office of Workmen's Compensation Programs has received a completed claim form and a completed medical evaluation report and has determined informally that a valid claim for benefits under the Act has been made, the Office will make a tentative determination on the basis of information contained in the claim and any other available information, as to the identity or probable identity of any coal mine operator who may be liable for the payment of black lung benefits to the claimant for any month after December 31, 1973. The claim will then be filed with a deputy commissioner who shall, to the extent appropriate, follow the procedures provided in section 19 of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 919).

§ 720.113 Notification of operators.

(a) Upon the filing of the claim with the deputy commissioner, each coal mine operator who has been tentatively identified as an operator who may have such liability will be notified of the pending claim, of his possible liability, and of the provisions of section 415(a)(5) of the Act. This notification will be made by certified mail, with proof of delivery requested.

(b) Such notification will include a copy of claimant's completed claim form, the medical evaluation report from an approved physician, and a cover letter informing the operator of the tentative determination of his possible liability for the claim and notice that he may present evidence relevant to determination of the claim pursuant to the procedures provided for such determination if he so requests within 20 calendar days from the date of mailing of this notice.

§ 720.114 Operator's response to notification.

(a) Within the 20-day period described in § 720.113 a notified coal mine operator shall respond to the notice.

(b) If the operator does not desire to present any evidence relevant to determination of the claim or desires the opportunity to do so, he shall so state either:

(1) By letter mailed to the Office of Workmen's Compensation Programs, U.S. Department of Labor, Washington, D.C. 20211; or

(2) By completing and mailing form CM–902 (Employers First Report and Answer to Claim for Benefits) to such address.

(c) If a notified operator questions his liability for payment of benefits to the claimant for any period after December 31, 1973, he shall so state by transmitting to the Office a completed form CM–902 setting forth generally his reasons for questioning such liability along with

a detailed description of any evidence relied upon to negate his liability.

(d) A notified operator whose response indicates a desire to present evidence relevant to the claim or raises questions regarding his possible liability for payment of benefits to the claimant shall be considered a party in interest for purposes of adjudicatory proceedings with respect to the claim (see § 720.210).

§ 720.120 Final adjudication; no responsible operator.

(a) If after the Office has received all the evidence developed with respect to a claim and there is no identifiable responsible operator, the Office shall proceed to a final adjudication of a claim pursuant to Subpart B of this Part 720.

(b) If at this point there is no dispute over the claimant's eligibility and entitlement to benefits, the deputy commissioner shall summarily issue his findings of fact, conclusions of law and order approving the claim, and commencing the payment of benefits pursuant to §§ 720.600–720.740.

§ 720.121 Filing claim under State workmen's compensation law.

(a) A claimant for benefits under this part must file a claim under the applicable State workmen's compensation law prior to a final decision on his claim for benefits under this part except where the filing of a claim under the applicable State workmen's compensation law would clearly be futile.

(b) The Office of Workmen's Compensation Programs shall determine that the filing of such a claim would clearly be futile when:

(1) The period within which such a claim may be filed under such law has expired; or

(2) Pneumoconiosis as defined in § 715.101(a)(3) of this subchapter is not compensable under such law; or

(3) The maximum amount of compensation or the maximum number of compensation payments allowable under such law has already been paid; or

(4) The claimant does not meet one or more conditions of eligibility for workmen's compensation payments under applicable State law; or

(5) In any other situation the claimant establishes to the satisfaction of the Office that the filing of a claim on account of pneumoconiosis would result as a matter of law in a denial of his claim for compensation under such law.

(c) To be considered to have complied with the requirement for filing a claim under the applicable State workmen's compensation law, a claimant for benefits under this part must diligently prosecute such State claim.

(d) Where, but for the failure to file a claim under the applicable State workmen's compensation law, an individual's claim for benefits under this part would be allowed, the Office shall notify the individual in writing of the need to file such State claim as a prerequisite to such allowance. Such claim, when filed within 30 days of the date such notice is mailed to the individual, will be considered to have been filed timely.

(e) Where, on the other hand, a claim has not been filed under the applicable State workmen's compensation law, and the Office determines that a claim for benefits under this part would be disallowed even if a State claim were filed, the Office shall make such determination as may be necessary for the adjudication of the individual's claim for benefits under this part.

Subpart B—Adjudicatory Process

General Information Regarding Procedures

§ 720.200 Initial procedures; claims examiners.

(a) Each claim for benefits under this part, when it is received by the Office of Workmen's Compensation Programs, will be assigned to a claims examiner. The claims examiner will be responsible for compiling the case record, notifying any operator who may be liable to pay benefits to the claimant after December 31, 1973, of the pendency of the claim, notifying a claimant of any deficiency in the medical record, scheduling and conducting prehearing conferences pursuant to this Subpart B, effecting the settlement or compromise of disputes, whenever possible, at the prehearing stage, drafting proposed findings of fact, conclusions of law and orders and submitting these to the designated deputy commissioner for cases in which no further proceedings are necessary beyond the prehearing stage, and making recommendations in respect to any case for which a formal hearing is to be conducted.

(b) In the event that there are contested issues of fact in any case, those issues generally will be resolved by the following procedure:

(1) If in the opinion of the claims examiner the medical evidence does not support the claim for benefits, the claimant will be given an opportunity to submit additional medical evidence at the expense of the Department of Labor (see § 720.111). If the additional evidence is still insufficient in the examiner's opinion to support the claim and no resolution may or might be reached at the prehearing stage, the case will be forwarded to a deputy commissioner who will conduct a hearing pursuant to this Subpart B and issue a final order granting or denying the claim, or remanding the case to the Office for further evidentiary development or for the completion of the case record when appropriate.

(2) The claims examiner will make every effort to resolve any dispute at a prehearing conference conducted pursuant to this Subpart B. If no resolution can be achieved at the prehearing stage the case will be forwarded with the claims examiner's recommendation to a deputy commissioner who will schedule and conduct a formal hearing pursuant to this Subpart B and issue a formal order granting or denying the claim, and when appropriate, establishing the identity of any operator or operators who will either be liable or not liable for payment of benefits to the claimant for any periods after December 31, 1973.

(c) In the event that there are no contested issues of fact or law the claims examiner will prepare a proposed findings of fact, conclusions of law, and order granting or denying benefits, when appropriate, establishing the identity of any operator or operators who will be liable for payments of such benefits for any periods after December 31, 1973. These proposed recommendations will then be forwarded to a deputy commissioner who will either approve and sign the proposed order or take any other action he deems appropriate including the return of the case to the claims examiner if further development is necessary. If the proposed order is signed by a deputy commissioner it will become a final order pursuant to § 720.465 of this Subpart B.

§ 720.205 Definitions; adjudication officers.

(a) *Claims examiner.* The claims examiner is a designated official of the Office of Workmen's Compensation Programs of the Department of Labor authorized to make initial recommendations for determinations with respect to any case and to insure that any case is developed and processed according to these regulations.

(b) *Deputy commissioner.* The deputy commissioner is that officer of the Office of Workmen's Compensation Programs authorized to conduct formal hearings with respect to any case and to issue all final orders and decisions.

(c) *Office of the Solicitor* means the Office of the Solicitor of the U.S. Department of Labor.

§ 720.210 Parties in interest.

(a) No person except a duly authorized official of the Department of Labor or as otherwise provided in paragraph (b) or (c) of this section or § 720.212 may participate at any stage of the adjudicatory process unless that person is a party in interest. The individuals who may be a party in interest are:

(1) The claimant;

(2) A person other than a claimant authorized to execute a claim on such claimant's behalf pursuant to § 717.101 of this subchapter;

(3) A dependent who may be entitled to receive augmented benefits or for whom augmented benefits are payable pursuant to §§ 715.211, 715.215 of this subchapter;

(4) Any coal mine operator who has been notified pursuant to § 720.113 of his possible liability to the claimant for benefits payable for any month after December 31, 1973; and

(5) Any insurance carrier of such operator.

(b) Any other individual may be made a party in interest if that individual's rights with respect to benefits may be prejudiced by the decision, upon notice given to him by the deputy commissioner to appear at the hearing or otherwise present evidence as to fact or law as he may desire in support of his interest.

(c) A widow, surviving child, parent, brother, or sister or representative of a

decedent's estate, who makes a showing in writing that an individual's rights with respect to benefits may be prejudiced by a decision that may be made, may be a party in interest.

(d) Any coal mine operator or prior operator or insurance carrier who has not been notified pursuant to § 720.113 and who makes a showing in writing that its rights may be prejudiced by any final decision of the deputy commissioner may in the discretion of the deputy commissioner be made a party in interest.

§ 720.212 Party amicus curiae.

At the discretion of the deputy commissioner assigned any case and upon the recommendation of the Solicitor of Labor, a party not named in § 720.210 may be allowed to participate, fully or partially, in a formal hearing only, as to an issue of law. If a party wishes to participate amicus curiae in a formal hearing he shall request such status in writing with supporting arguments at least 10 days prior to the hearing. If the request is granted, the deputy commissioner will inform the party the extent to which he may participate. The request may, however, be denied summarily and without explanation.

PREHEARING CONFERENCES

§ 720.220 Nature of conferences.

(a) In cases which cannot be disposed of summarily and on the record, prehearing conferences are to be scheduled to expedite the handling of contested issues and to avoid, whenever possible, the need for formal hearings.

(b) The proceedings are to be informal and are presided over by a claims examiner. Testimony is not stenographically reported. The parties in interest are not required to be represented by counsel, but may be so represented if they desire. The conference is not a formal hearing and witnesses may not be produced.

§ 720.225 Purpose of conferences.

The purposes of a prehearing conference are:

(a) To amicably dispose of controversies whenever possible;

(b) To narrow issues; and

(c) To simplify the subsequent methods of proof.

§ 720.230 Notification of parties.

When, after reviewing the record, the claims examiner assigned the case determines that a prehearing conference might fulfill one or more of the purposes listed in § 720.225 he shall notify all parties in interest that a conference has been called. Conferences may be called upon at least 10 days notice to the parties in interest or a shorter period if agreed upon by the parties. In any event, the examiner shall make every effort to give all parties sufficient notice to insure that the conference will be productive.

§ 720.235 Time and place of conference.

The claims examiner shall assign a definite time and place for the prehearing conference and shall include this information in his notice to the parties. Whenever practicable the conference should be held in the area of the claimant's residence and be convenient to public transportation.

§ 720.240 Preparation for conferences; examiner.

Prior to scheduling a conference the examiner shall review his file to be certain that it contains all the necessary material to insure that the conference will be productive. His file should contain information submitted by the parties in interest indicating that they have made every possible effort to resolve all the issues and delineating the issues which are still unresolved and which require a conference. The file should also contain copies of all medical reports from all parties in interest and there should be evidence in the file that the parties have exchanged all medical reports and any other material pertinent to the case. If this information does not appear in the file the examiner may advise the parties of these requirements and postpone the setting of the conference.

§ 720.245 Cancellation of conferences.

Any party may request cancellation and rescheduling of a conference upon 5 days written notice prior to the conference date sent to the Office or the claims examiner assigned the case. Such request shall state the reasons warranting cancellation. The claims examiner may, if reasonable cause is shown, grant the request, but when all parties agree to the cancellation, it shall be granted.

§ 720.250 Attendance at conferences.

(a) The claimant and/or his representative and any operator whose liability for payment of benefits after December 31, 1973, may be determined by a final order in the case and/or the operator's insurance carrier and/or their representatives must attend all prehearing conferences. However, any party in interest (see § 720.210) may, in writing, waive his right to participate in a prehearing conference. The claims examiner may, in his discretion, grant or deny such waiver.

(b) Any representative of an operator or of an operator's insurance carrier must have sufficient authority to expedite settlement.

§ 720.255 Participation by the examiner.

A characteristic of an informal conference under the Act is the active participation in the proceedings by the claims examiner. It is his responsibility to see that the conference is productive. He shall assist the parties whenever possible by answering questions pertaining to the law and offer compromises for the parties to consider. He shall direct the discussion of the parties. He has the authority to conduct direct examinations of the claimants, operators whose liabilities may be determined, and their insurance carriers' representatives and he may conduct such examinations whenever necessary.

§ 720.260 File record.

(a) During the course of the conference the examiner shall take notes upon which to base his written memorandum of conference. The information which must appear in the memorandum of conference is:

(1) Date, time, and place of conference;

(2) Names, addresses, telephone numbers, and status (i.e., claimant, attorney, operator, carriers representatives, etc.), of all persons attending the conference;

(3) Reason why conference was held;

(4) Issues discussed at conference;

(5) Additional material presented (i.e., medical reports, employment reports, marriage certificates, birth certificates, etc.);

(6) Issues resolved at conference; and

(7) Examiner's recommendation.

§ 720.270 Memorandum of conference.

At the conclusion of the conference the examiner shall issue a comprehensive but brief memorandum summarizing the conference for the record. Carbon copies of the memorandum shall be sent to all parties in interest. The memorandum of conference shall contain the examiner's final recommendations for settlement of all disputed issues and any other information listed in § 720.260. A copy of the memorandum shall be sent to each party in interest no more than 20 days after the date in which the conference is terminated.

§ 720.275 Reply to memorandum of conference.

Each party shall in writing either accept or reject in part or in whole the examiner's recommendations, stating in appropriate cases the reasons for rejecting any recommendation. If no reply is received within 10 days from the date on which the recommendations were sent to the parties, the recommendations shall be deemed rejected. If the recommendations are not wholly agreed upon, the claims examiner or any party may request a formal hearing. If it appears that final settlement might be reached without formal hearing, the claims examiner may schedule one or more additional prehearing conferences pursuant to §§ 720.220–720.285, notwithstanding a party's request for formal hearing.

§ 720.280 Informal disposition.

If the issues in the case are successfully disposed of by the conference method and the parties comply with the recommendation, further action on the case may then be suspended. This is referred to as an informal disposition of a claim. This does not constitute a formal adjudication of a claim. For a formal adjudication of a claim, a compensation order is issued by a deputy commissioner either after a formal hearing or upon stipulation by the parties.

§ 720.285 Formal adjudication without a hearing.

If the parties in interest indicate that they are willing to dispose of the issues in the case based on the recommendations made, but desire a formal adjudication of the claim by compensation order, the claims examiner shall obtain stipulations to this effect signed by the parties. The stipulations shall contain all the information required for inclusion in a formal order and shall show that the parties agree that a final order may be issued by the deputy commissioner without a formal hearing. The claims examiner shall then proceed to prepare a proposed final decision and order based on the stipulations for the deputy commissioner's signature. In appropriate cases the deputy commissioner may remand the case to the claims examiner with instructions for further development.

FORMAL HEARING

§ 720.290 Type of hearings; parties.

In contested cases for which a formal hearing is deemed necessary, the hearing shall be conducted by a deputy commissioner from the Office of Workmen's Compensation Programs. The necessary parties to this hearing are the deputy commissioner and all parties in interest or their designated representatives, except that any party may in writing or on the record at the hearing waive his right to be heard as to any or all issues.

§ 720.300 Representation of parties.

Each of the parties in interest shall appoint an individual to represent his interest at any formal hearing. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the party in interest or his legal guardian and shall be sent to the Office or to the appropriate claims examiner or deputy commissioner. In any case such representative must be qualified under § 720.305.

§ 720.305 Qualifications of representative.

(a) *Attorney.* Any attorney in good standing who is admitted to practice before a court of a State, territory, district or insular possession or before the Supreme Court of the United States or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative may be appointed as a representative.

(b) *Other person.* Any other person with the approval of the deputy commissioner may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 720.310 Authority of representative.

A representative, appointed and qualified as provided in §§ 720.305 and 720.305 may make or give, on behalf of the party he represents, any request or notice relative to any proceeding before a deputy commissioner under Part B of Title IV of the Act, including reconsideration, hearing and review, except that such representative may not execute a claim for benefits, unless he is a person designated in § 717.101 of this subchapter as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and allegations as to facts and law in any proceeding affecting the party he represents and to obtain information with respect to the claim of such party to the same extent as such party. Notice of any party of any administrative action, determination, or decision, or request to any party for the production of evidence may be sent to the representative of such party, and such notice or request shall have the same force and effect as if it had been sent to the party represented.

§ 720.315 Fees for legal services.

No fee for legal services rendered in respect of a claim or award for benefits shall be valid unless approved by the deputy commissioner, or if proceedings for review of the order of the deputy commissioner in respect of such claim or award are had before any court, unless approved by such court. Any claim for legal services so approved shall, in the manner and to the extent fixed by the deputy commissioner or court, be a lien upon the award of benefits. No contract for a stipulated fee or for a fee on a contingent basis will be recognized, and no fee shall be approved except upon an application to the deputy commissioner supported by a complete statement of the extent and character of the necessary work done on behalf of the claimant. Except where the claimant has been advised that representation will be rendered without charge, the fee approved by the deputy commissioner shall be reasonably commensurate with the actual necessary work performed by the representative, taking into account the capacity in which the attorney has appeared, the amount of benefits involved and the financial circumstances of the claimant.

§ 720.320 Disqualification of hearing officer.

No deputy commissioner shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for decision before him. Notice of any objection which a party may have to the deputy commissioner who will conduct the hearing, shall be made by such party at his earliest opportunity. The deputy commissioner shall consider such objection and shall, in his discretion, either proceed with the hearing or withdraw. If the deputy commissioner withdraws, another deputy commissioner shall be designated by the Director of the Office of Workmen's Compensation Programs.

HEARING PROCEDURE

§ 720.330 Right to a hearing.

(a) An individual has a right to a formal hearing concerning any issue of fact or law unresolved in a prehearing conference if:

(1) He is a party in interest as defined in § 720.210; and

(2) No final disposition of the case has been achieved in prior proceedings.

§ 720.335 Request for hearing.

Any party in interest may in writing request a formal hearing as to any contested issue of fact or law. In addition, a deputy commissioner may on his own initiative order a hearing, when he determines a hearing necessary to protect the rights of any party in interest. If a hearing is requested by any party in interest, that request shall state the reasons for which a hearing is needed and the issues the requesting party intends to discuss and resolve at the hearing. Upon receipt of a request or upon his own initiative the deputy commissioner shall order a hearing.

§ 720.340 No hearing requested or ordered.

If no formal hearing is requested by any party or ordered by the deputy commissioner within 10 days from the close of any prehearing conference the deputy commissioner shall notify the parties by certified mail that he intends to make a final adjudication of the case on the basis of the record and the stipulations made by the parties at the prehearing stage, if any. Each party shall have 10 days from the date of such notice to request a formal hearing describing the issues on which that party desires to be heard. If no request is received by the deputy commissioner within the 10-day period the deputy commissioner shall proceed to a final adjudication of the case and issue an appropriate and formal findings of fact, conclusions of law, and final decision and order.

§ 720.345 Notice of hearing.

In each case in which a hearing is ordered, the deputy commissioner shall, by certified mail give all parties in interest at least 10 days notice of the time and place at which the hearing is to be conducted and the issues to be resolved. No issue may be raised or discussed at a hearing if the party who must contest the issue has not had at least 10 days notice that the issue was to be raised at the hearing.

§ 720.350 Hearing on new issues.

(a) At any time after a hearing has been ordered but before a final decision has been mailed, the deputy commissioner may in his discretion, either on the application of a party or on his own motion, give notice that he will consider any specified new issue. In such a case the deputy commissioner shall give the parties at least 10 days notice of the hearing on the new issue and shall proceed to hearing on the new issue in the same manner as he would on an issue initially considered.

(b) A hearing on any new issue shall be limited to a discussion of that new issue.

(c) In the event that a new issue is raised at the time any formal hearing is conducted, the party confronted with

that new issue may, upon request to the deputy commissioner, be granted a continuance of not less than 5 days with respect to that new issue.

§ 720.355 Time and place of hearing.

(a) The deputy commissioner shall assign a definite time and place for the formal hearing and shall include this information in his notice to the parties. Whenever practicable, the hearing shall be held in the area of the claimant's residence and be convenient to public transportation.

(b) If the claimant's residence is not in any State, the deputy commissioner may in his discretion determine an appropriate location for the hearing.

§ 720.360 Change of time and place for hearing.

The deputy commissioner may change the time and place for the hearing, either on his own motion or for good cause shown by a party. The deputy commissioner may adjourn or postpone the hearing, or he may reopen the hearing for the receipt of additional evidence at any time prior to the mailing of notice to the party of the decision in the case. At least 10 days notice shall be given to the parties of any change in the time or place of hearing or of an adjournment or a reopening of the hearing.

§ 720.365 Transfer of cases.

At any time after a claim has been filed with the Office of Workmen's Compensation Programs, the deputy commissioner or claims examiner having jurisdiction over the claim may, with the approval of the Office, transfer such case to any other office of the Department for the purpose of making investigation, taking testimony, making physical examinations, or the taking of such other necessary action therein as may be directed. Such transfer is to be made in accordance with procedures established by the Office and by certified mail.

§ 720.370 Conduct of hearings.

All hearings shall be attended by the parties or their representatives and such other persons as the deputy commissioner deems necessary and proper. The deputy commissioner shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the deputy commissioner believes that there is relevant and material evidence available which has not been presented at the hearing, he may adjourn the hearing or, at any time, prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence. The order in which evidence and allegations shall be presented and the procedure at the hearing generally, except as these regulations otherwise expressly provide, shall be in the discretion of the deputy commissioner and of such nature as to afford the parties a reasonable opportunity for a fair hearing.

§ 720.375 Evidence.

Evidence may be received at the hearing even though inadmissible under rules of evidence applicable to court procedures.

§ 720.380 Witnesses.

Witnesses at the hearing shall testify under oath or affirmation or as directed by the deputy commissioner unless they are excused by the deputy commissioner for cause. The deputy commissioner may examine the witnesses and shall allow the parties or their representatives to do so. If the deputy commissioner conducts the examination of a witness, he may allow the parties to suggest matters as to which they desire the witness to be questioned, and the deputy commissioner shall question the witness with respect to such matters if they are relevant and material to any issue pending for decision before him.

§ 720.385 Depositions; interrogatories.

(a) No person shall be required to attend as a witness in any proceeding before a deputy commissioner at a place outside the State of his residence and more than 100 miles from his place of residence, unless his lawful mileage and fee for 1 day's attendance shall be paid to him in advance of the hearing date.

(b) The testimony of any witness may be taken by deposition or interrogatory according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the United States District Court for the District of Columbia if the case is pending in the District).

§ 720.390 Witness fees.

Witnesses summoned in a formal hearing before a deputy commissioner whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States. Before any witness fees are paid the deputy commissioner shall determine, in his discretion, that the presence of any witness was necessary. If it is determined that the presence of a witness was not necessary then that witness shall not be entitled to witness fees pursuant to this section.

§ 720.395 Oral argument and written allegations.

The parties, upon their request, shall be allowed a reasonable time for the presentation of oral argument or for the filing of briefs or other written statements of allegations as to facts or law. Where there is more than one party to the hearing, copies of any brief or other written statement shall be filed in sufficient number that they may be made available to any party.

§ 720.400 Powers of deputy commissioners.

(a) The deputy commissioner shall have power to preserve and enforce order during any such proceedings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office.

(b) Pursuant to section 27(b) of the Longshoremen's Act as incorporated by sections 415(a)(5) of the Act, if any person in proceedings before a deputy commissioner disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner shall certify the facts to the Federal district court having jurisdiction in the place in which he is sitting (or to the U.S. District Court for the District of Columbia if he is sitting in such District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

§ 720.405 Record of hearing.

All formal hearings shall be open to the public and shall be stenographically reported. All evidence upon which the deputy commissioner relies for his final decision shall be contained in the transcript of testimony either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record either in whole or in material part shall be incorporated into the record either by reference or as an appendix.

§ 720.410 Certification of record for judicial review.

Whenever the record of a hearing shall be required for review or otherwise by any court of competent jurisdiction, the deputy commissioner shall transmit the record with a certification thereof over his signature as the official record of the case in his custody. The certification shall list each transcript of testimony and other paper included in the certification.

§ 720.415 Joint hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters in issue at each such hearing and conduct all such hearings fix the same time and place for each hearing and conduct all such hearings

jointly. Where joint hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others and a separate or joint decision shall be made, as appropriate.

§ 720.420 Consolidated issues.

When one or more additional issues are raised by the deputy commissioner pursuant to § 720.350, such issues may, in the discretion of the deputy commissioner, be consolidated for hearing and decision with other issues pending before him upon the same request for a hearing, whether or not the same or substantially similar evidence is relevant and material to the matters in issue. A single decision may be made upon all such issues.

§ 720.425 Costs in proceedings brought without reasonable grounds.

If the court having jurisdiction of proceedings in respect of any claim or final decision and order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings. (See section 26 of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424; 33 U.S.C. 926, and section 415(a)(5) of the Act.)

§ 720.430 Waiver of right to appear and present evidence.

If all parties waive their right to appear before the deputy commissioner and present evidence and contentions personally or by representative, it shall not be necessary for the deputy commissioner to give notice of and conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the deputy commissioner. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a hearing before the deputy commissioner, such officer may, nevertheless, give notice of a time and place and conduct a hearing, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts in issue in the case. Where such a waiver has been filed by all parties, and they do not appear before the deputy commissioner personally or by representative, the deputy commissioner shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and other documents which were considered in connection with the initial determination and reconsideration, and whatever additional relevant and material evidence the party or parties may present in writing for consideration by the deputy commissioner. Such documents shall be considered as all of the evidence in the case and the decision shall be based on them.

§ 720.435 Dismissal of request for hearing; by application of party.

With the approval of the deputy commissioner at any time prior to the mailing of notice of the decision, a request for a hearing may be withdrawn or dismissed upon the application of the party or parties filing the request for such hearing. A party may request a dismissal by filing a written notice of such request with the deputy commissioner or orally stating such request at the hearing.

§ 720.440 Dismissal by abandonment of party.

With the approval of the deputy commissioner, a request for hearing may also be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his representative appears at the time and place fixed for the hearing and either (a) prior to the time for hearing such party does not show good cause as to why neither he nor his representative can appear or (b) within 10 days after the mailing of a notice to him by the deputy commissioner to show cause, such party does not show good cause for such failure to appear and failure to notify the deputy commissioner prior to the time fixed for hearing that he cannot appear.

§ 720.445 Dismissal for cause.

The deputy commissioner may, on his own motion, dismiss a hearing request, either entirely or as to any stated issue, under any of the following circumstances:

(a) *Res judicata.* Where there has been a previous determination or decision by the Secretary with respect to the rights of the same party on the same facts pertinent to the same issue or issues which has become final either by judicial affirmance or, without judicial consideration, upon the claimant's failure timely to request reconsideration, or hearing, or to commence a civil action with respect to such determination or decision.

(b) *No right to hearing.* Where the party requesting a hearing is not a proper party under § 720.210 or does not otherwise have a right to a hearing under § 720.330.

§ 720.450 Notice of dismissal and right to request review thereon.

Notice of the deputy commissioner's dismissal action shall be given to the parties or mailed to them at their last known addresses, within 20 days from the date on which the hearing was scheduled. Such notice shall advise the parties of their right to request reconsideration of the dismissal action by the deputy commissioner pursuant to §§ 720.490–720.530.

§ 720.455 Effect of dismissal.

The dismissal of a request for hearing shall be final and binding unless vacated.

§ 720.460 Vacation of dismissal of request for hearing.

A deputy commissioner may, on request of the party and for good cause shown, vacate any dismissal of a request for hearing at any time within 3 months from the date of mailing notice of the dismissal to the party requesting the hearing at his last known address.

COMPLETION OF FINAL ADJUDICATION

§ 720.465 Final decision and order.

Within 20 days after the close of a hearing the deputy commissioner shall by order reject the claim or make an award in respect of the claim.

§ 720.470 Form of final decision and order.

(a) Orders adjudicating claims for benefits or suspending payments of benefits shall be designated by the term "final decision and order" followed by a descriptive phrase designating the particular type of such order, such as "award of benefits," "rejection of claim," "suspension of benefits," "modification of award." All final decisions and orders shall contain the name of the Office and agency, the names of the parties in interest, a statement of the basis for the order (that is, whether upon a claim, an application for suspension of benefits, an application of award, etc., with a statement by whom made, and whether a hearing was held or applied for), findings of fact, an award, rejection, or other appropriate paragraph containing the action of the deputy commissioner, and appended thereto shall be a paragraph headed "proof of service," containing the certification of the deputy commissioner that a copy of the final decision and order was on a date stated sent by certified mail, with the names and addresses of the parties to whom sent. Final decisions and orders shall be signed by the deputy commissioner at two places, (1) following the action paragraph, and (2) following the certification under the "proof of service."

(b) Copies of final decisions and orders shall be served personally or by certified mail upon the claimant, and upon any operator and his insurance carrier when applicable at the last known address of each.

§ 720.475 Contents of final decision and order.

(a) Findings of fact. All original final decisions and orders shall contain, in the paragraph headed "findings of fact," findings with respect to the names and addresses of the parties in interest, the dates and places of employment pertinent to the claim, the circumstances surrounding the coal miner's exposure to respirable coal dust, the nature and extent of the disability, notice of total disability or death, and such other facts as may be necessary to determine all of the issues raised before the deputy commissioner upon the hearing of the case or otherwise, but in case of rejection of the claim the deputy commissioner may in his discretion omit any findings unnecessary to support such action. In cases in

which the claim is rejected, the ground for such rejection shall be stated in a paragraph following the findings of fact.

(b) In orders other than the original order, the statement of the basis for the order shall contain reference to all prior orders with the dates thereof. In such orders the findings of fact shall relate only to the immediate issues before the deputy commissioner, without restatement of facts found in any prior order relating to the same disability or death, unless necessary for the completeness of the order.

(c) Findings of fact shall be stated positively; that is, without equivocation or qualification.

(d) Conclusions of law. All final decisions and orders shall contain after the findings of fact a paragraph entitled conclusions of law. This paragraph shall, when appropriate, contain statements of all ultimate facts necessary to support the action of the deputy commissioner. This paragraph shall contain among other things a statement as to the claimant's eligibility for benefits and, when appropriate, a statement asserting or denying the liability of an operator or his insurance carrier for the payment of benefits to the claimant for any periods after December 31, 1973.

§ 720.485 Interlocutory matters to be disposed of without formal orders.

Final decisions and orders or other formal orders shall not be made or filed with respect to interlocutory matters of a procedural nature arising during the pendency of a case where benefits have been claimed.

§ 720.490 Reconsideration and modification of awards.

(a) Any party in interest dissatisfied with the final decision and order of a deputy commissioner, may request a reconsideration of such final decision and order.

(b) In addition, the deputy commissioner who finally determined the case, may institute a reconsideration of that case.

§ 720.495 Right to reconsideration.

Any party named in § 720.210 may initiate or request reconsideration of any final decision and order on the following grounds exclusively:

(1) That there has been a material change in the conditions upon which the final decision and order was based;

(2) That there has been a material mistake in a determination of fact by the deputy commissioner; or

(3) That there has been a mistake in a conclusion or determination of law in the final decision and order.

There are no other grounds upon which a reconsideration proceeding may be based.

§ 720.500 Notice of request for reconsideration, time limits.

(a) In the event that a party in interest requests reconsideration of a final decision and order he shall do so in writing, stating the supporting rationale for the request and including any new material pertinent to the request.

(b) The request shall be sent or delivered in person to the Office of Workmen's Compensation Programs, Washington, D.C.

(c) No request for reconsideration shall be considered if filed more than 1 year after the date of the last payment of benefits, or more than 1 year after the rejection of a claim.

§ 720.505 Grant or denial of request.

(a) All requests for reconsideration shall be reviewed by a deputy commissioner and shall be granted if one or more of the criteria listed in § 720.495 is met. In the event that no one of the criteria listed in § 720.495 is met or the request is not timely pursuant to § 720.500 the request shall be denied. If a request is denied the deputy commissioner shall within 30 days from the date the request was received notify the requesting party by certified mail of such denial and the reasons therefor. Each denial of a request shall contain a paragraph describing the availability of judicial review.

(b) In the event that a request is granted the deputy commissioner shall within 30 days from the date the request was received notify all parties in interest that the case is to be reconsidered. Such notification shall be by certified mail and shall contain copies of all papers submitted in support of the request.

§ 720.510 Issues considered.

The reconsideration proceeding may not be a de novo review of the entire prior adjudication unless such review is warranted by the nature of the request in light of the criteria listed in § 720.495.

§ 720.515 Reconsideration proceeding.

A request for reconsideration, if approved, shall be processed in accordance with the procedures prescribed in respect of new claims in this Subpart B.

§ 720.520 Modification of award.

Within 20 days from the termination of a reconsideration proceeding the deputy commissioner shall issue a new final decision and order which may terminate, continue, reinstate, increase, or decrease benefits, or award benefits. The new order shall not affect any benefits previously paid, except that an award increasing the benefit rate may be made effective from the date that total disability began, and if any part of the benefits due or to become due is unpaid, an award decreasing the benefits rate may be made effective from the date that total disability began, and any payment made prior thereto in excess of the decreased rate shall be deducted from any unpaid benefits, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Secretary.

§ 720.525 Finality of orders.

A final decision and order shall become effective when filed in the Office of Workmen's Compensation Programs unless proceedings for the suspension or setting aside of such order are instituted as provided in § 720.530, shall become final at the expiration of the 30th day thereafter.

§ 720.530 Judicial review; appeal from final decision and order.

(a) Pursuant to section 21(b) of the Longshoremen's Act as incorporated by section 415(a)(5) of Part B of Title IV of the Act, if not in accordance with law, a final decision and order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the claimant resides or any Federal district court of competent jurisdiction if the claimant does not reside in any State. The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than 3 days' notice to the parties in interest and the deputy commissioner, or hearing examiner allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the operator or carrier. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the operator or carrier, and specifying the nature of the damage.

(b) If any operator or insurance carrier or their officers or agents fails to comply with an order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the claimant resides. If the court determines that the order was made and served in accordance with law, and that such operator or carrier or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(c) Proceedings for suspending, setting aside, or enforcing an order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section.

Subpart C—Payment of Benefits

§ 720.600 Duration of applicability of this payment scheme.

For purposes of the Department of Labor's administration of Part B of Title IV of the Act only, benefits shall be determined and paid pursuant to the provisions of this subpart.

§ 720.603 Application effective for entire month of submission.

Benefits under this part are payable for full calendar months. If the claimant meets all the requirements for entitlement to benefits in the same calendar month in which his application is submitted, the application will be effective for the whole month. If a claimant dies in the first month for which he meets all the requirements for entitlement to benefits, he will be considered to be entitled to benefits for that month.

§ 720.605 Payees.

Benefits may be paid, as appropriate, to a beneficiary, to a qualified dependent, or to a representative payee on behalf of such beneficiary or dependent. Also, where an amount is payable under Part B of Title IV of the Act for any month to two or more individuals who are members of the same family, the Office may, in its discretion, certify to any two or more of such individuals joint payment of the total benefits payable to them for such month.

§ 720.610 Payment periods.

Benefits are paid to beneficiaries during entitlement for payment periods consisting of full calendar months.

§ 720.615 Payment on behalf of another; "legal guardian" defined.

Benefits are paid only to the beneficiary or his legal guardian. As used in this section, "legal guardian" means an individual who has been appointed by a court of competent jurisdiction or otherwise appointed pursuant to law, to assume control of and responsibility for the care of the beneficiary, the management of his estate, or both.

§ 720.620 Computation of benefits.

(a) *Basic rate.* The benefit amount of each beneficiary entitled to a benefit for a month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 50 percent of the minimum monthly payment to which a totally disabled Federal employee in Grade GS–2 would be entitled for such month under the Federal Employees' Compensation Act, Chapter 81, Title 5, United States Code. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay ("step 1") for Grade GS–2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in subparagraph (1) of this paragraph by 12;

(3) Ascertaining the minimum monthly payment under the Federal Employees' Compensation Act by multiplying the amount determined in subparagraph (2) of this paragraph by 0.75 (that is, by 75 percent) (see 5 U.S.C. 8112); and

(4) Ascertaining the basic rate under the Act by multiplying the amount determined in subparagraph (3) of this paragraph by 0.50 (that is, by 50 percent).

(b) *Basic benefit.* When a miner or widow is entitled to benefits for a month for which he or she has no dependents who qualify under Part 715 of this Chapter VI and when a surviving child of a miner or widow, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next higher multiple of 10 cents). This amount is referred to as the "basic benefit."

(c) *Augmented benefit.* (1) When a miner or widow is entitled to benefits for a month for which he or she has one or more dependents who qualify under Part 715 of this Chapter VI, the amount of benefits to which such miner or widow is entitled is increased. This increase is referred to as an "augmentation."

(2) Any request to the Office that the benefits of a miner or widow be augmented in accordance with this paragraph shall be in writing on such form and in accordance with such instructions as are prescribed by the Office. Such request shall be filed with the Office in accordance with those provisions of Part 717 of this Chapter VI dealing with the filing of claims as if such request were a claim for benefits, and as if such dependent were the "beneficiary" referred to therein. Ordinarily, such request is made as part of the claim of the miner or widow for benefits.

(3) The benefits of a miner or widow are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in Part 715 of this Chapter VI, and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in Part 715 of this Chapter VI, except in the case of a child who qualifies as a dependent because he is a student. In the latter case such benefits continue to be augmented through the month before the first month during no part of which he qualifies as a student.

(4) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents.

(d) *Survivor benefit.* (1) As used in this section, "survivor" means a surviving child of a miner or widow, or, for months beginning May 1972, a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under the provisions of Part 715 of this Chapter VI.

(e) *Computation and rounding.* (1) Any computation prescribed by this section is made to the third decimal place.

(2) Monthly benefits are payable in multiples of 10 cents. Therefore, a monthly payment of amounts derived under paragraph (c)(4) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

§ 720.625 Certification to dependent of augmentation portion of benefit.

(a) If the benefit of a miner or of a widow is augmented because of one or more dependents (§ 720.620(b)), and it appears to the Office that the best interest of such dependent would be served thereby, the Office may certify payment of the amount of such augmentation (to the extent attributable to such dependent) to such dependent directly or to a representative payee for the use and benefit of such dependent.

(b) Any request to the Office to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section, shall be in writing on such form and in accordance with such instructions as are prescribed by the Office, and shall be filed with the Office in accordance with those provisions of Subpart B of this part dealing with the filing of claims as if such request were a claim for benefits (see subpart A of this part).

(c) In determining whether it is in the best interest of such dependent to certify separate payment of the amount of the augmentation in benefits attributable to him, the Office shall apply the standards pertaining to representative payment in §§ 720.690–720.735, and the instructions issued pursuant thereto.

(d) When the Office determines that the amount of a miner's benefit attributable to the miner's wife or child should be certified for separate payment to a person other than such miner, or that the amount of a widow's benefit attributable to such widow's child should be certified for separate payment to a person other than the widow, and the miner or widow disagrees with such determination and alleges that separate certification is not in the best interest of such dependent, the Office shall reconsider that determination.

(e) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

§ 720.630 Modification of benefit amounts; general.

Under certain conditions, the amount of monthly benefits as computed in § 720.620 must be modified to determine the amount actually to be paid to a beneficiary. A modification of the amount of a monthly benefit is required in the following instances:

(a) *Reduction.* A reduction from a beneficiary's monthly benefit may be required because of:

(1) In the case of benefits to a miner, parent, brother, or sister, the excess earnings from wages and from net earnings from self-employment of such miner, parent, brother, or sister, respectively; or

(2) Failure to report earnings from work in employment and self-employment within the prescribed period of time (see § 720.640); or

(3) The receipt by a beneficiary of payments made on account of any disability of the miner under State laws relating to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance (see § 720.635).

(4) The fact that a claim for benefits from an additional beneficiary is filed, or that such a claim is effective for a month prior to the month of filing, or a dependent qualifies under Part 715 of this chapter for an augmentation portion of a benefit of a miner or widow for a month for which another dependent has previously qualified for an augmentation.

(b) *Adjustment.* An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary (see §§ 720.655, 720.680, 720.685).

(c) *Nonpayment.* No benefits under this part are payable to the residents of a State which reduces its payments made to beneficiaries pursuant to certain State laws (see § 720.655).

(d) *Suspension.* A suspension of a beneficiary's monthly benefits may be required when the Office has information indicating that reductions on account of the miner's excess earnings (based on criteria in section 203(b) of the Social Security Act, 42 U.S.C. 403(b)) may reasonably be expected.

(e) *"Rounding" of benefit amounts.* Monthly benefit rates are payable in multiples of 10 cents. Any monthly benefit rate which, after all applicable computations, augmentations, and/or reductions is not a multiple of 10 cents, is increased to the next higher multiple of 10 cents. Since a fraction of a cent is not a multiple of 10 cents a benefit rate which contains such a fraction in the third decimal is raised to the next higher multiple of 10 cents.

(f) *Failure to disclose pertinent evidence.* Any individual entitled to a benefit who is aware of any circumstance which, under the provisions of this part could affect his entitlement to benefits, his eligibility for payment, or the amount of his benefit, or result in the termination, suspension, or reduction of his benefit, shall promptly report such circumstance to the Office of Workmen's Compensation Programs. The Office may at any time require an individual receiving, or claiming that he is entitled to receive a benefit, either on behalf of himself or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. The failure on the part of such individual to submit any such report or statement, properly executed, to the Office shall subject such benefit to reductions, suspension, or termination as the case may be.

§ 720.635 Reductions; receipt of State benefit.

(a) As used in this section, the term "State benefit" means a payment to a beneficiary made on account of any disability of the miner under State laws relating to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(b) Benefit payments to a beneficiary for a month are reduced (but not below zero) by an amount equal to any payments of State benefits received by such beneficiary for such month.

(c) Where a State benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitute for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Office determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State benefit is multiplied by 4⅓ and a biweekly benefit is multiplied by 2⅙, to ascertain the monthly equivalent for reduction purposes.

(d) Amounts paid or incurred, or to be incurred, by the individual for medical, legal, or related expenses in connection with his claim for State benefits (defined in paragraph (a) of this section) or the injury or occupational disease, if any, on which such award of State benefits (or settlement agreement) is based, are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consonant with State law. Such medical, legal, or related expenses may be evidenced by the State benefit award, compromise agreement, or court order in the State benefit proceedings, or by such other evidence as the Administration may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other clear and convincing evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable.

Any expenses not established by evidence required by the Administration will not be excluded.

§ 720.640 Reductions; excess earnings.

Benefit payments to a miner, parent, brother, or sister are reduced by an amount equal to the deductions which would be made with respect to excess earnings under the provisions of sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403 (b), (f), (g), (h), (j), and (l)) as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402).

§ 720.645 Reductions; retroactive effect of an additional claim for benefits.

Beginning with the month in which a person (other than a miner) files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid.

§ 720.650 More than one reduction event.

If a reduction for receipt of State benefits and a reduction on account of excess earnings are chargeable to the same month, the benefit for such month is first reduced (but not below zero) by the amount of the State benefits, and the remainder of the benefit for such month, if any, is then reduced (but not below zero) by the amount of excess earnings chargeable to such month.

§ 720.655 Nonpayment of benefits to residents of certain States.

No benefit shall be paid under this part to the residents of any State which, after December 30, 1969, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance benefits which are funded in whole or in part out of employer contributions.

§ 720.660 Overpayments.

(a) *General.* As used in this subpart, the term "overpayment" includes a payment where no amount is payable under Part B of Title IV of the Act; a payment in excess of the amount due under Part B of Title IV of the Act; a payment resulting from the failure to reduce benefits under section 412(b) of the Act; a payment to a resident of a State whose residents are not eligible for payment; and a payment resulting from the failure to terminate benefits of an individual no longer entitled thereto.

(b) *Overpaid beneficiary is living.* If the beneficiary to whom an overpayment was made is, at the time of a determination of such overpayment, entitled to benefits, or at any time thereafter becomes so entitled, no benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefit.* Adjustment under paragraph (b) of this section may be effected by withholding a part of the monthly benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount each month would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish material information; and

(3) Recoupment can be effected in an amount of not less than $10 a month and at a rate which would not extend the period of adjustment beyond 3 years after the initiation of the adjustment action.

(d) *Overpaid beneficiary dies before adjustment.* If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

§ 720.665 Notice of right to waiver consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, notice of the provisions of section 204(b) of the Social Security Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual and to any other individual against whom adjustment or recovery of the overpayment is to be effected.

§ 720.670 When waiver of adjustment or recovery may be applied.

There shall be no adjustment or recovery in any case where an incorrect payment under Part B of Title IV of the Act has been made with respect to an individual—

(a) Who is without fault, and

(b) Adjustment or recovery would either:

(1) Defeat the purpose of Title IV of the Act, or

(2) Be against equity and good conscience.

§ 720.675 Standards for waiver of adjustment or recovery.

The standards for determining the applicability of the criteria listed in § 720.670 shall be the same as those applied by the Social Security Administration pursuant to §§ 410.561–410.561h of this title.

§ 720.680 Collection and compromise of claims for overpayment.

(a) *General effect of the Federal Claims Collection Act of 1966.* Claims by the Office of Workmen's Compensation Programs against an individual for recovery of overpayments under Part B of Title IV of the Act, not exceeding the sum of $2,000, exclusive of interest, may be compromised, or collection suspended or terminated where such individual or his estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see paragraph (c) of this section), or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section), except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension, or termination of collection of a claim for overpayment.* (1) *Overpaid individual alive.* In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual or on the part of any other party having an interest in the claim.

(2) *Overpaid individual deceased.* In any case where the overpaid individual is deceased: (i) A claim for overpayment in excess of $2,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such deceased individual, and (ii) a claim for overpayment regardless of the amount will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.* In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under Part B of Title IV of the Act, the Office will consider such individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Office will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Office will consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.* Where the probable costs of recovering an overpayment under Part B of title IV of the Act would not justify enforced collection proceedings for the full amount of the claim or there is doubt concerning the Office's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount will be considered.

(e) *Amount of compromise.* The amount to be accepted in compromise of a claim for overpayment under Part B of title IV of the Act shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings giving due consideration to the exemptions available to the overpaid individual under State or Federal law and the time which collection will take.

(f) *Payment.* Payment of the amount which the Office has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under Part B of title IV of the Act must be made within the time and in the manner set by the Office. A claim for such recovery of the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Office. Failure of the overpaid individual or his estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

§ 720.685 Underpayments.

(a) *General.* As used in this subpart, the term "underpayment" includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits are payable.

(b) *Underpaid individual is living.* If an individual to whom an underpayment is due is living, the amount of such underpayment will be paid to such individual either in a single payment (if he is not entitled to a monthly benefit) or by increasing one or more monthly benefit payments to which such individual is or becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.* If an individual to whom an underpayment is due dies before receiving payment or negotiating a check or checks representing such payment, such underpayment will be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household with the deceased individual at the time of such individual's death, or

(ii) In the case of a deceased miner, entitled for the month of death to widow's blaek lung benefits.

(2) In the case of a deceased miner or widow, his or her child entitled to benefits as the surviving child of such miner or widow for the month in which such miner or widow died (if more than one such child, in equal shares to each such child).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under subparagraph (1) of this paragraph.

(5) The child or children of the deceased individual who do not qualify under subparagraph (2) of this paragraph (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under subparagraph (3) of this paragraph (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) In the event that a person who is otherwise qualified to receive an under-

payment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his share of the underpayment will be divided among the remaining living person(s) in the same order of priority. In the event that there is (are) no other such person(s), the underpayment will be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative.* The term "legal representative," for the purpose of qualifying to receive an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution, or organization acting on behalf of an unadministered estate, provided the person can give the Office good acquittance (as defined in paragraph (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Office good acquittance:

(1) A person who qualifies under a State's "small estate" statute; or

(2) A person resident in a foreign country who under the laws and customs of that country, has the right to receive assets of the estate; or

(3) A public administrator; or

(4) A person who has the authority, under applicable law, to collect the assets of the estate of the deceased beneficiary.

(f) *Definition of "good acquittance."* A person is considered to give the Office "good acquittance" when payment to that person will release the Office from further liability for such payment.

§ 720.690 Relation to provisions for reductions or increases.

The amount of an overpayment or underpayment is the difference between the amount actually paid to the beneficiary and the amount of the payment to which the beneficiary was actually entitled. Such overpayment or underpayment, for example, would be equal to the difference between the amount of a benefit in fact paid to the beneficiary and the amount of such benefit as reduced under section 412(b) of the Act, as increased pursuant to section 412(a)(1), or as augmented under section 412(a)(3), of the Act. In effecting an adjustment with respect to an overpayment, no amount can be considered as having been withheld from a particular benefit which is in excess of the amount of such benefit as so reduced. Overpayment and underpayment simultaneously outstanding on account of the same beneficiary are first adjusted against one another before adjustment pursuant to the other provisions of this subpart.

§ 720.695 Payments on behalf of an individual.

(a) When it appears to the Office that the interest of a beneficiary entitled to a payment under Part B of title IV of the act would be served thereby, certification of payments may be made by the Office, regardless of the legal competency or incompetency of the beneficiary entitled thereto, either for direct payment to such beneficiary, or for his use and benefit to a relative or some other person as the "representative payee" of the beneficiary. When it appears that an individual who is receiving benefit payments may be incapable of managing such payments in his own interest, the Office shall, if such individual is age 18 or over and has not been adjudged legally incompetent, continue payments to such individual pending a determination as to his capacity to manage benefit payments and the selection of a representative payee.

(b) As used in §§ 720.695–720.740, the term "beneficiary" includes the dependent of a miner or widow who could qualify for certification of separate payment of an augmentation portion of such miner's or widow's benefits.

§ 720.700 Submission of evidence by representative payee.

Before any amount shall be certified for payment to any relative or other person as representative payee for and on behalf of a beneficiary, such relative or other person shall submit to the Office such evidence as it may require of his relationship to, or his responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his authority to receive such payment. The Office may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility or authority. If any such relative or other person fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him on behalf of the beneficiary unless for good cause shown, the default of such relative or other person is excused by the Office and the required evidence is thereafter submitted.

§ 720.705 Responsibility of representative payee.

A relative or other person to whom certification of payment is made on behalf of a beneficiary as representative payee shall, subject to review by the Office and to such requirements as it may from time to time prescribe, apply the payments certified to him on behalf of a beneficiary only for the use and benefit of such beneficiary in the manner and for the purposes determined by him to be in the beneficiary's best interest.

§ 720.710 Use of benefits for current maintenance.

Payments certified to a relative or other person on behalf of a beneficiary shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance—i.e., to replace current income lost because of the disability, retirement, or death of the insured individual. Where a beneficiary is receiving care in an institution, current maintenance shall include the customary charges made by the institution to individuals it provides with care and services like those it provides the beneficiary and charges made for current and forseeable needs of the beneficiary which are not met by the institution.

§ 720.715 Conservation and investment of payments.

Payments certified to a relative or other person on behalf of a beneficiary which are not needed for the current maintenance of the beneficiary except as they may be used pursuant to § 720.720, shall be conserved or invested on the beneficiary's behalf. Preferred investments are U.S. savings bonds, but such funds may also be invested in accordance with the rules applicable to investment of trust estates by trustees. For example, surplus funds may be deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association if the account is either federally insured or is otherwise insured in accordance with State law requirements. Surplus funds deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association must be in a form of account which clearly shows that the representative payee has only a fiduciary, and not a personal, interest in the funds. The preferred forms of such accounts are as follows:

_____
(Name of beneficiary)
by
_____
(Name of representative payee)
representative payee; or

_____
(Name of beneficiary)
by
_____
(Name of representative payee)
trustee.

U.S. savings bonds purchased with surplus funds by a representative payee for a minor should be registered as follows:

_____
(Name of beneficiary)
_____, a minor, for whom _____ is representative payee for black lung benefits.
(Social Security No.)
(Name of payee)

U.S. savings bonds purchased with surplus funds by a representative payee for an incapacitated adult beneficiary should be registered as follows:

_____
(Name of beneficiary)
_____, for whom _____ is representative payee for black lung benefits.
(Social Security No.)
(Name of payee)

A representative payee who is the legally appointed guardian or fiduciary of the beneficiary may also register U.S. savings bonds purchased with funds from the payment of benefits under Part B of title IV in accordance with applicable regulations of the U.S. Treasury Department (31 CFR 315.5 through 315.8). Any other approved investment of the

beneficiary's funds made by the representative payee must clearly show that the payee holds the property in trust for the beneficiary.

§ 720.720 Use of benefits for beneficiary in institution.

Where a beneficiary is confined in a Federal, State or private institution because of mental or physical incapacity, the relative or other person to whom payments are certified on behalf of the beneficiary shall give highest priority to expenditure of the payments for the current maintenance needs of the beneficiary, including the customary charges made by the institution in providing care and maintenance. It is considered in the best interests of the beneficiary for the relative or other person to whom payments are certified on the beneficiary's behalf to allocate expenditure of the payments so certified in a manner which will facilitate the beneficiary's earliest possible rehabilitation or release from the institution or which otherwise will help him live as normal a life as practicable in the institutional environment.

§ 720.725 Support of legally dependent spouse, child, or parent.

If current maintenance needs of a beneficiary are being reasonably met, a relative or other person to whom payments are certified as representative payee on behalf of the beneficiary may use part of the payments so certified for the support of the legally dependent spouse, a legally dependent child, or a legally dependent parent of the beneficiary.

§ 720.730 Claims of creditors.

A relative or other person to whom payments under Part B of title IV of the Act are certified as representative payee on behalf of a beneficiary may not be required to use such payments to discharge an indebtedness of the beneficiary which was incurred before the first month for which payments are certified to a relative or other person on the beneficiary's behalf. In no case, however, may such payee use such payments to discharge such indebtedness of the beneficiary unless the current and reasonably foreseeable future needs of the beneficiary are otherwise provided for.

§ 720.735 Accountability.

A relative or other person to whom payments are certified as representative payee on behalf of a beneficiary shall submit a written report in such form and at such times as the Office may require, accounting for the payments certified to him on behalf of the beneficiary unless such payee is a court-appointed fiduciary and, as such, is required to make an annual accounting to the court, in which case a true copy of each such account filed with the court may be submitted in lieu of the accounting form prescribed by the Office. If any such relative or other person fails to submit the required accounting within a reasonable period of time after it is requested, no further payments shall be certified to him on behalf of the beneficiary unless for good cause shown, the default of such relative or other person is excused by the Office, and the required accounting is thereafter submitted.

§ 720.740 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested funds from payments under Part B of title IV of the Act certified to him on behalf of a beneficiary shall, upon direction of the Office, transfer any such funds (including interest earned from investment of such funds) to a successor payee appointed by the Office, or, at the option of the Office, shall transfer such funds, including interest, to the Office for recertification to a successor payee or to the beneficiary.

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PART 717—FILING AND PRELIMINARY PROCESSING OF CLAIMS FOR BLACK LUNG BENEFITS AFTER JUNE 30, 1973, UNDER TITLE IV, PART B, SECTION 415 OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT AS AMENDED

On September 7, 1972, notice of proposed rule making regarding the amendment of 20 CFR Chapter VI by adding thereto a new Part 717 was published in the FEDERAL REGISTER (37 F.R. 18169–18171). Interested persons were given until September 20, 1972, to submit written comments, suggestions, or objections, regarding the proposed regulations. After consideration of all relevant matter as was presented by interested parties, changes have been made in the proposed Part 717, which is hereby adopted as set forth below.

In view of the short period during which comments were received, the Employment Standards Administration of the Department of Labor shall continue to receive and consider comments from interested parties until November 20, 1972, and, where appropriate, amend this Part 717 to incorporate pertinent recommendations or objections.

Effective date. This part shall become effective on September 30, 1972.

The new Part 717 reads as follows:

INTRODUCTION

AUTHORITY: The provisions of this Part 717 are issued under section 415, 86 Stat. 156.

INTRODUCTION

§ 717.1 Purpose and scope of this part.

(a) This Part 717 contains the general rules of the Department of Labor and the Department of Health, Education, and Welfare, providing for the filing after June 30, 1973, and preliminary processing of claims under Part B and section 415 of title IV (Black Lung Benefits) of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972. The regulations contained in this part implement the policies of the Departments of Labor and Health, Education, and Welfare, and of the Congress to insure a smooth, orderly and equitable transition from the period prior to July 1, 1973, during which the primary responsibility for the administration of the black lung benefits program lies with the Department of Health, Education, and Welfare to the period beginning January 1, 1974, in which the primary responsibilty for the administration of that benefit program devolves upon the State workmen's compensation agencies or the Department of Labor pursuant to Part C of title IV of the Act as amended.

(b) Section 415(a) of the Act requires that the manner and place of filing new claims for benefits under Part B of title IV of the Act after June 30, 1973, and before January 1, 1974, shall be in accordance with regulations issued jointly by the Secretary of Health, Education, and Welfare and the Secretary of Labor, which regulations shall provide, among other things, that "such claims may be filed in offices of the Social Security Administration and thereafter transferred to the jurisdiction of the Department of Labor for further consideration." To effectuate this requirement of the Act, this part is issued as a joint regulation of the Department of Labor and the Department of Health, Education, and Welfare.

§ 717.2 Applicability of 20 CFR Part 715.

Part 715 of this chapter describes generally the statutory provisions pertinent to the responsibilties of the Secretary of Labor under title IV of the Act, including the special responsibilities delineated in section 415 of the Act with respect to claims filed under Part B of title IV during the period after June 30, 1973, the definitions applicable thereto, guidelines relating to eligibilty for bene-

fits, and the appropriate policy concerning disclosure of program information and records. The matter contained in Part 715 of this chapter is hereby made applicable, wherever appropriate, to this Part 717 of this chapter.

WHO MAY FILE CLAIMS

§ 717.101 Who may execute a claim.

The Office determines who is the proper party to execute a claim in accordance with the following rules:

(a) If the claimant has attained the age of 18, is mentally competent, and is physically able to execute the claim, the claim shall be executed by him. Where, however, paragraph (d) of this section applies, the claim may also be executed by the claimant's legal guardian, committee, or other representative.

(b) If the claimant is between the ages of 16 and 18, is mentally competent, has no legally appointed guardian, committee, or other representative, and is not in the care of any person, such claimant may execute the claim upon filing a statement on the prescribed form indicating capacity to act on his own behalf.

(c) If the claimant is mentally competent but has not attained age 18 and is in the care of a person, the claim may be executed by such person.

(d) If the claimant (regardless of his age) has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or representative.

(e) If the claimant (regardless of his age) is mentally incompetent or is physically unable to execute the claim, it may be executed by the person who has the claimant in his care or by a legally appointed guardian, committee, or other representative.

(f) Where the claimant is in the care of an institution and is not mentally competent or physically able to execute a claim, the manager or principal officer of such institution may execute the claim.

(g) For good cause shown, the Office may accept a claim executed by a person other than one described in paragraph (a), (b), (c), (d), (e), or (f) of this section.

§ 717.102 Evidence of authority to execute a claim on behalf of another.

Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, submit evidence of his authority to execute the claim on behalf of such claimant in accordance with the following rules:

(a) If the person executing the claim is the legally appointed guardian, committee, or other legal representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(b) If the person executing the claim is not such a legal representative, the evidence shall be a statement describing his relationship to the claimant, the extent to which he has the care of such claimant, or his position as an officer of the institution of which the claimant is an inmate. The Office may, at any time, require additional evidence to establish the authority of any such person.

§ 717.103 Claimant must be alive when claim is filed.

For a claim to be effective, the claimant must be alive at the time the claim is filed with the Office or with the Social Security Administration. See § 717.113(a).

PROCEDURE FOR FILING CLAIMS

§ 717.111 Claims forms.

(a) Claims shall be filed on approved forms and in accordance with instructions (provided thereon or attached thereto) as are prescribed by the Office.

(b) The forms for filing claims after June 30, 1973, for benefits under Part B of title IV of the Act pursuant to section 415 of the Act and these regulations are CM–903 (Coal Miner's Claim for Benefits), 903A (Widow's Claim for Benefits), 903B (Dependent Survivor's Claim for Benefits), and CM–904 (Medical Report—Pneumoconiosis). These forms shall be made generally available to the public at Social Security Administration offices as well as from the Office of Workmen's Compensation Programs, U.S. Department of Labor, Washington, D.C. 20211.

§ 717.112 Procedure for filing claim.

Claims shall be filed in the following manner:

(a) *Place of filing claim.* Claims and applications for benefits under this part shall be delivered, mailed, or otherwise presented at any of the various offices of the Social Security Administration.

(b) *Assistance in preparation of forms.* The Social Security Administration will assist claimants, if necessary, in completing their claims forms, including the listing of information required to establish previous periods of a miner's coal mine employment and to determine which of these periods of employment were spent in the service of any particular coal mine operator. The Social Security Administration will also assist claimants in securing other evidence necessary to support their claims.

§ 717.113 When a claim is considered to have been filed; time of filing claim.

(a) *Date of receipt.* (1) For the purposes of determining when a claim has been filed within the meaning of section 415(a) of the Act, a claim is considered to have been filed only as of the date it is received at an office of the Social Security Administration or by an employee of the Social Security Administration who is authorized to receive such claims.

(2) Claims submitted to the Department of Labor shall be forwarded to an office of the Social Security Administration. Such a claim shall be deemed filed with the Social Security Administration as of the date it was received by the Department of Labor.

(3) Claims submitted to an office maintained by the Foreign Service of the United States by or on behalf of a claimant residing outside the United States shall be considered to have been filed with the Social Security Administration as of the date it is received at such office of the Foreign Service.

(b) *Date of mailing.* If the claim is deposited in and transmitted by the U.S. mail and the fixing of the date of delivery as the date of filing would result in a loss or impairment of benefit rights, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence may be used to establish the mailing date.

(c) *Prospective filing of a claim.* A claim which is filed before the first month in which the claimant meets the requirements for entitlement to benefits is a valid claim only if the claimant meets such requirements before a final decision on his claim is made. Such a claim is deemed to have been filed on the first day such requirements are met.

§ 717.114 Requests and notices to be in writing.

Any request for a determination or a decision relating to an individual's right to benefits, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for, by, or pursuant to this part, shall be in writing and shall be signed by the person authorized to execute a claim under § 717.101.

§ 717.115 Withdrawal of a claim.

(a) *Before adjudication of claim.* A claimant (or an individual who is authorized to execute a claim on his behalf under § 717.101), may withdraw his previously filed claim provided that:

(1) He files a written request for withdrawal;

(2) The claimant is alive at the time his request for withdrawal is filed;

(3) The Office approves the request for withdrawal; and

(4) The request for withdrawal is filed on or before the date the Office makes a determination on the claim.

(b) *After adjudication of claim.* A claim for benefits may be withdrawn by a written request filed after the date the Office makes a determination on the claim provided that:

(1) The conditions enumerated in subparagraph (a) (1) through (3) of this section are met; and

(2) There is repayment of the amount of benefits previously paid because of the claim that is being withdrawn or it can be established to the satisfaction of the Office that repayment of any such amount is assured.

(c) *Effect of withdrawal of claim.* Where a request for withdrawal of a claim is filed and such request for withdrawal is approved by the Office, such claim will be deemed not to have been filed. After the withdrawal (whether made before or after the date the Office makes a determination) further action

will be taken by the Office only upon the filing of a new claim, except as provided in § 717.116.

§ 717.116 Cancellation of a request for withdrawal.

Before or after a written request for withdrawal has been approved by the Office, the claimant (or a person who is authorized under § 717.101 to execute a claim on his behalf) may request that the "request for withdrawal" be canceled and that the withdrawn claim be reinstated. Such request for cancellation must be in writing and must be filed, in a case where the requested withdrawal was approved by the Office, no later than 60 days after such approval. The claimant must be alive at the time the request for cancellation of the "request for withdrawal" is filed with the Office.

§ 717.117 When a written statement is considered a claim.

(a) *Written statement filed by claimant on his own behalf.* Where an individual submits a written statement which indicates an intention to claim benefits and such statement bears his signature or his mark properly witnessed, the filing of such written statement shall be considered to be the filing of a claim for benefits. *Provided,* That:

(1) The claimant or a proper party on his behalf (see § 717.101) executes a prescribed claims form (see § 717.111) that is filed with the Office or the Social Security Administration during the claimant's lifetime and within the period prescribed in paragraph (c)(1) of this section; or

(2) In the case of a claimant who dies prior to the filing of such prescribed claims form within the period prescribed in paragraph (c)(1) of this section, a prescribed claims form is filed with the Office or the Social Security Administration within the period prescribed in paragraph (c)(2) of this section by a party acting on behalf of the deceased claimant's estate.

(b) *Written statement filed by an individual on behalf of another.* A written statement filed by an individual which indicates an intention to claim benefits on behalf of another person shall, unless otherwise indicated thereon, be considered to be the filing of a claim for such purposes: *Provided,* That:

(1) The written statement bears the signature (or mark properly witnessed) of the individual filing the statement; and

(2) The individual filing the statement is the claimant on whose behalf the statement is being filed, or a proper party to execute a claim on behalf of the claimant; and

(3) A prescribed claims form (see § 717.111) is executed and filed in accordance with the provisions of paragraph (c)(1) of this section.

(c) *Period within which prescribed claims form must be filed.* After the Office or the Social Security Administration has received from an individual a written statement as described in paragraph (a) or (b) of this section:

(1) Notice in writing shall be sent to the claimant or to the individual who filed the written statement on his behalf, stating that an initial determination will be made with respect to such written statement if a prescribed claims form executed by the claimant or by a proper party on his behalf is filed with the Office or the Social Security Administration within 6 months from the date of such notice; or

(2) If notice is received that the death of such claimant occurred before the mailing of the notice described in subparagraph (1) of this paragraph, or within the 6-month period following the mailing of such notice but before the filing of a prescribed claims form by or on behalf of such individual, notification in writing shall be sent a person acting on behalf of his estate, or to the deceased's last known address. Such notification will include information that an initial determination with respect to such written statement will be made only if a prescribed claims form is filed within 6 months from the date of such notification.

(3) If, after the notice as described in this paragraph (c) has been sent, a prescribed claims form is not filed (in accordance with the provisions of paragraph (a) or (b) of this section) within the applicable period prescribed in subparagraph (1) or (2) of this paragraph, it will be deemed that the filing of the written statement to which such notice refers is not to be considered the filing of a claim for the purposes set forth in paragraphs (a) and (b) of this section.

PROCESSING OF CLAIM

§ 717.121 Completion and transmittal of claims forms.

The Social Security Administration shall forward completed claims forms to the Office of Workmen's Compensation Programs, Washington, D.C. 20211.

§ 717.122 Medical evidence.

(a) When a miner has timely filed a completed claims form CM-903 with the Social Security Administration, the latter will refer the miner, when appropriate, to a physician from among those physicians previously designated and approved by the Department of Labor to conduct examinations in connection with the black lung benefits program.

(b) The examination will be conducted at a time convenient to both the miner and the approved physician and as soon as is practicable.

(c) The designated physician will complete an examination of the miner to determine the nature and extent of that miner's impairment.

(d) The physician's findings will be entered on form CM-904 pursuant to the instructions on the form and remitted together with the physician's bill for services directly to the Office of Workmen's Compensation Programs, U.S. Department of Labor, Washington, D.C. 20211.

(e) All other medical evidence submitted to the Social Security Administration by a claimant will be forwarded to the Office of Workmen's Compensation Programs, Washington, D.C. 20211.

§ 717.123 Reimbursement for reasonable expenses in obtaining medical evidence.

Claimants for benefits under this part shall be reimbursed promptly by the Office of Workmen's Compensation Programs for reasonable medical expenses incurred by them for services from medical sources of their choice, in establishing their claims, including the reasonable and necessary cost of travel incident thereto. A medical expense generally is not "reasonable" when the medical evidence for which the expense was incurred is of no value in the adjudication of a claim. Medical evidence will be considered to be of "no value" when, for instance, it is wholly duplicative or when it is wholly extraneous to the medical issue of whether the claimant is disabled or died due to pneumoconiosis. In order to minimize inconvenience and expense to the claimant, he should not generally incur any medical expense for which he intends to claim reimbursement without first contacting the Office or the Social Security Administration to determine what types of evidence not already available may be useful in adjudicating his claim, what types of medical evidence may be reimbursable, and what would constitute a "reasonable medical expense" in a given case. However, a claimant's failure to contact the Office or the Social Security Administration before the expense is incurred will not preclude the Office or the Social Security Administration from later approving reimbursal for any reasonable medical expense. Where a reasonable expense for medical evidence is ascertained, the Office or the Social Security Administration may authorize direct payment to the provider of such evidence.

§ 717.124 Development of evidence.

(a) The claimant shall furnish a complete and detailed history of the miner's coal mine employment. When this employment history is completed, the Social Security Administration will review it for completeness and will forward it to the Office of Workmen's Compensation Programs, Washington, D.C. 20211.

(b) In appropriate cases it shall be necessary to develop evidence pertaining to or obtain proof of age, marriage, or termination of marriage, death, relationship of parent and child, other relationship or dependence, or any other fact which may be proven as a matter of public record. Evidence pertaining to these matters shall be obtained by the claimant and submitted to an office of the Social Security Administration for forwarding to the Office of Workmen's Compensation Programs. For purposes of claims under this part (that is, those claims under Part B of Title IV of the Act which, pursuant to section 415(a) thereof, are filed with the Department of Labor), this evidence shall be obtained in accordance with the regulations of the Social Security Administration (see § 410.240 of this title).

(c) *Certification of evidentiary documents.* In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of any such record or by an employee of the district office of the Social Security Administration or an employee of the Office authorized to make certifications of any such evidence.

§ 717.125 Insufficient evidence of eligibility.

Whenever a claimant for benefits has submitted no evidence or insufficient evidence of eligibility, the Office will inform the claimant what evidence is necessary for a determination of eligibility and will request him to submit such evidence within a specified reasonable time which may be extended for a further reasonable time upon the claimant's request.

Signed at Washington, D.C., this 26th day of September 1972.

JAMES D. HODGSON,
Secretary of Labor.

ROBERT M. BALL,
Commissioner, Social Security Administration.

Approved:

ELLIOTT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

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PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

■

Black Lung Benefits Program

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. 10, further amended]

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969——)

Miscellaneous Amendments

On September 2, 1972, there was published in the FEDERAL REGISTER (37 F.R. 18002) a notice of proposed rule making with proposed amendments of regulations No. 10 of the Social Security Administration, 20 CFR Part 410, pursuant to the provisions of the Black Lung Benefits Act of 1972 (P.L. 92-303, 86 Stat. 150), which amends title IV of the Federal Coal Mine Health and Safety Act of 1969 (P.L. 91-173; 83 Stat. 792 et seq.; 30 U.S.C. 901 et seq.). After consideration of all comments submitted by interested parties, those amendments as proposed are hereby adopted, subject to the following changes:

1. Paragraph 410.110(o) is revised to add "coal workers' pneumoconiosis" to the list of specific impairments included in the definition of the term "pneumoconiosis." The definition also makes it clear that the term "pneumoconiosis" includes any chronic respiratory or pulmonary disease when the conditions are met for the application of the presumption prescribed in section 411(c)(4) of the Act, and any respirable disease when the conditions are met for the application of the presumption in section 411(c)(2) of the Act.

2. The statement in § 410.240(b) that a claimant's failure to submit requested evidence shall, by itself, be a basis for determining that the conditions of eligibility have not been met, has been deleted.

3. Section 410.240(h) is revised to include a provision that a claimant's failure to contact the Administration before a medical expense is incurred is not a bar to subequent reimbursement for a reasonable medical expense.

4. A provision is added to § 410.340 to include steprelationships, relationships of the half-blood, and those by adoption, in determining who is a parent, brother, or sister. This is consistent with the general approach to determinations of relationship under title II of the Social Security Act.

5. Section 410.414(c) is revised to include the medical tests listed in the Act in the meaning of the term "other relevant evidence." The X-ray test is provided for in § 410.414(a) and is therefore omitted from this paragraph. The same change is made in § 410.454(c).

6. Sections 410.418 (a)(1) and (a)(2) have been redesignated as paragraphs (a) (2) and (3) and a new paragraph (a)(1) provides that diagnosis of pneumoconiosis by X-ray may be classified according to the ILO-U/C International Classification of Radiographs of Pneumoconioses, 1971. This agrees with latest medical practices. However, until full dissemination of the 1971 classification is made, classification may continue to be made under the ILO and UICC/Cincinnati Classifications. A similar provision is made in § 410.428(a)(1).

7. A provision is added to § 410.418(b) clarifying that a report of biopsy or autopsy is accepted as evidence of complicated pneumoconiosis if the histological findings show simple pneumoconiosis and progressive massive fibrosis.

8. Section 410.426(a) is revised to include a statement that the criteria for determining total disability in § 410.426 recognized that an impairment in the transfer of oxygen from the lung alveoli to cellular level can exist in an individual even though his chest X-ray or ventilatory function tests are normal. The same statement had been made in § 410.490, which contains the interim adjudicatory rules for certain claims filed before July 1, 1973.

9. Section 410.426(c) is revised to show that the decision that a chronic respiratory or pulmonary impairment is medically the equivalent of the values specified in § 410.426(b) is based on medically accepted clinical and laboratory diagnostic techniques including a medical judgment furnished by a physician designated by the Administration. This is consistent with a similar provision previously included in § 410.424 (b) and with prior regulations published subsequent to the enactment of the Federal Coal Mine Health and Safety Act of 1969.

10. Section 410.426(d) is revised to clarify that when evidence obtained as a result of ventilatory or physical performance tests does not establish that the miner is under a disability, other relevant evidence may nevertheless establish that he is totally disabled within the meaning of the Act. The revision also makes clear that the severity of the impairment thus established prevents him not only from doing his previous work but also, considering his age, education, and work experience, prevents him from engaging in comparable and gainful work.

11. Section 410.428(b) is revised to provide that X-rays shall be of suitable quality for proper classification of the pneumoconioses and for the obtaining of additional films, if necessary, for that purpose.

12. Section 410.430 is revised to provide a cautionary note against the use of nebulized broncho-dilators in ventilatory studies if the use is contraindicated.

13. Section 410.432(b) is revised to provide that the date specified for a medical examination may be extended at the miner's request for good cause.

14. New § 410.432(c) is added to provide procedures on "due process." Before a determination is made that a miner's disability has ceased, he is given notice and an opportunity to present evidence from sources of his own choosing, as well as arguments and contentions, that his disability has not ceased.

15. Section 410.462(b) is revised to deleted the qualification that another chronic disease of the lung must have characteristics which are not inconsistent with the diagnosis of pneumoconiosis. This makes the regulation consistent with the provisions in the prior regulation § 410.415 dealing with the presumption relating to respirable diseases in survivors' claims.

16. Section 410.471 is revised to provide that appropriate account shall be taken of the length of time the miner's physician treated the miner.

17. New § 410.490 (d) and (e) have been added to the interim adjudicatory rules contained in § 410.490. Paragraph (d) provides that any claim initially adjudicated under the interim rules will, if the claim is for any reason thereafter readjudicated, be readjudicated under the same rules. Paragraph (e) provides that an individual who is not found totally disabled due to pneumoconiosis under the interim rules will have his claim considered under the permanent rules set out in §§ 410.412 to 410.462.

18. Paragraph (1) in the appendix has been deleted and paragraphs (2), (3), and (4) redesignated as paragraphs (1), (2), and (3) respectively.

19. New paragraph (1) in the appendix is revised to provide that the test for arterial oxygen tension at rest may be performed sitting or standing as well as during exercise.

20. Minor editorial and clarifying changes are made in §§ 410.110(a), 410.211(b), 410.212(a), 410.213(b), 410.213(c), 410.428(a), 410.240(h), 410.370(c), 410.393(a), 410.401(b), 410.401(c), 410.410(c), 410.414(a), 410.418(c), 410.424(a), 410.424(b), 410.426(d), 410.432(a), 410.454(a), 410.462(a), 410.472, 410.475, 410.476(b), 410.490(a), 410.490(b), the Appendix to Subpart D, §§ 410.561e(k), 410.584, 410.610(m), 410.615(b), 410.670b(c), and 410.670b(d).

Because of the statutory requirement that final regulations be published in the FEDERAL REGISTER on or before September 30, 1972, and the resultant brief time available to interested parties to comment, the Department will continue to consider any data, views, or arguments, pertaining to said regulations which have been submitted before or after September 20, 1972, for the purpose of any future modification or additions thereof. All interested parties who submit or have submitted comments will be notified individually of the Department's reactions thereto.

(Secs. 401-426, 83 Stat. 792, as amended, 86 Stat. 150; 30 U.S.C. 901 et seq.)

Effective date. These regulations as set forth below shall be effective on publication in the FEDERAL REGISTER (9-30-72).

Dated: September 26, 1972.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: September 27, 1972.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

Part 410 of Chapter III of title 20 is amended as follows:

1. In § 410.101, the material preceding paragraph (a) and paragraphs (c) and (e) are revised to read as follows:

§ 410.101 Introduction.

The regulations in this Part 410 (Regulation No. 10 of the Social Security Administration) relate to the provisions of Part B (Black Lung Benefits) of title IV of the Federal Coal Mine Health and Safety Act of 1969, as enacted December 30, 1969, as amended by the Black Lung Benefits Act of 1972, and as may hereafter be amended. The regulations in this part are divided into the following subparts according to subject content:

* * * * *

(c) Subpart C of this part describes the relationship and dependency requirements for widows, children, parents, brothers, and sisters, and relationship and dependency requirements which affect the benefit amounts of entitled miners and widows.

* * * * *

(e) Subpart E of this part relates to payment of benefits, payment periods, benefit rates and their modification, representative payees, and overpayments and underpayments.

* * * * *

2. In § 410.110, paragraphs (a), (b), (j), (k), (o), (p), and (r) are revised to read as follows:

§ 410.110 General definitions and use of terms.

For purposes of this part, except where the context clearly indicates otherwise, the following definitions apply:

(a) "The Act," means the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91–173), enacted December 30, 1969, as amended by the Black Lung Benefits Act of 1972 (Public Law 92–303), enacted May 19, 1972, and as may hereafter be amended.

(b) "Benefit" means the black lung benefit provided under Part B of title IV of the Act to coal miners, to surviving widows of miners, to the surviving child or children of a miner, or of a widow of a miner, to the surviving dependent parent or parents of a miner, and to the surviving dependent brother(s) or sister(s) of a miner.

* * * * *

(j) "Miner" or "coal miner" means any individual who is working or has worked as an employee in a coal mine, performing functions in extracting the coal or preparing the coal so extracted.

(k) "The Nation's coal mines" comprise all coal mines as defined in paragraph (h) of this section located in a State as defined in paragraph (l) of this section.

* * * * *

(o) "Pneumoconiosis" means: (1) A chronic dust disease of of the lung arising out of employment in the Nation's coal mines, and includes coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, progressive massive fibrosis, silicosis, or silicotuberculosis, arising out of such employment.

For purposes of this subpart, the term also includes the following conditions that may be the basis for application of the statutory presumption of disability or death due to pneumoconiosis under the circumstances prescribed in section 411(c) of the Act:

(2) Any other chronic respiratory or pulmonary impairment when the conditions are met for the application of the presumption described in § 410.414(b) or § 410.454(b), and

(3) Any respirable disease when the conditions are met for the application of the presumption described in § 410.462.

(p) A "workmen's compensation law" means a law providing for payment of compensation to an employee (and his dependents) for injury (including occupational disease) or death suffered in connection with his employment. A payment funded wholly out of general revenues and paid (without regard to insurance principles) solely on account of the financial need of the miner and his family, shall not be considered a payment under a "workmen's compensation law."

* * * * *

(r) "Beneficiary" means a miner or a surviving widow, child, parent, brother, or sister, who is entitled to a benefit as defined in paragraph (b) of this section.

3. Following § 410.120, a new § 410.130 is added to read as follows:

§ 410.130 Periods of limitation ending on nonworkdays.

Where any provision of Part B of title IV of the Act, or any provision of another law of the United States, relating to or changing the effect of Part B, or any regulation of the Secretary issued under Part B, provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under this part or is necessary to establish or protect any right under this part, and such period ends on a Saturday, Sunday, or Federal legal holiday, or on any other day all or part of which is declared to be a nonworkday for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday, or any other day all or part of which is declared to be a nonworkday for Federal employees either by statute or Executive order. For purposes of this section, the day on which a period ends shall include the final day of any extended period where such extension is authorized by law or by the Secretary pursuant to law. Such extension of any period of limitation does not apply to periods during which benefits may be paid for months prior to the month a claim for such benefits is filed (see § 410.226).

4. Section 410.200 is revised to read as follows:

§ 410.200 Types of benefits; general.

(a) Part B of title IV of the Act provides for the payment of periodic benefits:

(1) To a miner who is determined to be totally disabled due to pneumoconiosis; or

(2) To the widow or child of a miner who was entitled to benefits at the time of his death, who is determined to have been totally disabled due to pneumoconiosis at the time of his death, or whose death was due to pneumoconiosis; or

(3) To the child of a widow of a miner who was entitled to benefits at the time of her death; or

(4) To the surviving dependent parents, or the surviving dependent brothers or sisters, of a miner who is determined to have been entitled to benefits at the time of his death, or who was totally disabled due to pneumoconiosis at the time of his death, or whose death was due to pneumoconiosis.

(b) The following sections of this subpart set out the conditions of entitlement to benefits for a miner, a widow, child, parent, brother, or sister; describe the events which terminate or preclude entitlement to benefits and the procedures for filing a claim; and prescribe certain requirements as to evidence. Also see Subpart C of this part for regulations relating to the relationship and dependency requirements applicable to claimants for benefits as a widow, child, parent, brother, or sister, and to beneficiaries with dependents.

5. In § 410.201, paragraph (c) is revised to read as follows:

§ 410.201 Conditions of entitlement; miner.

An individual is entitled to benefits if such individual:

* * * * *

(c) Has filed a claim for benefits in accordance with the provisions of §§ 410.220–410.234.

6. In § 410.202, paragraphs (b) and (c) are revised to read as follows:

§ 410.202 Duration of entitlement; miner.

* * * * *

(b) The last month for which such individual is entitled to such benefit is the month before the month:

(1) In which the miner dies (see, however, § 410.226); or

(2) In no part of which the miner is under a disability.

(c) A miner's entitlement to benefits under Part B of title IV of the Act which is based on a claim which is filed (see § 410.227) after June 30, 1973, and before January 1, 1974, shall terminate on December 31, 1973, unless sooner terminated under paragraph (b) of this section.

7. Section 410.210 is revised to read as follows:

§ 410.210 Conditions of entitlement; widow or surviving divorced wife.

An individual is entitled to benefits if such individual:

(a) Is the widow (see § 410.320) or surviving divorced wife (see § 410.321) of a miner (see § 410.110(j));

(b) Is not married (or, for months prior to May 1972, had not remarried since the miner's death);

(c) Has filed a claim for benefits in accordance with the provisions of §§ 410.220–410.234;

(d) Was dependent on the miner at the pertinent time (see § 410.360 or § 410.361); and

(e) The deceased miner:

(1) Was entitled to benefits at the time of his death; or

(2) Died before January 1, 1974, and it is determined that he was totally disabled due to pneumoconiosis at the time of his death, or that his death was due to pneumoconiosis (see Subpart D of this part).

8. Section 410.211 is revised to read as follows:

§ 410.211 Duration of entitlement; widow or surviving divorced wife.

(a) An individual is entitled to benefits as a widow, or as a surviving divorced wife, for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 410.210 are satisfied.

(b) The last month for which such individual is entitled to such benefit is the month before the month in which either of the following events first occurs:

(1) The widow or surviving divorced wife marries; or

(2) The widow or surviving divorced wife dies; or

(3) Where the individual qualifies as the widow of a miner under § 410.320(d), she ceases to qualify as provided therein.

9. Following § 410.211, new §§ 410.212, 410.213, and 410.214 are added to read as follows:

§ 410.212 Conditions of entitlement; child.

(a) An individual is entitled to benefits if such individual:

(1) Is the child or stepchild (see § 410.330) of (i) a deceased miner (see § 410.110(j)) or (ii) of the widow of a miner who was entitled to benefits at the time of her death (see §§ 410.210 and 410.211);

(2) Has filed a claim for benefits in accordance with the provisions of §§ 410.220–410.234;

(3) Meets the dependency requirements in § 410.370;

(4) If a child of a miner, the deceased miner:

(i) Was entitled to benefits at the time of his death, or

(ii) Died before January 1, 1974, and his death is determined to have been due to pneumoconiosis (see Subpart D of this part), or

(iii) Died before January 1, 1974, and it is determined that at the time of his death he was totally disabled by pneumoconiosis (see Subpart D of this part).

(b) A child is not entitled to benefits for any month for which a widow of a miner establishes entitlement to benefits.

§ 410.213 Duration of entitlement; child.

(a) An individual is entitled to benefits as a child for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 410.212 are satisfied.

(b) The last month for which such individual is entitled to such benefit is the month before the month in which any one of the following events first occurs:

(1) The child dies;

(2) The child marries;

(3) The child attains age 18 and,

(i) Is not under a disability at that time, and

(ii) Is not a student (as defined in § 410.370) during any part of the month in which he attains age 18;

(4) If the child's entitlement is based on his status as a student, the earlier of:

(i) The first month during no part of which he is a student, or

(ii) The month in which he attains age 23 and is not under a disability at that time (but see § 410.370(c)(4) for an exception);

(5) If the child's entitlement is based on disability, the first month in no part of which such individual is under a disability.

(c) A child whose entitlement to benefits terminated with the month before the month in which he attained age 18, or later, may thereafter (provided he is not married) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month in which he files such application in or after such termination and in which he is a student and has not attained the age of 23.

§ 410.214 Conditions of entitlement; parent, brother, or sister.

An individual is entitled to benefits if:

(a) Such individual:

(1) Is the parent, brother, or sister (see § 410.340) of a deceased miner (see § 410.110(j));

(2) Has filed a claim for benefits in accordance with the provisions of §§ 410.220–410.234;

(3) Was dependent on the miner at the pertinent time (see § 410.380); and

(4) Files proof of support before June 1, 1974, or within 2 years after the miner's death, whichever is later, or it is shown to the satisfaction of the Administration that there is good cause for failure to file such proof within such period (see § 410.216).

(b) In the case of a brother, he also:

(1) Is under 18 years of age; or

(2) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d) (see Subpart P of Part 404 of this chapter), which began before he attained age 18, or in the case of a student, before he ceased to be a student (see § 410.370(c)); or

(3) Is a student (see § 410.370(c)); or

(4) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d) (see Subpart P of Part 404 of this chapter), at the time of the miner's death.

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the deceased miner:

(1) Was entitled to benefits at the time of his death; or

(2) Died before January 1, 1974, and his death is determined to have been due to pneumoconiosis (see Subpart D of this part); or

(3) Died before January 1, 1974, and it is determined that at the time of his death he was totally disabled by pneumoconiosis (see Subpart D of this part).

(d) Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section:

(1) A parent is not entitled to benefits if the deceased miner was survived by a widow or child at the time of his death, and

(2) A brother or sister is not entitled to benefits if the deceased miner was survived by a widow, child, or parent at the time of his death.

10. Section 410.215 is redesignated as § 410.219 and new §§ 410.215 and 410.216 are added to read as follows:

§ 410.215 Duration of entitlement; parent, brother, or sister.

(a) A parent, brother, or sister is entitled to benefits beginning with the month all the conditions of entitlement described in § 410.214 are met.

(b) The last month for which such parent is entitled to benefits is the month before the month in which the parent dies.

(c) The last month for which such sister is entitled to benefits is the month before the month in which any of the following events occurs:

(1) She dies;

(2) (i) She marries or remarries; or

(ii) If already married, she receives support in any amount from her spouse.

(d) The last month for which such brother is entitled to benefits is the month before the month in which any of the following events first occurs:

(1) He dies;

(2) (i) He marries or remarries; or

(ii) If already married, he receives support in any amount from his spouse;

(3) He attains age 18 and,

(i) Is not under a disability at that time, and

(ii) Is not a student (see § 410.370(c)) during any part of the month in which he attains age 18;

(4) If his entitlement is based on his status as a student, the earlier of:

(i) The first month during no part of which he is a student; or

(ii) The month in which he attains age 23 and is not under a disability at that time;

(5) If his entitlement is based on disability, the first month in no part of which such individual is under a disability.

§ 410.216 "Good cause" for delayed filing of proof of support.

(a) *What constitutes "good cause."* "Good cause" may be found for failure to file proof of support within the 2-year period where the parent, brother, or sister establishes to the satisfaction of the Administration that such failure to file was due to:

(1) Circumstances beyond the individual's control, such as extended illness, mental or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Administration; or

(3) Efforts by the individual to secure supporting evidence without a realization that such evidence could be submitted after filing proof of support; or

(4) Unusual or unavoidable circumstances, the nature of which demonstrate that the individual could not reasonably be expected to have been aware of the need to file timely the proof of support.

(b) *What does not constitute "good cause."* "Good cause" for failure to file timely such proof of support does not exist when there is evidence of record in the Administration that the individual was informed that he should file within the initial 2-year period and he failed to do so through negligence or intent not to file.

11. In § 410.220, a new paragraph (f) is added to read as follows:

§ 410.220 Claim for benefits; definitions.

* * * * *

(f) *Provisions with respect to claims applicable with respect to requests.* The provisions of §§ 410.222–410.234 (relating to the preparation, execution, or filing of a claim for benefits) are applicable to the preparation, execution, and filing of a written request required under this part, e.g., a request to be selected as representative payee (see § 410.581 et seq.), a request for separate payment of an augmentation (see § 410.511), a request for reconsideration (see § 410.622), etc. In such cases, the term "claimant" as used therein refers to the individual filing the request on his own behalf or the individual on whose behalf such request is filed.

12. Section 410.221 is revised to read as follows:

§ 410.221 Prescribed application and request forms.

(a) Claims shall be made as provided in this subpart on such application forms and in accordance with such instructions (provided thereon or attached thereto) as are prescribed by the Administration.

(b) The application forms used by the public to file claims for benefits under Part B of title IV of the Act are SSA–46 (application for benefits under the Federal Coal Mine Health and Safety Act of 1969 (coal miner's claim of total disability)), SSA–47 (application for benefits under the Federal Coal Mine Health and Safety Act of 1969 (widow's claim)), SSA–48 (application for benefits under the Black Lung Benefits Act of 1972 (child's claim)), and SSA–49 (application for benefits under the Black Lung Act of 1972 (parent's, brother, or sister's claim)).

(c) The form used by an individual to request that such individual be selected as a representative payee or by a dependent to request that payment be certified to him separately is SSA–50 (Request to be Selected as Payee).

(d) For further information about some of the forms used in the administration of Part B of title IV of the Act, see §§ 422.505(b), 422.515, 422.525, and 422.527 of this chapter.

13. Section 410.222 is revised to read as follows:

§ 410.222 Execution of a claim.

The Administration determines who is the proper party to execute a claim in accordance with the following rules:

(a) If the claimant has attained the age of 18, is mentally competent, and is physically able to execute the claim, the claim shall be executed by him. Where, however, paragraph (d) of this section applies, the claim may also be executed by the claimant's legal guardian, committee, or other representative.

(b) If the claimant is between the ages of 16 and 18, is mentally competent, has no legally appointed guardian, committee, or other representative, and is not in the care of any person, such claimant may execute the claim upon filing a statement on the prescribed form indicating capacity to act on his own behalf.

(c) If the claimant is mentally competent but has not attained age 18 and is in the care of a person, the claim may be executed by such person.

(d) If the claimant (regardless of his age) has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or representative.

(e) If the claimant (regardless of his age) is mentally incompetent or is physically unable to execute the claim, it may be executed by the person who has the claimant in his care or by a legally appointed guardian, committee, or other representative.

(f) Where the claimant is in the care of an institution and is not mentally competent or physically able to execute a claim, the manager or principal officer of such institution may execute the claim.

(g) For good cause shown, the Administration may accept a claim executed by a person other than one described in paragraph (a), (b), (c), (d), (e), or (f) of this section.

14. Section 410.226 is revised to read as follows:

§ 410.226 Periods for which claims are effective.

(a) *Application effective for entire month of filing.* Benefits are payable for full calendar months. If the claimant meets all the requirements for entitlement to benefits in the same calendar month in which his application is filed, the application will be effective for the whole month. If a miner dies in the first month for which he meets all the requirements for entitlement to benefits, he will, notwithstanding the provisions of § 410.202(b), be considered to be entitled to benefits for that month.

(b) *Prospective life of claims.* A claim which is filed before the claimant meets all the requirements for entitlement to such benefits will be deemed a valid claim if the claimant meets such requirements of entitlement (1) before the Administration makes a final decision on such claim or (2) if the claimant has timely requested judicial review of such final decision before such review is completed. If the claimant first meets the requirements for entitlement to benefits in a month after the month of actual filing but before a final administrative or judicial decision is rendered on his claim, his claim will be deemed to have been effectively filed in such first month of entitlement.

(c) *Retroactive life of claims.* Except in the case of a claim for benefits as a surviving child (see § 410.212) a claim for benefits has no retroactive effect. (See, however, § 410.230.) Generally, a claim for benefits for a surviving child is effective (depending on the first month of eligibility) for up to 12 months preceding the month in which such claim is filed. However, if such claim is filed before December 1972, such claim may be effective retroactively (depending on the first month of eligibility) to December 1969.

§ 410.227 [Amended]

15. In § 410.227, paragraph (c) is revoked.

16. Section 410.231 is revised to read as follows:

§ 410.231 Time limits for filing claims.

(a) A claim by or on behalf of a miner must be filed on or before December 31, 1973, and when so filed, is a claim for benefits under Part B of title IV of the Act. (See § 410.227 for when a claim is considered to have been filed. See also § 410.202(c) for the duration of entitlement to benefits of a miner based on a claim for such benefits which is filed after June 30, 1973, and before January 1, 1974.)

(b) In the case of a miner who was entitled to benefits for the month before the month of his death, or died in the first month for which he met all the requirements for entitlement (see § 410.226), a claim for benefits by or on behalf of the widow, child, parent, brother, or sister of a miner must be filed by December 31, 1973, or within 6 months after the miner's death, whichever is later. When so filed, it constitutes a claim for benefits under Part B of title IV of the Act.

(c) In the case of a miner who was not entitled to benefits for the month before the month of his death, and whose death occurred prior to January 1, 1974, a claim for benefits by or on behalf of the widow, child, parent, brother, or sister of a miner must be filed by December 31, 1973, or, in the case of the death

of a miner occurring after June 30, 1973, and before January 1, 1974, within 6 months of such miner's death. When so filed, it constitutes a claim for benefits under Part B of title IV of the Act.

(d) Notwithstanding the provisions of paragraphs (b) and (c) of this section, if a widow established entitlement to benefits under this part (see § 410.210), a claim by or on behalf of a surviving child of a miner or of such widow, must be filed within 6 months after the death of such miner or of such widow, or by December 31, 1973, whichever is the later.

17. Section 410.234 is revised to read as follows:

§ 410.234 Interim provisions.

(a) Notwithstanding any other provision of this subpart, a written request for benefits which is filed before January 31, 1972, and which meets the requirements of this subpart except for the filing of a prescribed application form, shall be considered a claim for benefits. Nevertheless, where a prescribed application form has not been filed, the Administration may require that such a form be completed and filed before adjudicating the claim. (See § 410.240(a).)

(b) Notwithstanding any other provision of this part, where (1) a request has been made before the effective date of this regulation that a claim for benefits be withdrawn and (2) such request has been approved (see § 410.232), such claim may nevertheless be reinstated and adjudicated under the provisions of the Black Lung Benefits Act of 1972 (Public Law 92-303).

18. In § 410.240, paragraphs (b) and (h) are revised to read as follows:

§ 410.240 Evidence.

* * * * *

(b) *Insufficient evidence of eligibility.* Whenever a claimant for benefits has submitted no evidence or insufficient evidence of eligibility, the Administration will inform the claimant what evidence is necessary for a determination of eligibility and will request him to submit such evidence within a specified reasonable time which may be extended for a further reasonable time upon the claimant's request.

* * * * *

(h) *Reimbursement for reasonable expenses in obtaining medical evidence.* Claimants for benefits under this part shall be reimbursed promptly for reasonable medical expenses incurred by them for services from medical sources of their choice, in establishing their claims, including the reasonable and necessary cost of travel incident thereto. A medical expense generally is not "reasonable" when the medical evidence for which the expense was incurred is of no value in the adjudication of a claim. Medical evidence will be considered to be of "no value" when, for instance, it is wholly duplicative or when it is wholly extraneous to the medical issue of whether the claimant is disabled or died due to pneumoconiosis. In order to minimize inconvenience and possible expense to the claimant, he should not generally incur any medical expense for which he intends to claim reimbursement without first contacting the district office to determine what types of evidence not already available to the Administration may be useful in adjudicating his claim, what types of medical evidence may be reimbursable, and what would constitute a "reasonable medical expense" in a given case. However, a claimant's failure to contact the Administration before the expense is incurred will not preclude the Administration from later approving reimbursal for any reasonable medical expense. Where a reasonable expense for medical evidence is ascertained, the Administration may authorize direct payment to the provider of such evidence.

19. Section 410.250 is revised to read as follows:

§ 410.250 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

An individual who has been finally convicted by a court of competent jurisdiction of the felonious and intentional homicide of a miner or of a widow shall not be entitled to receive any benefits payable because of the death of such miner or widow, and such felon shall be considered nonexistent in determining the entitlement to benefits of other individuals with respect to such miner or widow.

20. Section 410.300 is revised to read as follows:

§ 410.300 Relationship and dependency; general.

(a) In order to establish entitlement to benefits, a widow, child, parent, brother, or sister must meet relationship and dependency requirements with respect to the miner or widow, as applicable, prescribed by or pursuant to the Act.

(b) In order for an entitled miner or widow to qualify for augmented benefits because of one or more dependents (see § 410.510(c)), such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act.

(c) References in §§ 410.310(c), 410.320(c), 410.330(d), and 410.340, to the "same right to share in the intestate personal property" of a deceased miner (or widow), refer to the right of an individual to share in such distribution in his own right and not by right of representation.

21. In § 410.310, paragraph (d) is revised to read as follows:

§ 410.310 Determination of relationship; wife.

An individual will be considered to be the wife of a miner if:

* * * * *

(d) (1) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment (see § 410.391), would have been a valid marriage. However, such purported marriage shall not be considered a valid marriage if such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household (see § 410.393) in the month in which there is filed a request that the miner's benefits be augmented because such individual qualifies as his wife (see § 410.510(c)). The provisions of this paragraph shall not apply, however, if the miner's benefits are or have been augmented under § 410.510(c) because another person qualifies or has qualified as his wife and such other person is, or is considered to be, the wife of such miner under paragraph (a), (b), or (c) of this section at the time such request is filed.

(2) The qualification for augmentation purposes of an individual who would not be considered to be the wife of such miner but for this paragraph (d), shall end with the month before the month in which (i) the Administration determines that the benefits of the miner should be augmented on account of another person, if such other person is (or is considered to be) the wife of such miner under paragraph (a), (b), or (c) of this section, or (ii) if the individual who previously qualified as a wife for purposes of § 410.510(c), entered into a marriage valid without regard to this paragraph, with a person other than such miner.

22. Following § 410.310, a new § 410.311 is added to read as follows:

§ 410.311 Determination of relationship; divorced wife.

An individual will be considered to be the divorced wife of a miner if her marriage to such miner has been terminated by a final divorce on or after the 20th anniversary of the marriage: *Provided*, That if she was married to and divorced from him more than once, she was married to him in each calendar year of the period beginning 20 years immediately before the date on which any divorce became final and ending with the year in which that divorce became final.

23. In § 410.320, paragraph (d) is revised to read as follows:

§ 410.320 Determination of relationship; widow.

* * * * *

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment (see § 410.391) would have been a valid marriage. However, such purported marriage shall not be considered a valid marriage if such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household (see § 410.393) at the time of the miner's death. The provisions of this paragraph shall not apply if another person is or has been entitled to benefits as the widow of the

miner and such other person is, or is considered to be, the widow of such miner under paragraph (a), (b), or (c) of this section at the time such individual files her claim for benefits.

24. Following § 410.320, a new § 410.321 is added to read as follows:

§ 410.321 Determination of relationship; surviving divorced wife.

An individual will be considered to be the surviving divorced wife of a deceased miner if her marriage to such miner had been terminated by a final divorce on or after the 20th anniversary of the marriage: *Provided*, That, if she was married to and divorced from him more than once, she was married to him in each calendar year of the period beginning 20 years immediately before the date on which any divorce became final and ending with the year in which that divorce became final.

25. In § 410.330, paragraph (f)(3) is revoked and the material preceding paragraph (a) is revised to read as follows:

§ 410.330 Determination of relationship; child.

As used in this section, the term "beneficiary" means only a widow entitled to benefits at the time of her death (see § 410.211), or a miner, except where there is a specific reference to the "father" only, in which case it means only a miner. An individual will be considered to be the child of a beneficiary if:

* * * * *

(f) * * *

(3) [Revoked]

26. Following § 410.330, a new § 410.340 is added to read as follows:

§ 410.340 Determination of relationship; parent, brother, or sister.

An individual will be considered to be the parent, brother, or sister of a miner if the courts of the State in which such miner was domiciled (see § 410.392) at the time of his death would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's parent, brother, or sister. Where, under such law, the individual does not bear the relationship to the miner of parent, brother, or sister, but would, under State law, have the same status (i.e., right to share in the miner's intestate personal property) as a parent, brother, or sister, the individual will be deemed to be such. An individual will be considered to be the parent, brother, or sister of a miner if the individual is the stepparent, stepbrother, stepsister, half brother, or half sister of the miner, or is the parent, brother, or sister of the miner by adoption.

27. Section 410.350 is revised to read as follows:

§ 410.350 Determination of dependency; wife.

An individual who is the miner's wife (see § 410.310) will be determined to be dependent upon the miner if:

(a) She is a member of the same household as the miner (see § 410.393); or

(b) She is receiving regular contributions from the miner for her support (see § 410.395(c)); or

(c) The miner has been ordered by a court to contribute to her support (see § 410.395(e)); or

(d) She is the natural mother of the son or daughter of the miner; or

(e) She was married to the miner (see § 410.310) for a period of not less than 1 year.

28. Following § 410.350, a new § 410.351 is added to read as follows:

§ 410.351 Determination of dependency; divorced wife.

An individual who is the miner's divorced wife (see § 410.311) will be determined to be dependent upon the miner if:

(a) She is receiving at least one-half of her support from the miner (see § 410.395(g)); or

(b) She is receiving substantial contributions from the miner pursuant to a written agreement (see § 410.395 (c) and (f)); or

(c) There is in effect a court order for substantial contributions to her support to be furnished by such miner (see § 410.395 (c) and (e)).

29. Section 410.360 is revised to read as follows:

§ 410.360 Determination of dependency; widow.

(a) *General.* An individual who is the miner's widow (see § 410.320) will be determined to have been dependent on the miner if, at the time of the miner's death:

(1) She was living with the miner (see § 410.393); or

(2) She was dependent upon the miner for support or the miner has been ordered by a court to contribute to her support (see § 410.395); or

(3) She was living apart from the miner because of his desertion or other reasonable cause; or

(4) She is the natural mother of his son or daughter; or

(5) She had legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18; or

(6) He had legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18; or

(7) She was married to him at the time both of them legally adopted a child under the age of 18; or

(8) She was married to him for a period of not less than 9 months immediately prior to the day on which he died (but see paragraph (b) of this section).

(b) *Waiver of 9-month requirement.*—(1) *General.* Except as provided in subparagraph (3) of this paragraph, the requirement in paragraph (a)(8) of this section that the surviving spouse of a miner must have been married to him for a period of not less than 9 months immediately prior to the day on which he died in order to qualify as such miner's widow, shall be deemed to be satisfied where such miner dies within the applicable 9-month period, if his death:

(i) Is accidental (as defined in subparagraph (2) of this paragraph), or

(ii) Occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in § 404.1013 (f) (2) and (3) of this chapter), and such surviving spouse was married to such miner for a period of not less than 3 months immediately prior to the day on which he died.

(2) *Accidental death.* For purposes of subparagraph (1)(i) of this paragraph, the death of a miner is accidental if such individual receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than 3 months after the day on which he receives such bodily injuries. The term "accident" means an event that was unpremeditated and unforeseen from the standpoint of the deceased individual. To determine whether the death of an individual did, in fact, result from an accident the Administration will consider all the circumstances surrounding the casualty. An intentional and voluntary suicide will not be considered to be death by accident; however, suicide by an individual who is so insane as to be incapable of acting intentionally and voluntarily will be considered to be death by accident. In no event will the death of an individual resulting from violent and external causes be considered a suicide unless there is direct proof that the fatal injury was self-inflicted.

(3) *Applicability.* The provisions of this paragraph shall not apply if the Administration determines that at the time of the marriage involved, the miner could not reasonably have been expected to live for 9 months.

30. Following § 410.360, a new § 410.361 is added to read as follows:

§ 410.361 Determination of dependency; surviving divorced wife.

An individual who is the miner's surviving divorced wife (see § 410.321) will be determined to have been dependent on the miner if, for the month preceding the month in which the miner died:

(a) She was receiving at least one-half of her support from the miner (see § 410.395(g)); or

(b) She was receiving substantial contributions from the miner pursuant to a written agreement (see § 410.395 (c) and (f)); or

(c) There was in effect a court order for substantial contributions to her support to be furnished by such miner (see § 410.395 (c) and (e)).

31. Section 410.370 is revised to read as follows:

§ 410.370 Determination of dependency; child.

For purposes of augmenting the benefits of a miner or widow (see § 410.510 (c)), the term "beneficiary" as used in this section means only a miner or widow

entitled to benefits (see §§ 410.201 and 410.210); or, for purposes of an individual's entitlement to benefits as a surviving child (see § 410.212), the term "beneficiary" as used in this section means only a deceased miner (see § 410.200) or a deceased widow who was entitled to benefits for the month prior to the month of her death (see §§ 410.210 and 410.211). An individual who is the beneficiary's child (see § 410.330) will, as applicable, be determined to be, or to have been, dependent on the beneficiary, if the child:

(a) Is unmarried; and

(b) (1) Is under 18 years of age; or

(2) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d) (see Subpart P of Part 404 of this chapter). For purposes of entitlement to benefits as a surviving child (see § 410.212), such disability must have begun before the child attained age 18, or, in the case of a student, before he ceased to be a student (see paragraph (c) of this section); or

(3) Is 18 years of age or older and is a student.

(c) (1) The term "student" means a "full-time student" as defined in section 202(d)(7) of the Social Security Act, 42 U.S.C. 402(d)(7) (see § 404.320(c) of this chapter), or an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal, or a State government or any political subdivision thereof, providing courses of not less than 3 months' duration that prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be "pursuing a full-time course of study or training at an institution" if he is enrolled in a noncorrespondence course and is carrying a subject load which is considered full time for day students under the institution's standards and practices. However, a student will not be considered to be "pursuing a full-time course of study or training" if he is enrolled in a course of study or training of less than 13 school weeks' duration. A student beginning or ending a full-time course of study or training in part of any month will be considered to be pursuing such course for the entire month.

(3) A child is deemed not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and he shows to the satisfaction of the Administration that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim; or

(ii) During periods of reasonable duration during which, in the judgment of the Administration, he is prevented by factors beyond his control from pursuing his education.

(4) A student who completes 4 years of education beyond the high school level, or whose 23d birthday occurs during a semester or other enrollment period in which he is pursuing a full-time course of study or training shall continue to be considered a student for as long as he otherwise qualifies under this section until the end of such period.

32. Section 410.380 is revised to read as follows:

§ 410.380 Determination of dependency; parent, brother, or sister.

An individual who is the miner's parent, brother, or sister (see § 410.340) will be determined to have been dependent on the miner if, during the 1-year period immediately prior to such miner's death:

(a) Such individual and the miner were living in the same household (see § 410.393); and

(b) Such individual was totally dependent on the miner for support (see § 410.395(h)).

33. Following § 410.380, a new § 410.390 is added to read as follows:

§ 410.390 Time of determinations.

(a) *Relationship and dependency of wife or child.* With respect to the wife or child of a miner entitled to benefits, and with respect to the child of a widow entitled to benefits, the determination as to whether an individual purporting to be a wife or child is related to or dependent upon such miner or widow shall be based on the facts and circumstances with respect to the period of time as to which such issue of relationship or dependency is material. (See, for example, § 410.510(c).)

(b) *Relationship and dependency of widow.* The determination as to whether an individual purporting to be the widow of a miner was related to or dependent upon such miner is made after such individual effectively files a claim for benefits (see § 410.227) as a widow. Such determination is based on the facts and circumstances with respect to the time of the miner's death (except as provided in § 410.320(d)). A prior determination that such individual was determined to be, or not to be, the wife of such miner, pursuant to §§ 410.310 and 410.350, for purposes of augmenting the miner's benefits for a certain period (see § 410.510(c)), is not determinative of the issue of whether the individual is the widow of such miner or of whether she was dependent on such miner.

(c) *Relationship and dependency of surviving divorced wife.* The determination as to whether an individual purporting to be a surviving divorced wife of a miner was related to or dependent upon such miner is made when such individual effectively files a claim for benefits (see § 410.227) as a surviving divorced wife. Such determination is made with respect to the time of the miner's death. A prior determination that such individual was, or was not, the divorced wife of such miner, pursuant to §§ 410.311 and 410.351, for purposes of augmenting the miner's benefits for a certain period (see § 410.510(c)), is not determinative of the issue of whether the individual is the surviving divorced wife of such miner or of whether she was dependent on such miner.

34. In § 410.392, paragraph (b) is revised to read as follows:

§ 410.392 Domicile.

* * * * *

(b) The domicile of a deceased miner or widow is determined as of the time of his or her death.

* * * * *

35. Section 410.393 is revised to read as follows:

§ 410.393 "Member of the same household"; "living with"; "living in the same household"; and "living in the miner's household."

(a) *Defined.* (1) The term "member of the same household" as used in section 402(a)(2) of the Act (with respect to a wife); the term "living with" as used in section 402(e) of the Act (with respect to a widow); and the term "living in the same household" as used in §§ 410.310(d) and 410.320(d) (with respect to certain wives and widows, respectively), mean that a husband and wife were customarily living together as husband and wife in the same place of abode.

(2) The term "living in the miner's household" as used in section 412(a)(5) of the Act (with respect to a parent, brother, or sister (see § 410.380)), means that the miner and such parent, brother, or sister, were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either the miner, or his wife, parent, brother, or sister (as the case may be), does not preclude a finding that one was "living with" the other, or that they were "members of the same household," etc. The absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months, and neither individual was outside the

United States, and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together at some time in the reasonably near future.

(c) *Death during absence.* Where the death of one of the parties occurred while away from the residence for treatment or care of an illness or an injury (e.g., in a hospital), the fact that the death was foreseen as possible or probable does not in and of itself preclude a finding that the parties were "living with" one another or were "member[s] of the same household" etc. at the time of death.

(d) *Absences other than temporary.* In situations other than those described in paragraphs (b) and (c) of this section, the absence shall not be considered temporary, and the parties may not be found to be "living with" one another or to be "member[s] of the same household" etc. A finding of temporary absence would not be justified where one of the parties was committed to a penal institution for life or for a period exceeding the reasonable life expectancy of either, or was under a sentence of death; or where the parties had ceased to live in the same place of abode because of marital or family difficulties and had not resumed living together before death.

(e) *Relevant period of time.* (1) The determination as to whether a widow had been "living with" her husband shall be based upon the facts and circumstances as of the time of death of the miner.

(2) The determination as to whether a wife is a "member of the same household" as her husband shall be based upon the facts and circumstances with respect to the period or periods of time as to which the issue of membership in the same household is material. (See § 410.510(c).)

(3) The determination as to whether a parent, brother, or sister was "living in the miner's household" shall take account only of the 1-year period immediately prior to the miner's death. (See § 410.380.)

§ 410.394 [Revoked]

36. Section 410.394 is revoked.

37. Section 410.395 is revised to read as follows:

§ 410.395 Contributions and support.

(a) *"Support" defined.* The term "support" includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the person supported.

(b) *"Contributions" defined.* The term "contributions" refers to contributions actually provided by the contributor from his own property, or the use thereof, or by the use of his own credit.

(c) *"Regular contributions" and "substantial contributions" defined.* The terms "regular contributions" and "substantial contributions" mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support.

(d) *Contributions and community property.* When a wife receives, and uses for her support, income from her services or property and such income, under applicable State law, is the community property of herself and the miner, no part of such income is a "contribution" by the miner to his wife's support regardless of any legal interest the miner may have therein. However, when a wife receives, and uses for her support, income from the services and the property of the miner and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the miner to his wife's support.

(e) *"Court order for support" defined.* References to support orders in §§ 410.330 (f)(1), 410.350(c), and 410.360(b) mean any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(f) *"Written agreement" defined.* The term "written agreement" in the phrase "substantial contributions * * * pursuant to a written agreement" (see §§ 410.351 (b) and 410.361(b)) means an agreement signed by the miner providing for substantial contributions by him for the individual's support. It must be in effect at the applicable time but it need not be legally enforceable.

(g) *"One-half support" defined.* The term "one-half support" means that the miner made regular contributions, in cash or in kind, to the support of a divorced wife (see § 410.351(a)), or of a surviving divorced wife (see § 410.361 (a)), at the specified time or for the specified period, and that the amount of such contributions equaled or exceeded one-half the total cost of such individual's support at such time or during such period.

(h) *"Totally dependent for support" defined.* The term "totally dependent on the miner for support" as used in § 410.380(b), means that such miner made regular contributions to the support of his parent, brother, or sister, as the case may be, and that the amount of such contributions at least equaled the total cost of such individual's support.

38. Subpart D of Part 410 (§§ 410.401–410.421) is revoked and a new Subpart D (§§ 410.401–410.490) is added to read as follows:

Subpart D—Total Disability or Death Due to Pneumoconiosis

Sec.

Subpart D—Total Disability or Death Due to Pneumoconiosis

§ 410.401 Scope of Subpart D.

(a) *General.* This subpart establishes the standards for determining whether a coal miner is totally disabled due to pneumoconiosis, whether he was totally disabled due to pneumoconiosis at the time of his death, or whether his death was due to pneumoconiosis.

(b) *"Pneumoconiosis" defined.* "Pneumoconiosis" means:

(1) A chronic dust disease of the lung arising out of employment in the Nation's coal mines, and includes coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, progressive massive fibrosis, silicosis, or silicotuberculosis, arising out of such employment. For purposes of this subpart, the term also includes the following conditions that may be the basis for application of the statutory presumption of disability or death due to pneumoconiosis under the circumstances prescribed in section 411 (c) of the Act:

(2) Any other chronic respiratory or pulmonary impairment when the conditions are met for the application of the presumption described in § 410.414(b) or § 410.454(b), and

(3) Any respirable disease when the conditions are met for the application of the presumption described in § 410.462. The provisions for determining that a miner is or was totally disabled due to pneumoconiosis or its sequelae are included in §§ 410.410–410.430 and in the Appendix following this Subpart D. The provisions for determining that a miner's death was due to pneumoconiosis are included in §§ 410.450–410.462. Certain related provisions of general application are included in §§ 410.470–410.476.

(c) *Relation to the Social Security Act.* Section 402(f) of the Act, as amended, 30 U.S.C. 902(f), provides that regulations defining total disability "shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act." Section 413(b) of the Act, 30 U.S.C. 923(b), also provides, in pertinent part, that in "carrying out the provisions of this part [that is, part B of title IV of the Act], the Secretary [of Health, Education, and Welfare] shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the * * * procedures he uses in determining entitlement to disability insurance benefits under section 223 of the Social Security Act * * *."

§ 410.410 Total disability due to pneumoconiosis, including statutory presumption.

(a) Benefits are provided under the Act to coal miners "who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's coal mines," and to the eligible survivors of miners who are determined to have been totally disabled due to pneumoconiosis at the time of their death. (For benefits to the eligible survivors of miners whose deaths are determined to have been due to pneumoconiosis, see § 410.450.)

(b) To establish entitlement to benefits on the basis of a coal miner's total disability due to pneumoconiosis, a claimant must submit the evidence necessary to establish: (1) That he is a coal miner, that he is totally disabled due to pneumoconiosis, and that his pneumoconiosis arose out of employment in the Nation's coal mines; or (2) that the deceased individual was a miner, that he was totally disabled due to pneumoconiosis at the time of his death, and that his pneumoconiosis arose out of employment in the Nation's coal mines.

(c) Total disability is defined in § 410.412; the basic provision on determining the existence of pneumoconiosis is in § 410.414; and the requirement that the pneumoconiosis must have arisen out of coal mine employment is in § 410.416. The statutory presumptions with respect to the burden of proving the foregoing are in §§ 410.414(b), 410.416(a), and 410.418, and the provision for determining the existence of total disability when the presumption in § 410.418 does not apply is included in § 410.422.

§ 410.412 "Total disability" defined.

(a) A miner shall be considered totally disabled due to pneumoconiosis if:

(1) His pneumoconiosis prevents him from engaging in gainful work in the immediate area of his residence requiring the skills and abilities comparable to those of any work in a mine or mines in which he previously engaged with some regularity and over a substantial period of time (that is, "comparable and gainful work"; see §§ 410.424–410.426); and

(2) His impairment can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months.

(b) A miner shall be considered to have been totally disabled due to pneumoconiosis at the time of his death, if at the time of his death:

(1) His pneumoconiosis prevented him from engaging in gainful work in the immediate area of his residence requiring the skills and abilities comparable to those of any work in a mine or mines in which he previously engaged with some regularity and over a substantial period of time (that is, "comparable and gainful work"; see §§ 410.424–410.426); and

(2) His impairment was expected to result in death, or it lasted or was expected to last for a continuous period of not less than 12 months.

§ 410.414 Determining the existence of pneumoconiosis, including statutory presumption.

(a) *General.* A finding of the existence of pneumoconiosis as defined in § 410.110 (o)(1) may be made under the provisions of § 410.428 by:

(1) Chest roentgenogram (X-ray); or

(2) Biopsy; or

(3) Autopsy.

(b) *Presumption relating to respiratory or pulmonary impairment.* (1) Even though the existence of pneumoconiosis is not established as provided in paragraph (a) of this section, if other evidence demonstrates the existence of a totally disabling chronic respiratory or pulmonary impairment (see §§ 410.412, 410.422, and 410.426), it may be presumed, in the absence of evidence to the contrary (see subparagraph (2) of this paragraph), that a miner is totally disabled due to pneumoconiosis, or that a miner was totally disabled due to pneumoconiosis at the time of his death.

(2) This presumption may be rebutted only if it is established that the miner does not, or did not, have pneumoconiosis, or that his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(3) The provisions of this paragraph shall apply where a miner was employed for 15 or more years in one or more of the Nation's underground coal mines; in one or more of the Nation's other coal mines where the environmental conditions were substantially similar to those in an underground coal mine; or in any combination of both.

(4) However, where the evidence shows a work history reflecting many years of such coal mine employment (although less than 15), as well as a severe lung impairment, such evidence may be considered, in the exercise of sound judgment, to establish entitlement in such case, provided that a mere showing of a respiratory or pulmonary impairment shall not be sufficient to establish such entitlement.

(c) *Other relevant evidence.* Even though the existence of pneumoconiosis is not established as provided in paragraph (a) or (b) of this section, a finding of total disability due to pneumoconiosis may be made if other relevant evidence establishes the existence of a totally disabling chronic respiratory or pulmonary impairment, and that such impairment arose out of employment in a coal mine. As used in this paragraph, the term "other relevant evidence" includes medical tests such as blood gas studies, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the miner's physician, his spouse's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the individual's physical condition, and other supportive materials. In any event, no claim for benefits under Part B of title IV of the Act shall be denied solely on the basis of a negative chest roentgenogram (X-ray).

§ 410.416 Determining origin of pneumoconiosis, including statutory presumption.

(a) If a miner was employed for 10 or more years in the Nation's coal mines, and is suffering or suffered from pneumoconiosis, it will be presumed, in the absence of persuasive evidence to the contrary, that the pneumoconiosis arose out of such employment.

(b) In any other case, a miner who is suffering or suffered from pneumoconiosis, must submit the evidence necessary to establish that the pneumoconiosis arose out of employment in the Nation's coal mines. (See §§ 410.110 (h), (i), (j), (k), (l), and (m).)

§ 410.418 Irrebuttable presumption of total disability due to pneumoconiosis.

There is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis, or that a minor was totally disabled due to pneumoconiosis at the time of his death, if he is suffering or suffered from a chronic dust disease of the lung which:

(a) When diagnosed by chest roentgenogram (X-ray), yields one or more large opacities (greater than 1 centimeter in diameter) and would be classified in Category A, B, or C (that is, as "complicated pneumoconiosis"), in:

(1) The ILO–U/C International Classification of Radiographs of Pneumoconioses, 1971, or

(2) The International Classification of the Radiographs of the Pneumoconioses of the International Labour Office, Extended Classification (1968) (which may be referred to as the "ILO Classification (1968)"), or

(3) The Classification of the Pneumoconioses of the Union Internationale Contra Cancer/Cincinnati (1968) (which may be referred to as the "UICC/Cincinnati (1968) Classification"); or

(b) When diagnosed by biopsy or autopsy, yields massive lesions in the lung. The report of biopsy or autopsy will be accepted as evidence of complicated pneumoconiosis if the histological findings show simple pneumoconiosis and progressive massive fibrosis; or

(c) When established by diagnoses by means other than those specified in paragraphs (a) and (b) of this section, would be a condition which could reasonably be expected to yield the results described in paragraph (a) or (b) of this section had diagnoses been made as therein prescribed; *Provided, however,* That any diagnoses made under this paragraph shall accord with generally accepted medical procedures for diagnosing pneumoconiosis.

§ 410.422 Determining total disability: General criteria.

(a) A determination of total disability due to pneumoconiosis is made in accordance with this section when a miner cannot be presumed to be totally disabled due to pneumoconiosis (or to have been totally disabled due to pneumoconiosis at the time of his death), under the provisions of § 410.418. In addition, when a miner has (or had) a chronic respiratory or pulmonary impairment, a determination of whether or not such impairment is (or was) totally disabling is also made in accordance with this section for purposes of § 410.414(b).

(b) A determination of total disability may not be made for purposes of this part unless pneumoconiosis is (or is presumed to be) the impairment involved.

(c) Whether or not the pneumoconiosis in a particular case renders (or rendered) a miner totally disabled, as defined in § 410.412, is determined from all the facts of that case. Primary consideration is given to the medical severity of the individual's pneumoconiosis (see § 410.424). Consideration is also given to such other factors as the individual's age, education, and work experience (see § 410.426).

§ 410.424 Determining total disability: Medical criteria only.

(a) Medical considerations alone shall justify a finding that a miner is (or was) totally disabled where his impairment is one that meets (or met) the duration requirement in § 410.412(a)(2) or § 410.412(b)(2), and is listed in the Appendix to this subpart, or if his impairment is medically the equivalent of a listed impairment. However, medical considerations alone shall not justify a finding that an individual is (or was) totally disabled if other evidence rebuts such a finding, e.g., the individual is (or was) engaged in comparable and gainful work (see § 410.412).

(b) An individual's impairment shall be determined to be medically the equivalent of an impairment listed in the appendix to this subpart only if the medical findings with respect thereto are at least equivalent in severity and duration to the listed findings of the listed impairment. Any decision as to whether an individual's impairment is medically the equivalent of an impairment listed in the Appendix to this subpart, shall be based on medically accepted clinical and laboratory diagnostic techniques, including a medical judgment furnished by one or more physicians designated by the Administration, relative to the question of medical equivalence.

§ 410.426 Determining total disability: Age, education, and work experience criteria.

(a) Pneumoconiosis which constitutes neither an impairment listed in the appendix to this subpart (see § 410.424), nor the medical equivalent thereof, shall nevertheless be found totally disabling if because of the severity of such impairment, the miner is (or was) not only unable to do his previous coal mine work, but also cannot (or could not), considering his age, his education, and work experience, engage in any other kind of comparable and gainful work (see § 410.412(a)(1)) available to him in the immediate area of his residence. A miner shall be determined to be under a disability only if his pneumoconiosis is (or was) the primary reason for his inability to engage in such comparable and gainful work. Medical impairments other than pneumoconiosis may not be considered.

The following criteria recognize that an impairment in the transfer of oxygen from the lung alveoli to cellular level can exist in an individual even though his chest roentgenogram (X-ray) or ventilatory function tests are normal.

(b) Subject to the limitations in paragraph (a) of this section, pneumoconiosis shall be found disabling if it is established that the miner has (or had) a respiratory impairment because of pneumoconiosis demonstrated on the basis of a ventilatory study in which the maximum voluntary ventilation (MVV) or maximum breathing capacity (MBC), and 1-second forced expiratory volume (FEV_1), are equal to or less than the values specified in the following table or by a medically equivalent test:

Height (inches)	MVV (MBC) equal to or less than	and	FEV_1 equal to or less than
	L./Min.		*L.*
57 or less	52		1.4
58	53		1.4
59	54		1.4
60	55		1.5
61	56		1.5
62	57		1.5
63	58		1.5
64	59		1.6
65	60		1.6
66	61		1.6
67	62		1.7
68	63		1.7
69	64		1.8
70	65		1.8
71	66		1.8
72	67		1.9
73 or more	68		1.9

(c) Where the values specified in paragraph (b) of this section are not met, pneumoconiosis may nevertheless be found disabling if a physical performance test establishes a chronic respiratory or pulmonary impairment which is medically the equivalent of the values specified in the table in paragraph (b) of this section. Any decision with respect to such medical equivalence shall be based on medically accepted clinical and laboratory diagnostic techniques including a medical judgment furnished by one or more physicians designated by the Administration.

(d) Where a ventilatory study and/or a physical performance test is medically contraindicated, or cannot be obtained, or where evidence obtained as a result of such tests does not establish that the miner is totally disabled, pneumoconiosis may nevertheless be found totally disabling if other relevant evidence (see § 410.414(c)) establishes that the miner has (or had) a chronic respiratory or pulmonary impairment, the severity of which prevents (or prevented) him not only from doing his previous coal mine work, but also, considering his age, his education, and work experience, prevents (or prevented) him from engaging in comparable and gainful work.

(e) When used in this section, the term "age" refers to chronological age and the extent to which it affects the miner's capacity to engage in comparable and gainful work.

(f) When used in this section, the term "education" is used in the following sense: Education and training are factors in determining the employment capacity of a miner. Lack of formal schooling, however, is not necessarily proof that a miner is an uneducated person. The kinds of responsibilities with which he was charged when working may indicate ability to do more than unskilled work even though his formal education has been limited.

§ 410.428 X-ray, biopsy, and autopsy evidence of pneumoconiosis.

(a) A finding of the existence of pneumoconiosis as defined in § 410.110(o)(1) may be made under the provisions of § 410.414(a) if:

(1) A chest roentgenogram (X-ray) establishes the existence of pneumoconiosis classified as Category 1, 2, 3, A, B, or C according to:

(i) The ILO–U/C International Classification of Radiographs of Pneumoconioses, 1971; or

(ii) The International Classification of Radiographs of the Pneumoconioses of the International Labour Office, Extended Classification (1968); or

(iii) The Classification of the Pneumoconioses of the Union Internationale Contra Cancer/Cincinnati (1968).

A chest roentgenogram (X-ray) classified as Category Z under the ILO Classification (1958) or Short Form (1968) will be reclassified as Category 0 or Category 1 and only the latter accepted as evidence of pneumoconiosis. A chest roentgenogram (X-ray) classified under any of the foregoing classifications as Category 0, including subcategories o/–, o/o, or o/1 under the UICC/Cincinnati (1968) Classification, is not accepted as evidence of pneumoconiosis; or

(2) An autopsy shows the existence of pneumoconiosis, or

(3) A biopsy (other than a needle biopsy) shows the existence of pneumoconiosis. Such biopsy would not be expected to be performed for the sole purpose of diagnosing pneumoconiosis. Where a biopsy is performed for other purposes, however (e.g., in connection with a lung resection), the report thereof will be considered in determining the existence of pneumoconiosis.

(b) The roentgenogram shall be of suitable quality for proper classification of the pneumoconioses and conform to accepted medical standards. It should represent a posterior-anterior view of the chest, and such other views as the Administration may require, taken at a preferred distance of 6 feet (a minimum of 5 feet is required) between the focal point and the film on a 14 x 17 inch or 14 x 14 inch X-ray film. Additional films or views should be obtained, if necessary, to provide a suitable roentgenogram (X-ray) for proper classification purposes.

(c) A report of autopsy or biopsy shall include a detailed gross (macroscopic) and microscopic description of the lungs or visualized portion of a lung. If an operative procedure has been performed to obtain a portion of a lung, the evidence should include a copy of the operative note and the pathology report of the gross and microscopic examination of the surgical specimen. If any autopsy has been performed, the evidence should include a complete copy of the autopsy report.

§ 410.430 Ventilatory studies.

Spirometric tests to measure ventilatory function must be expressed in liters or liters per minute. The reported maximum voluntary ventilation (MVV) or maximum breathing capacity (MBC) and 1-second forced expiratory volume (FEV_1) should represent the largest of at least three attempts. The MVV or the MBC reported should represent the observed value and should not be calculated from FEV_1. The three appropriately labeled spirometric tracings, showing distance per second on the abscissa and the distance per liter on the ordinate, must be incorporated in the file. The paper speed to record the FEV_1 should be at least 20 millimeters (mm.) per second. The height of the individual must be recorded. Studies should not be performed during or soon after an acute respiratory illness. If wheezing is present on auscultation of the chest, studies must be performed following administration of nebulized broncho-dilator unless use of the later is contraindicated. A statement shall be made as to the individual's ability to understand the directions, and cooperate in performing the tests. If the tests cannot be completed the reason for such failure should be explained.

§ 410.432 Cessation of disability.

(a) Where it has been determined that a miner is totally disabled under § 410.412, such disability shall be found to have ceased in the month in which his impairment, as established by medical or other relevant evidence, is no longer of such severity as to prevent him from engaging in compariable and gainful work.

(b) Except where a finding is made as specified in paragraph (a) of this section which results in an earlier month of cessation, if a miner is requested to furnish necessary medical or other evidence or to present himself for a necessary medical examination by a date specified in the request or a date extended at the miner's request for good cause, and the miner fails to comply with such request, the disability may be found to have ceased in the month within which the date for compliance falls, unless the Administration determines that there is a good cause for such failure.

(c) Before a determination is made that a miner's disability has ceased, such miner shall be given notice and an opportunity to present evidence including that from medical sources of his own choosing and arguments and contention that his disability has not ceased.

§ 410.450 Death due to pneumoconiosis, including statutory presumption.

Benefits are provided under the Act to the eligible survivor of a coal miner who was entitled to benefits at the time of his death, or whose death is determined to have been due to pneumoconiosis. (For benefits to the eligible survivors of a miner who is determined to have been totally disabled due to pneumoconiosis at the time of his death, regardless of the cause of death, see §§ 410.410–410.430.) Except as otherwise provided in §§ 410.454–410.462, the claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in the Nation's coal mines.

§ 410.454 Determining the existence of pneumoconiosis, including statutory presumption—survivor's claim.

(a) *Medical findings.* A finding of the existence of pneumoconiosis as defined in § 410.110(o)(1) may be made under the provisions of § 410.428 by:

(1) Chest roentgenogram; or

(2) Biopsy; or

(3) Autopsy.

(b) *Presumption relating to respiratory or pulmonary impairment—survivor's claim.* (1) Even though the existence of pneumoconiosis is not established as provided in paragraph (a) of this section, if other evidence demonstrates the existence of a chronic respiratory or pulmonary impairment from which the miner was totally disabled (see § 410.412) prior to his death, it will be presumed in the absence of evidence to the contrary (see subparagraph (2) of this paragraph) that the death of the miner was due to pneumoconiosis.

(2) This presumption may be rebutted only if it is established that the miner did not have pneumoconiosis, or that his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(3) The provisions of this paragraph shall apply where a miner was employed for 15 or more years in one or more of the Nation's underground coal mines; in one or more of the Nation's other coal mines where the environmental conditions were substantially similar to those in an underground coal mine; or in any combination of both.

(4) However, where the evidence shows a work history reflecting many years of such coal mine employment (although less than 15) as well as a severe lung impairment, such evidence may be considered, in the exercise of sound judgment, to establish entitlement in such case, provided that a mere showing of a respiratory or pulmonary impairment shall not be sufficient to establish such entitlement.

(c) *Other relevant evidence.* Even though the existence of pneumoconiosis is not established as provided in paragraph (a) or (b) of this section, a finding of death due to pneumoconiosis may be made if other relevant evidence establishes the existence of a totally disabling chronic respiratory or pulmonary impairment, and that such impairment arose out of employment in a coal mine. As used in this paragraph, the term "other relevant evidence" includes medical tests such as blood gas studies, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the miner's physician, his spouse's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the individual's physical condition, and other supportive materials. In any event, no claim for benefits under Part B of title IV of the Act shall be denied solely on the basis of a negative chest roentgenogram (X-ray).

§ 410.456 Determining origin of pneumoconiosis, including statutory presumption—survivor's claim.

(a) If a miner was employed for 10 years or more in the Nation's coal mines, and suffered from pneumoconiosis, it will be presumed, in the absence of persuasive evidence to the contrary, that the pneumoconiosis arose out of such employment.

(b) In any other case, the claimant must submit the evidence necessary to establish that the pneumoconiosis from which the deceased miner suffered, arose out of employment in the Nation's coal mines. (See §§ 410.110 (h), (i), (j), (k), (l), and (m).)

§ 410.458 Irrebuttable presumption of death due to pneumoconiosis—survivor's claim.

There is an irrebuttable presumption that the death of a miner was due to pneumoconiosis if he suffered from a chronic dust disease of the lung which meets the requirements of § 410.418.

§ 410.462 Presumption relating to respirable disease.

(a) Even though the existence of pneumoconiosis as defined in § 410.110 (o)(1) is not established as provided in § 410.454(a), if a deceased miner was employed for 10 years or more in the

Nation's coal mines and died from a respirable disease, it will be presumed, in the absence of evidence to the contrary, that his death was due to pneumoconiosis arising out of employment in a coal mine.

(b) Death will be found due to a respirable disease when death is medically ascribed to a chronic dust disease, or to another chronic disease of the lung. Death will not be found due to a respirable disease where the disease reported does not suggest a reasonable possibility that death was due to pneumoconiosis. Where the evidence establishes that a deceased miner suffered from pneumoconiosis or a respirable disease and death may have been due to multiple causes, death will be found due to pneumoconiosis if it is not medically feasible to distinguish which disease caused death or specifically how much each disease contributed to causing death.

§ 410.470 Determination by nongovernmental organization or other governmental agency.

The decision of any nongovernmental organization or any other governmental agency that an individual is, or is not, disabled for purposes of any contract, schedule, regulation, or law, or that his death was or was not due to a particular cause, shall not be determinative of the question of whether or not an individual is totally disabled due to pneumoconiosis, or was totally disabled due to pneumoconiosis. As used in this section, the term "other governmental agency" includes the Administration with respect to a determination or decision relating to entitlement to disability insurance benefits under section 223 of the Social Security Act, since the requirements for entitlement under the latter Act differ from those relating to benefits under this part. However, a final determination or decision that an individual is disabled for purposes of section 223 of the Social Security Act where the cause of such disability is pneumoconiosis, shall be binding on the Administration on the issue of disability with respect to claims under this part.

§ 410.471 Conclusion by physician regarding miner's disability or death.

The function of deciding whether or not an individual is totally disabled due to pneumoconiosis, or was totally disabled due to pneumoconiosis at the time of his death, or that his death was due to pneumoconiosis, is the responsibility of the Administration. A statement by a physician that an individual is, or is not, "disabled," "permanently disabled," "totally disabled," "totally and permanently disabled," "unable to work," or a statement of similar import, being a conclusion upon the ultimate issue to be decided by the Administration, shall not be determinative of the question of whether or not an individual is under a disability. However, all statements and other evidence (including statements of the miner's physician) shall be considered in adjudicating a claim. In considering statements of the miner's physician, appropriate account shall be taken of the length of time he treated the miner.

§ 410.472 Consultative examinations.

Upon reasonable notice of the time and place thereof, any individual filing a claim alleging to be totally disabled due to pneumoconiosis shall present himself for and submit to reasonable physical examinations or tests, at the expense of the Administration, by a physician or other professional or technical source designated by the Administration or the State agency authorized to make determinations as to disability. If any such individual fails or refuses to present himself for any examination or test, such failure or refusal, unless the Administration determines that there is good cause therefor, may be a basis for determining that such individual is not totally disabled. Religious or personal scruples against medical examination or test shall not excuse an individual from presenting himself for a medical examination or test. Any claimant may request that such test be performed by a physician or other professional or technical source of his choice, the reasonable expense of which shall be borne by the Administration (see § 410.240(h)). However, granting such request does not preclude the Administration from requiring that additional or supplemental tests be conducted by a physician or other professional or technical source designated by the Administration.

§ 410.473 Evidence of continuation of disability.

An individual who has been determined to be totally disabled due to pneumoconiosis, upon reasonable notice, shall, if requested to do so (e.g., where there is an issue about the validity of the original adjudication of disability) present himself for and submit to examinations or tests as provided in § 410.472, and shall submit medical reports and other evidence necessary for the purposes of determining whether such individual continues to be under a disability.

§ 410.474 Place and manner of submitting evidence.

Evidence in support of a claim for benefits based on disability shall be filed in the manner and at the place or places prescribed in Subpart B of this part, or where appropriate, at the office of a State agency authorized under agreement with the Secretary to make determinations as to disability under title II of the Social Security Act, or with an employee of such State agency authorized to accept such evidence at a place other than such office.

§ 410.475 Failure to submit evidence.

An individual shall not be determined to be totally disabled unless he furnishes such medical and other evidence thereof as is reasonably required to establish his claim. Religious or personal scruples against medical examinations, tests, or treatment shall not excuse an individual from submitting evidence of disability.

§ 410.476 Responsibility to give notice of event which may affect a change in disability status.

An individual who is determined to be totally disabled due to pneumoconiosis shall notify the Administration promptly if:

(a) His respiratory or pulmonary condition improves; or

(b) He engages in any gainful work or there is an increase in the amount of such work or his earnings therefrom.

§ 410.490 Interim adjudicatory rules for certain Part B claims filed by a miner before July 1, 1973, or by a survivor where the miner died before January 1, 1974.

(a) *Basis for rules.* In enacting the Black Lung Act of 1972, the Congress noted that adjudication of the large backlog of claims generated by the earlier law could not await the establishment of facilities and development of medical tests not presently available to evaluate disability due to pneumoconiosis, and that such claims must be handled under present circumstances in the light of limited medical resources and techniques. Accordingly, the Congress stated its expectancy that the Secretary would adopt such interim evidentiary rules and disability evaluation criteria as would permit prompt and vigorous processing of the large backlog of claims consistent with the language and intent of the 1972 amendments and that such rules and criteria would give full consideration to the combined employment handicap of disease and age and provide for the adjudication of claims on the basis of medical evidence other than physical performance tests when it is not feasible to provide such tests. The provisions of this section establish such interim evidentiary rules and criteria. They take full account of the congressional expectation that in many instances it is not feasible to require extensive pulmonary function testing to measure the total extent of an individual's breathing impairment, and that an impairment in the transfer of oxygen from the lung alveoli to cellular level can exist in an individual even though his chest roentgenogram (X-ray) or ventilatory function tests are normal.

(b) *Interim presumption.* With respect to a miner who files a claim for benefits before July 1, 1973, and with respect to a survivor of a miner who dies before January 1, 1974, when such survivor timely files a claim for benefits, such miner will be presumed to be totally disabled due to pneumoconiosis, or to have been totally disabled due to pneumoconiosis at the time of his death, or his death will be presumed to be due to pneumoconiosis, as the case may be, if:

(1) One of the following medical requirements is met:

(i) A chest roentgenogram (X-ray), biopsy, or autopsy establishes the existence of pneumoconiosis (see § 410.428); or

(ii) In the case of a miner employed for at least 15 years in underground or comparable coal mine employment,

ventilatory studies establish the presence of a chronic respiratory or pulmonary disease (which meets the requirements for duration in § 410.412(a)(2)) as demonstrated by values which are equal to or less than the values specified in the following table:

	Equal to or less than—	
	FEV_1	and MVV
67" or less	2.3	92
68"	2.4	96
69"	2.4	96
70"	2.5	100
71"	2.6	104
72"	2.6	104
73" or more; and	2.7	108

(2) The impairment established in accordance with subparagraph (1) of this paragraph arose out of coal mine employment (see §§ 410.416 and 410.456).

(3) With respect to a miner who meets the medical requirements in subparagraph (1)(ii) of this paragraph, he will be presumed to be totally disabled due to pneumoconiosis arising out of coal mine employment, or to have been totally disabled at the time of his death due to pneumoconiosis arising out of such employment, or his death will be presumed to be due to pneumoconiosis arising out of such employment, as the case may be, if he has at least 10 years of the requisite coal mine employment.

(c) *Rebuttal of presumption.* The presumption in paragraph (b) of this section may be rebutted if:

(1) There is evidence that the individual is, in fact, doing his usual coal mine work or comparable and gainful work (see § 410.412(a)(1)), or

(2) Other evidence, including physical performance tests (where such tests are available and their administration is not contraindicated), establish that the individual is able to do his usual coal mine work or comparable and gainful work (see § 410.412(a)(1)).

(d) *Application of presumption on readjudication.* Any claim initially adjudicated under the rules in this section will, if the claim is for any reason thereafter readjudicated, be readjudicated under the same rules.

(e) *Failure of miner to qualify under presumption in paragraph (b) of this section.* Where it s not established on the basis of the presumption in paragraph (b) of this section that a miner is (or was) totally disabled due to pneumoconiosis, or was totally disabled due to pneumoconiosis at the time of his death, or that his death was due to pneumoconiosis, the claimant may nevertheless establish the requisite disability or cause of death of the miner under the rules set out in §§ 410.412 to 410.462.

APPENDIX

A miner with pneumoconiosis who meets or met one of the following sets of medical specifications, may be found to be totally disabled due to pneumoconiosis at the pertinent time, in the absence of evidence rebutting such finding:

(1) Arterial oxygen tension at rest (sitting or standing) or during exercise and simultaneously determined arterial p^{CO_2} equal to, or less than, the values specified in the following table:

Arterial p^{CO_2} (mm. Hg)	and	*Arterial p^{O_2} equal to or less than (mm. Hg)*
30 or below		65
31		64
32		63
33		62
34		61
35		60
36		59
37		58
38		57
39		56
40 or above		55

or

(2) Cor pulmonale with right-sided congestive failure as evidenced by peripheral edema and liver enlargement, with:

(A) Right ventricular enlargement or outflow tract prominence on X-ray or fluoroscopy; or

(B) ECG showing QRS duration less than 0.12 second and R of 5 mm. or more in V_1 and R/S of 1.0 or more in V_1 and transition zone (decreasing R/S) left of V_1;

or

(3) Congestive heart failure with signs of vascular congestion such as hepatomegaly or peripheral or pulmonary edema, with:

(A) Cardio-thoracic ratio of 55 percent or greater, or equivalent enlargement of the transverse diameter of the heart, as shown on teleroentgenogram (6-foot film); or

(B) Extension of the cardiac shadow (left ventricle) to the vertebral column on lateral chest roentgenogram and total of S in V_1 or V_2 and R in V_5 or V_6 of 35 mm. or more on ECG.

39. Section 410.505 is revised to read as follows:

§ 410.505 Payees.

Benefits may be paid, as appropriate, to a beneficiary (see § 410.110(r)), to a qualified dependent (see § 410.511), or to a representative payee on behalf of such beneficiary or dependent (see § 410.581 ff.). Also, where an amount is payable under Part B of title IV of the Act for any month to two or more individuals who are members of the same family, the Administration may, in its discretion, certify to any two or more of such individuals joint payment of the total benefits payable to them for such month.

40. Section 410.510 is amended by revising the section heading, paragraphs (a), (b), and (c), the heading to paragraph (d), and by adding new paragraphs (e) and (f) to read as follows:

§ 410.510 Computation of benefits.

(a) *Basic rate.* The benefit amount of each beneficiary entitled to a benefit for a month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 50 percent of the minimum monthly payment to which a totally disabled Federal employee in Grade GS–2 would be entitled for such month under the Federal Employees' Compensation Act, chapter 81, title 5, United States Code. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay ("step 1") for Grade GS–2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in subparagraph (1) of this paragraph by 12;

(3) Ascertaining the minimum monthly payment under the Federal Employees' Compensation Act by multiplying the amount determined in subparagraph (2) of this paragraph by 0.75 (that is, by 75 percent) (see 5 U.S.C. 8112); and

(4) Ascertaining the basic rate under the Act by multiplying the amount determined in subparagraph (3) of this paragraph by 0.50 (that is, by 50 percent).

(b) *Basic benefit.* When a miner or widow is entitled to benefits for a month for which he or she has no dependents who qualify under Subpart C of this part, and when a surviving child of a miner or widow, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next higher multiple of 10 cents (see paragraph (d) of this section)). This amount is referred to as the "basic benefit."

(c) *Augmented benefit.* (1) When a miner or widow is entitled to benefits for a month for which he or she has one or more dependents who qualify under Subpart C of this part, the amount of benefits to which such miner or widow is entitled is increased. This increase is referred to as an "augmentation."

(2) Any request to the Administration that the benefits of a miner or widow be augmented in accordance with this paragraph shall be in writing on such form and in accordance with such instructions as are prescribed by the Administration. Such request shall be filed with the Administration in accordance with those provisions of Subpart B of this part dealing with the filing of claims as if such request were a claim for benefits, and as if such dependent were the "beneficiary" referred to therein. (See § 410.220(f).) Ordinarily, such request is made as part of the claim of the miner or widow for benefits.

(3) The benefits of a miner or widow are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in Subpart C of this part, and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in Subpart C of this part, except in the case of a child who qualifies as a dependent because he is a student (see § 410.370(c)). In the latter case such benefits continue to be augmented through the month before the first month during no part of which he qualifies as a student.

(4) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents (see paragraph (d) of this section).

(d) *Benefit rates for miners and widows.* * * * * *

(e) *Survivor benefit.* (1) As used in this section, "survivor" means a surviving child of a miner or widow, or, for months beginning May 1972, a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under the provisions of Subpart B of this part.

(2) When one survivor is entitled to benefits for a month, his benefit is the amount specified in paragraph (d)(1) of this section; when two survivors are so entitled, the benefit of each is one-half the amount specified in paragraph (d)(2) of this section; when three survivors are so entitled, the benefit of each is one-third the amount specified in paragraph (d)(3) of this section; when four survivors are so entitled, the benefit of each is one-quarter of the amount specified in paragraph (d)(4) of this section; and when more than four survivors are so entitled, the benefit of each is determined by dividing the amount specified in paragraph (d)(4) by the number of such survivors.

(f) *Computation and rounding.* (1) Any computation prescribed by this section is made to the third decimal place.

(2) Monthly benefits are payable in multiples of 10 cents. Therefore, a monthly payment of amounts derived under paragraph (c)(4) or (e)(2) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

41. Following § 410.510, a new § 410.511 is added to read as follows:

§ 410.511 Certification to dependent of augmentation portion of benefit.

(a) If the benefit of a miner or of a widow is augmented because of one or more dependents (see § 410.510(c)), and it appears to the Administration that the best interest of such dependent would be served thereby, the Administration may certify payment of the amount of such augmentation (to the extent attributable to such dependent) (see §§ 410.510(c) and 410.536) to such dependent directly or to a representative payee and benefit of such dependent (see § 410.581 ff.).

(b) Any request to the Administration to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section, shall be in writing on such form and in accordance with such instructions as are prescribed by the Administration, and shall be filed with the Administration in accordance with those provisions of Subpart B of this part dealing with the filing of claims as if such request were a claim for benefits (see § 410.220(f)).

(c) In determining whether it is in the best interest of such dependent to certify separate payment of the amount of the augmentation in benefits attributable to him, the Administration shall apply the standards pertaining to representative payment in §§ 410.581–410.590, and the instructions issued pursuant thereto.

(d) When the Administration determines (see § 410.610(m)) that the amount of a miner's benefit attributable to the miner's wife or child should be certified for separate payment to a person other than such miner, or that the amount of a widow's benefit attributable to such widow's child should be certified for separate payment to a person other than the widow, and the miner or widow disagrees with such determination and alleges that separate certification is not in the best interest of such dependent, the Administration shall reconsider that determination (see §§ 410.622 and 410.623).

(e) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

42. In § 410.515, paragraph (a)(1) is revised and a new paragraph (a)(4) is added to read as follows:

§ 410.515 Modification of benefit amounts; general.

* * * * *

(a) *Reduction.* * * *

(1) In the case of benefits to a miner, parent, brother, or sister, the excess earnings from wages and from net earnings from self-employment (see § 410.530) of such miner, parent, brother, or sister, respectively; or

* * * * *

(4) The fact that a claim for benefits from an additional beneficiary is filed, or that such a claim is effective for a month prior to the month of filing (see § 410.535), or a dependent qualifies under Subpart C of this part for an augmentation portion of the benefit of a miner or widow for a month for which another dependent has previously qualified for an augmentation (see § 410.536).

* * * * *

43. In § 410.520, paragraph (d) is revised to read as follows:

§ 410.520 Reductions; receipt of State benefit.

* * * * *

(d) Amounts paid or incurred, or to be incurred, by the individual for medical, legal, or related expenses in connection with his claim for State benefits (defined in paragraph (a) of this section) or the injury or occupational disease, if any, on which such award of State benefits (or settlement agreement) is based, are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consonant with State law. Such medical, legal, or related expenses may be evidenced by the State benefit award, compromise agreement, or court order in the State benefit proceedings, or by such other evidence as the Administration may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other clear and convincing evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable.

Any expenses not established by evidence required by the Administration will not be excluded.

44. Section 410.530 is revised to read as follows:

§ 410.530 Reductions; excess earnings.

Benefit payments to a miner, parent, brother, or sister are reduced by an amount equal to the deductions which would be made with respect to excess earnings under the provisions of sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403 (b), (f), (g), (h), (j), and (l)), as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402). (See §§ 404.428–404.456 of this chapter.)

45. Following § 410.530, new §§ 410.535 and 410.536 are added to read as follows:

§ 410.535 Reductions; effect of an additional claim for benefits.

Beginning with the month in which a person (other than a miner) files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid. Certain claims may also be effective retroactively for benefits for months before the month of filing (see § 410.226). For any month before the month of filing, however, otherwise correct benefits that have been previously certified by the Administration for payment to other persons with respect to the same miner may not be changed. Rather, the benefits of the person filing a claim in the later month is reduced for each month of the retroactive period to the extent that may be necessary so that the earlier and otherwise correct payment to some other person is not made erroneous. That is, for each month of the retroactive period, the amount payable to the person filing the later claim is the difference, if any, between (a) the total amount of benefits actually certified for payment to other persons for that month and (b) the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) payable for that month to all persons, including the person filing later.

§ 410.536 Reductions; effect of augmentation of benefits based on subsequent qualification of individual.

(a) Ordinarily, a written request that the benefits of a miner or widow be augmented on account of a qualified dependent (see § 410.510(c)) is made as part of the claim for benefits filed by such miner or widow. However, it may also be made thereafter.

(b) In the latter case, beginning with the month in which such a request is filed on account of a particular dependent and in which such dependent qualifies for augmentation purposes under Subpart C of this part, the augmented benefits attributable to other qualified dependents (with respect to the same miner or widow), if any, are adjusted downward, if necessary, so that the permissible amount of augmented benefits (the maximum amount for the number of dependents involved) will not be exceeded.

(c) Where, based on the entitlement to benefits of a miner or widow, a dependent would have qualified for augmentation purposes for a prior month of such miner's or widow's entitlement had such request been filed in such prior month, such request is effective for such prior month. For any month before the month of filing such request, however, otherwise correct benefits previously certified by the Administration may not be changed. Rather, the amount of the augmented benefit attributable to the dependent filing such request in the later month is reduced for each month of the retroactive period to the extent that may be necessary, so that no earlier payment for some other dependent is made erroneous. This means that for each month of the retroactive period, the amount payable to the dependent filing the later augmentation request is the difference, if any, between (1) the total amount of augmented benefits certified for payment for other dependents for that month, and (2) the permissible amount of augmented benefits (the maximum amount for the number of dependents involved) payable for that month for all dependents, including the dependent filing later.

46. In § 410.560, paragraph (a) is revised to read as follows:

§ 410.560 Overpayments.

(a) *General.* As used in this subpart, the term "overpayment" includes a payment where no amount is payable under Part B of title IV of the Act; a payment in excess of the amount due under Part B of title IV of the Act; a payment resulting from the failure to reduce benefits under section 412(b) of the Act (see §§ 410.520 and 410.530); a payment to a resident of a State whose residents are not eligible for payment (see § 410.550); a payment of past due benefits to an individual where such payment had not been reduced by the amount of attorney's fees payable directly to an attorney (see § 410.686d); and a payment resulting from the failure to terminate benefits of an individual no longer entitled thereto. As used in this section, the term "beneficiary" includes a qualified dependent for augmentation purposes and the term "benefit" includes the amount of augmented benefits attributable to a particular dependent (see § 410.510(c)).

* * * * *

47. Following § 410.560, new §§ 410.561, 410.561a, 410.561b, 410.561c, 410.561d, 410.561e, 410.561f, 410.561g, 410.561h, and 410.563 are added to read as follows:

§ 410.561 Notice of right to waiver consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, notice of the provisions of section 204(b) of the Social Security Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual and to any other individual against whom adjustment or recovery of the overpayment is to be effected (see § 410.561a).

§ 410.561a When waiver of adjustment or recovery may be applied.

There shall be no adjustment or recovery in any case where an incorrect payment under Part B of title IV of the Act has been made with respect to an individual:

(a) Who is without fault, and

(b) Adjustment or recovery would either:

(1) Defeat the purpose of title IV of the Act, or

(2) Be against equity and good conscience.

§ 410.561b Fault.

"Fault" as used in "without fault" (see § 410.561a) applies only to the individual. Although the Administration may have been at fault in making the overpayment, that fact does not relieve the overpaid individual or any other individual from whom the Administration seeks to recover the overpayment from liability for repayment if such individual is not without fault. In determining whether an individual is at fault, the Administration will consider all pertinent circumstances, including his age, intelligence, education, and physical and mental condition. What constitutes fault (except for "reduction overpayments" (see § 410.561e)) on the part of the overpaid individual or on the part of any other individual from whom the Administration seeks to recover the overpayment depends upon whether the facts show that the incorrect payment to the individual resulted from:

(a) An incorrect statement made by the individual which he knew or should have known to be incorrect; or

(b) Failure to furnish information which he knew or should have known to be material; or

(c) With respect to the overpaid individual only, acceptance of a payment which he either knew or could have been expected to know was incorrect.

§ 410.561c Defeat the purpose of title IV.

(a) *General.* "Defeat the purpose of title IV" for purposes of this subpart, means defeat the purpose of benefits under this title, i.e., to deprive a person of income required for ordinary and necessary living expenses. This depends upon whether the person has an income or financial resources sufficient for more than ordinary and necessary needs, or is dependent upon all of his current benefits for such needs. An individual's ordinary and necessary expenses include:

(1) Fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, insurance (e.g., life, accident, and health insurance including premiums for supplementary medical insurance benefits under title XVIII of the Social Security Act), taxes, installment payments, etc.;

(2) Medical, hospitalization, and other similar expenses;

(3) Expenses for the support of others for whom the individual is legally responsible; and

(4) Other miscellaneous expenses which may reasonably be considered as part of the individual's standard of living.

(b) *When adjustment or recovery will defeat the purpose of title IV.* Adjustment or recovery will defeat the purposes of title IV in (but is not limited to) situations where the person from whom recovery is sought needs substantially all of his current income (including black lung benefits) to meet current ordinary and necessary living expenses.

§ 410.561d Against equity and good conscience; defined.

"Against equity and good conscience" means that adjustment or recovery of an incorrect payment will be considered inequitable if an individual, because of a notice that such payment would be made or by reason of the incorrect payment, relinquished a valuable right (example 1); or changed his position for the worse (example 2). In reaching such a determination, the individual's financial circumstances are irrelevant.

Example 1: After being awarded benefits, an individual resigned from employment on the assumption he would receive regular monthly benefit payments. It was discovered 3 years later that (due to Administration error) his award was erroneous because he did not have pneumoconiosis. Due to his age, the individual was unable to get his job back and could not get any other employment. In this situation, recovery or adjustment of the incorrect payments would be against equity and good conscience because the individual gave up a valuable right.

Example 2: A widow, having been awarded benefits for herself and daughter, entered her daughter in college because the monthly benefits made this possible. After the widow and her daughter received payments for almost a year, the deceased worker was found not to have had pneumoconiosis and all payments to the widow and child were incorrect. The widow has no other funds with which to pay the daughter's college expenses. Having entered the daughter in college and thus incurred a financial obligation toward which the benefits had been applied, she was in a worse position financially than if she and her daughter had never been entitled to benefits. In this situation, the recovery of the incorrect payments would be inequitable.

§ 410.561e When an individual is "without fault" in a reduction-overpayment.

Except as provided in § 410.561g, or elsewhere in this subpart, an individual will be considered "without fault" in accepting a payment which is incorrect because he failed to report an event relating to excess earnings specified in section 203(b) of the Social Security Act, or which is incorrect because a reduction

in his benefits equal to the amount of a deduction required under section 203(b) of the Social Security Act is necessary (see § 410.530), if it is shown that such failure to report or such acceptance of the overpayment was due to one of the following circumstances:

(a) Reasonable belief that only his net cash earnings ("take-home" pay) are included in determining the annual earnings limitation or the monthly earnings limitation under section 203(f) of the Social Security Act (see § 410.530).

(b) Reliance upon erroneous information from an official source within the Social Security Administration (or other governmental agency which the individual had reasonable cause to believe was connected with the administration of benefits under Part B of title IV of the Act) with respect to the interpretation of a pertinent provision of the Act or regulations pertaining thereto. For example, this circumstance could occur where the individual is misinformed by such source as to the interpretation of a provision in the Act or regulations relating to reductions.

(c) The beneficiary's death caused the earnings limit applicable to his earnings for purposes of reduction and the charging of excess earnings to be reduced below $1,680 for a taxable year.

(d) Reasonable belief that in determining, for reduction purposes, his earnings from employment and/or net earnings from self-employment in the taxable year in which he became entitled to benefits, earnings in such year prior to such entitlement would be excluded. However, this provision does not apply if his earnings in the taxable year, beginning with the first month of entitlement, exceeded the earnings limitation amount for such year.

(e) Unawareness that his earnings were in excess of the earnings limitation applicable to the imposition of reductions and the charging of excess earnings or that he should have reported such excess where these earnings were greater than anticipated because of:

(1) Retroactive increases in pay, including backpay awards;

(2) Work at a higher pay rate than realized;

(3) Failure of the employer of an individual unable to keep accurate records to restrict the amount of earnings or the number of hours worked in accordance with a previous agreement with such individual;

(4) The occurrence of five Saturdays (or other workdays, e.g., five Mondays) in a month and the earnings for the services on the fifth Saturday or other workday caused the reductions.

(f) The continued issuance of benefit checks to him after he sent notice to the Administration of the event which caused or should have caused the reductions provided that such continued issuance of checks led him to believe in good faith that he was entitled to checks subsequently received.

(g) Lack of knowledge that bonuses, vacation pay, or similar payments, constitute earnings for purposes of the annual earnings limitation.

(h) Reasonable belief that earnings in excess of the earnings limitation amount for the taxable year would subject him to reductions only for months beginning with the first month in which his earnings exceeded the earnings limitation amount. However, this provision is applicable only if he reported timely to the Administration during the taxable year when his earnings reached the applicable limitation amount for such year.

(i) Reasonable belief that earnings from employment and/or net earnings from self-employment after the attainment of age 72 in the taxable year in which he attained age 72 would not cause reductions with respect to benefits payable for months in that taxable year prior to the attainment of age 72.

(j) Reasonable belief by an individual entitled to benefits that earnings from employment and/or net earnings from self-employment after the termination of entitlement in the taxable year in which the termination event occurred would not cause reductions with respect to benefits payable for months in that taxable year prior to the month in which the termination event occurred.

(k) Failure to understand the deduction provisions of the Social Security Act or the occurrence of unusual or unavoidable circumstances the nature of which clearly shows that the individual was unaware of a violation of such reduction provisions. However, these provisions do not apply unless he made a bona fide attempt to restrict his annual earnings or otherwise comply with the reduction provisions of the Act.

§ 410.561f When an individual is "without fault" in an entitlement overpayment.

A benefit payment under Part B of title IV of the Act to or on behalf of an individual who fails to meet one or more requirements for entitlement to such payment or the payment exceeds the amount to which he is entitled, constitutes an entitlement overpayment. Where an individual or other person on behalf of an individual accepts such overpayment because of reliance on erroneous information from an official source within the Administration (or other governmental agency which the individual had reasonable cause to believe was connected with the administration of benefits under Part B of title IV of the Act) with respect to the interpretation of a pertinent provision of the Act or regulations pertaining thereto, such individual, in accepting such overpayment, will be deemed to be "without fault."

§ 410.561g When an individual is at "fault" in a reduction-overpayment.

(a) *Degree of care.* An individual will not be "without fault" if the Administration has evidence in its possession which shows either a lack of good faith or failure to exercise a high degree of care in determining whether circumstances which may cause reductions from his benefits should be brought to the attention of the Administration by an immediate report or by return of a benefit check. The high degree of care expected of an individual may vary with the complexity of the circumstances giving rise to the overpayment and the capacity of the particular payee to realize that he is being overpaid. Accordingly, variances in the personal circumstances and situations of individual payees are to be considered in determining whether the necessary degree of care has been exercised by an individual to warrant a finding that he was without fault in accepting a "reduction-overpayment."

(b) *Subsequent reduction-overpayments.* An individual will not be without fault where, after having been exonerated for a "reduction-overpayment" and after having been advised of the correct interpretation of the reduction provision, he incurs another "reduction-overpayment" under the same circumstances as the first overpayment.

§ 410.561h When adjustment or recovery of an overpayment will be waived.

(a) *Adjustment or recovery deemed "against equity and good conscience."* In the situations described in §§ 410.561e (a), (b), and (c), and 410.561f, adjustment or recovery will be waived since it will be deemed such adjustment or recovery is "against equity and good conscience." Adjustment or recovery will also be deemed "against equity and good conscience" in the situation described in § 410.561e(d), but only as to a month in which the individual's earnings from wages do not exceed the total monthly benefits affected for that month.

(b) *Adjustment or recovery considered to "defeat the purpose of title IV" or be "against equity and good conscience" under certain circumstances.* In the situation described in § 410.561e(d) (except in the case of an individual whose monthly earnings from wages in employment do not exceed the total monthly benefits affected for a particular month), and in the situations described in § 410.561e (e) through (k), adjustment or recovery shall be waived only where the evidence establishes that adjustment or recovery would work a financial hardship (see § 410.561c) or would otherwise be inequitable (see § 410.561d).

§ 410.563 Liability of a certifying officer.

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any individual:

(a) Where adjustment or recovery of such amount is waived under section 204(b) of the Social Security Act; or

(b) Where adjustment under section 204(a) of the Social Security Act is not completed prior to the death of all individuals against whose benefits or lump sums reductions are authorized; or

(c) Where a claim for recovery of an overpayment is compromised or collection or adjustment action is suspended or terminated pursuant to the Federal Claims Collection Act of 1966 (31 U.S.C. 951–953) (see § 410.565).

48. In § 410.570, paragraphs (b) and (c) are revised, paragraphs (d) and (e) are redesignated as (e) and (f) respectively, and a new paragraph (d) is added to read as follows:

§ 410.570 Underpayments.

* * * * *

(b) *Underpaid individual is living.* If an individual to whom an underpayment is due is living, the amount of such underpayment will be paid to such individual either in a single payment (if he is not entitled to a monthly benefit) or by increasing one or more monthly benefit payments to which such individual is or becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.* If an individual to whom an underpayment is due dies before receiving payment or negotiating a check or checks representing such payment, such underpayment will be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household (as defined in § 410.393) with the deceased individual at the time of such individual's death, or

(ii) In the case of a deceased miner, entitled for the month of death to widow's black lung benefits.

(2) In the case of a deceased miner or widow, his or her child entitled to benefits as the surviving child of such miner or widow for the month in which such miner or widow died (if more than one such child, in equal shares to each such child). As used in this subparagraph, "entitled to benefits as a surviving child" refers to the benefit described in § 410.212, and not to the payment described in § 410.510(c).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under subparagraph (1) of this paragraph.

(5) The child or children of the deceased individual who do not qualify under subparagraph (2) of this paragraph (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under subparagraph (3) of this paragraph (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) *Person qualified to receive underpayment dies before receiving payment.* In the event that a person who is otherwise qualified to receive an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his share of the underpayment will be divided among the remaining living person(s) in the same order of priority. In the event that there is (are) no other such person(s), the underpayment will be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

* * * * *

49. Following § 410.580, new §§ 410.581–410.590 are added to read as follows:

§ 410.581 Payments on behalf of an individual.

When it appears to the Administration that the interest of a beneficiary entitled to a payment under Part B of title IV of the Act would be served thereby, certification of payment may be made by the Administration, regardless of the legal competency or incompetency of the beneficiary entitled thereto, either for direct payment to such beneficiary, or for his use and benefit to a relative or some other person as the "representative payee" of the beneficiary. When it appears that an individual who is receiving benefit payments may be incapable of managing such payments in his own interest, the Administration shall, if such individual is age 18 or over and has not been adjudged legally incompetent, continue payments to such individual pending a determination as to his capacity to manage benefit payments and the selection of a representative payee. As used in §§ 410.581–410.590, the term "beneficiary" includes the dependent of a miner or widow who could qualify for certification of separate payment of an augmentation portion of such miner's or widow's benefits (see §§ 410.510(c) and 410.511).

§ 410.582 Submission of evidence by representative payee.

Before any amount shall be certified for payment to any relative or other person as representative payee for and on behalf of a beneficiary, such relative or other person shall submit to the Administration such evidence as it may require of his relationship to, or his responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his authority to receive such payment. The Administration may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility, or authority. If any such relative or other person fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him on behalf of the beneficiary unless for good cause shown, the default of such relative or other person is excused by the Administration, and the required evidence is thereafter submitted.

§ 410.583 Responsibility of representative payee.

A relative or other person to whom certification of payment is made on behalf of a beneficiary as representative payee shall, subject to review by the Administration and to such requirements as it may from time to time prescribe, apply the payments certified to him on behalf of a beneficiary only for the use and benefit of such beneficiary in the manner and for the purposes determined by him to be in the beneficiary's best interest.

§ 410.584 Use of benefits for current maintenance.

Payments certified to a relative or other person on behalf of a beneficiary shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance. Where a beneficiary is receiving care in an institution (see § 410.586), current maintenance shall include the customary charges made by the institution to individuals it provides with care and services like those it provides the beneficiary and charges made for current and foreseeable needs of the beneficiary which are not met by the institution.

§ 410.585 Conservation and investment of payments.

Payments certified to a relative or other person on behalf of a beneficiary which are not needed for the current maintenance of the beneficiary except as they may be used pursuant to § 410.587 shall be conserved or invested on the beneficiary's behalf. Preferred investments are U.S. Savings Bonds, but such funds may also be invested in accordance with the rules applicable to investment of trust estates by trustees. For example, surplus funds may be deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association if the account is either federally insured or is otherwise insured in accordance with State law requirements. Surplus funds deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association must be in a form of account which clearly shows that the representative payee has only a fiduciary, and not a personal, interest in the funds. The preferred forms of such accounts are as follows:

_____
(Name of beneficiary)
by
_____,
(Name of representative payee)
representative payee; or

_____
(Name of beneficiary)
by
_____,
(Name of representative payee)
trustee.

U.S. Savings Bonds purchased with surplus funds by a representative payee for a minor should be registered as follows:

_____
(Name of beneficiary)
_____, a minor
(Social Security No.)
for whom
_____ is representa-
(Name of payee)
tive payee for black lung benefits.

U.S. Savings Bonds purchased with surplus funds by a representative payee for

an incapacitated adult beneficiary should be registered as follows:

_____,
(Name of beneficiary)
_____, for whom
(Social Security No.)
_____ is representa-
(Name of payee)
tive payee for black lung benefits.

A representative payee who is the legally appointed guardian or fiduciary of the beneficiary may also register U.S. Savings Bonds purchased with funds from the payment of benefits under Part B of title IV in accordance with applicable regulations of the U.S. Treasury Department (31 CFR 315.5 through 315.8). Any other approved investment of the beneficiary's funds made by the representative payee must clearly show that the payee holds the property in trust for the beneficiary.

§ 410.586 Use of benefits for beneficiary in institution.

Where a beneficiary is confined in a Federal, State, or private institution because of mental or physical incapacity, the relative or other person to whom payments are certified on behalf of the beneficiary shall give highest priority to expenditure of the payments for the current maintenance needs of the beneficiary, including the customary charges made by the institution (see § 410.584) in providing care and maintenance. It is considered in the best interests of the beneficiary for the relative or other person to whom payments are certified on the beneficiary's behalf to allocate expenditure of the payments so certified in a manner which will facilitate the beneficiary's earliest possible rehabilitation or release from the institution or which otherwise will help him live as normal a life as practicable in the institutional environment.

§ 410.587 Support of legally dependent spouse, child, or parent.

If current maintenance needs of a beneficiary are being reasonably met, a relative or other person to whom payments are certified as representative payee on behalf of the beneficiary may use part of the payment so certified for the support of the legally dependent spouse, a legally dependent child, or a legally dependent parent of the beneficiary.

§ 410.588 Claims of creditors.

A relative or other person to whom payments under Part B of title IV of the Act are certified as representative payee on behalf of a beneficiary may not be required to use such payments to discharge an indebtedness of the beneficiary which was incurred before the first month for which payments are certified to a relative or other person on the beneficiary's behalf. In no case, however, may such payee use such payments to discharge such indebtedness of the beneficiary unless the current and reasonably foreseeable future needs of the beneficiary are otherwise provided for.

§ 410.589 Accountability.

A relative or other person to whom payments are certified as representative payee on behalf of a beneficiary shall submit a written report in such form and at such times as the Administration may require, accounting for the payments certified to him on behalf of the beneficiary unless such payee is a court-appointed fiduciary and, as such, is required to make an annual accounting to the court, in which case a true copy of each such account filed with the court may be submitted in lieu of the accounting form prescribed by the Administration. If any such relative or other person fails to submit the required accounting within a reasonable period of time after it is requested, no further payments shall be certified to him on behalf of the beneficiary unless for good cause shown, the default of such relative or other person is excused by the Administration, and the required accounting is thereafter submitted.

§ 410.590 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested funds from payments under Part B of title IV of the Act certified to him on behalf of a beneficiary shall, upon direction of the Administration, transfer any such funds (including interest earned from investment of such funds) to a successor payee appointed by the Administration, or, at the option of the Administration, shall transfer such funds, including interest, to the Administration for recertification to a successor payee or to the beneficiary.

50. In § 410.601, a new paragraph (e) is added to read as follows:

§ 410.601 Determinations of disability.

* * * * *

(e) *Simultaneous claims.* The adjudication of any claim under this part shall not be delayed for the adjudication of any other benefit claim by the same individual pending before the Administration.

51. Section 410.610 is amended by revising paragraphs (b) and (h) and adding new paragraphs (k), (l), (m), and (n) to read as follows:

§ 410.610 Administrative actions that are initial determinations.

* * * * *

(b) *Modification of the amount of benefits.* The Administration shall, under the circumstances hereafter stated in this paragraph, make findings, setting forth the pertinent facts and conclusions, and an initial determination as to whether:

(1) There should be a reduction under section 412(b) (or section 412(a)(5)) of the Act, and if a reduction is to be made, the amount thereof (see § 410.515(a)); or

(2) There has been an overpayment (see § 410.560) or an underpayment (see § 410.570) of benefits and, if so, the amount thereof, and the adjustment to be made by increasing or decreasing the monthly benefits to which a beneficiary is entitled (see § 410.515(b)), and, in the case of an underpayment due a deceased beneficiary, the person to whom the underpayment should be paid.

* * * * *

(h) *Failure to file or prosecute claim under applicable State workmen's compensation law.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether an individual has failed to file or to prosecute a claim under the applicable State workmen's compensation law pursuant to § 410.219.

* * * * *

(k) *Waiver of adjustment or recovery of monthly benefits.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination as to whether there shall be no adjustment or recovery where an overpayment with respect to an individual has been made (see § 410.561).

(l) *Need for representative payment.* The Administration shall make findings setting forth the pertinent facts and conclusions and an initial determination as to whether representative payment shall serve the interests of an individual by reason of his incapacity to manage his benefit payments (see § 410.581); except that findings as to incapacity with respect to an individual under age 18 or with respect to an individual adjudged legally incompetent shall not be considered an initial determination.

(m) *Separate certification of payment to dependent.* Where the benefit of a miner or of a widow is increased ("augmented") because he or she has a qualified dependent (see § 410.510(c)), and it appears to the Administration that it would be in the best interest of any such dependent to have the amount of the augmentation (to the extent attributable to such dependent) certified separately to such dependent (see § 410.511(a)) or to a representative payee on his behalf (see § 410.581), the Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether separate payment of an augmented amount should be certified (see § 410.511(a)).

(n) *Support of parent, brother, or sister.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether a parent, brother, or sister, meets the requirements for support from the miner set forth in the pertinent provisions of section 412(a)(5) of the Act and whether proof of support was submitted to the Administration within the time limits set forth in the Act or under the provisions described in § 410.214(d).

52. Section 410.615 is revised to read as follows:

§ 410.615 Administrative actions that are not initial determinations.

Administrative actions which shall not be considered initial determinations, but

which may receive administrative review include, but are not limited to, the following:

(a) The suspension of benefits pursuant to the criteria in section 203(h)(3) of the Social Security Act (42 U.S.C. 403(h)(3)), pending investigation and determination of any factual issue as to the applicability of a reduction under section 412(b) of the Act equivalent to the amount of a deduction because of excess earnings under section 203(b) of the Social Security Act (42 U.S.C. 403(b)) (see §§ 410.515(d) and 410.530).

(b) The appointment or continuance of a representative payee for and on behalf of a beneficiary under Part B of title IV of the Act (see § 410.581).

(c) The certification of any two or more individuals of the same family for joint payment of the total benefits payable to such individuals (see § 410.505).

(d) The withholding by the Administration in any month, for the purpose of recovering an overpayment, of less than the full amount of benefits otherwise payable in that month (see § 410.560(c)).

(e) The authorization approving or regulating the amount of the fee that may be charged or received by a representative for services before the Administration (see § 410.686b(e)).

(f) The disqualification or suspension of an individual from acting as a representative in a proceeding before the Administration (see § 410.688).

(g) The determination by the Administration under the authority of the Federal Claims Collection Act (31 U.S.C. 951–953) not to compromise a claim for overpayment under Part B of title IV of the Act, or not to suspend or terminate collection of such a claim, or the determination to compromise such a claim, including the compromise amount and the time and manner of payment (see § 410.565).

(h) Where the amount in controversy is less than $100, the denial of a request for reimbursement of medical expenses (see § 410.240(h)) which are claimed to have been incurred by the claimant in establishing his claim for benefits, or the approval of such request for reimbursement in an amount less than the amount requested. (Also see § 410.610(j).)

53. Section 410.620 is revised to read as follows:

§ 410.620 Notice of initial determination.

Written notice of an initial determination shall be mailed to the party to the determination at his last known address, except that no such notice shall be required in the case of a determination that a party's entitlement to benefits has ended because of such party's death (see § 410.610(c)). If the initial determination disallows, in whole or in part, the claim of a party, or if the initial determination is to the effect that a party's entitlement to benefits has ended, or that a reduction or adjustment is to be made in benefits, the notice of the determination sent to the party shall state the specific reasons for the determination. Such notice shall also inform the party of the right to reconsideration (see § 410.623). Where more than the correct amount of payment has been made, see § 410.561.

54. Section 410.623 is revised to read as follows:

§ 410.623 Reconsideration; right to reconsideration.

The Administration shall reconsider an initial determination if a written request for reconsideration is filed, as provided in § 410.624, by or for the party to the initial determination (see § 410.610). The Administration shall also reconsider an initial determination if a written request for reconsideration is filed, as provided in § 410.624, by an individual as a widow, child, parent, brother, sister, or representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits, may be prejudiced by such determination.

55. Section 410.628 is revised to read as follows:

§ 410.628 Notice of reconsidered determination.

Written notice of the reconsidered determination shall be mailed to the parties at their last known addresses. The reconsidered determination shall state the specific reasons therefor and inform the parties of their right to a hearing (see § 410.630).

56. Section 410.633 is revised to read as follows:

§ 410.633 Additional parties to the hearing.

The following individuals, in addition to those named in § 410.632, may also be parties to the hearing. A widow, child, parent, brother, sister, or representative of a decedent's estate, who makes a showing in writing that such individual's rights with respect to benefits may be prejudiced by any decision that may be made, may be a party to the hearing.

57. Section 410.636 is revised to read as follows:

§ 410.636 Time and place of hearing.

The Administrative Law Judge (formerly called "hearing examiner") shall fix a time and a place within the United States for the hearing, written notice of which, unless waived by a party, shall be mailed to the parties at their last known addresses or given to them by personal service, not less than 10 days prior to such time. As used in this section and in § 410.647, the United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. Written notice of the objections of any party to the time and place fixed for a hearing shall be filed by the objecting party with the Administrative Law Judge at the earliest practicable opportunity (before the time set for such hearing). Such notice shall state the reasons for the party's objection and his choice as to the time and place within the United States for the hearing. The Administrative Law Judge may, for good cause, fix a new time and/or place within the United States for the hearing.

58. Following § 410.638, a new § 410.639 is added to read as follows:

§ 410.639 Subpenas.

When reasonably necessary for the full presentation of a case, an Administrative Law Judge (formerly called "hearing examiner") or a member of the Appeals Council, may, either upon his own motion or upon the request of a party, issue subpenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. Parties who desire the issuance of a subpena shall, not less than 5 days prior to the time fixed for the hearing, file with the Administrative Law Judge or at a district office of the Administration a written request therefor, designating the witnesses or documents to be produced, and describing the address or location thereof with sufficient particularity to permit such witnesses or documents to be found. The request for a subpena shall state the pertinent facts which the party expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpena. Subpenas, as provided for above, shall be issued in the name of the Secretary, and the Administration shall pay the cost of the issuance and the fees and mileage of any witness so subpenaed, as provided in section 205(d) of the Social Security Act.

59. Section 410.645 is revised to read as follows:

§ 410.645 Joint hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters in issue at each such hearing, the Administrative Law Judge (formerly called "hearing examiner") may fix the same time and place for each hearing and conduct all such hearings jointly. However, where there is no common issue of law or fact involved in two or more hearings and any party objects to a joint hearing, a joint hearing may not be held. Where joint hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

60. Section 410.647 is revised to read as follows:

§ 410.647 Waiver of right to appear and present evidence.

(a) *General.* Any party to a hearing shall have the right to appear before the Administrative Law Judge (formerly called "hearing examiner"), personally or by representative, and present evidence and contentions. If all parties are unwilling, unable, or waive their right to

appear before the Administrative Law Judge, personally or by representative, it shall not be necessary for the Administrative Law Judge to conduct an oral hearing as provided in §§ 410.636 to 410.646, inclusive. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Administrative Law Judge. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a hearing before the Administrative Law Judge, the Administrative Law Judge may, nevertheless, give notice of a time and place and conduct a hearing as provided in §§ 410.636 to 410.646, inclusive, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts in issue in the case.

(b) *Record as basis for decision.* Where all of the parties have waived their right to appear in person or through a representative and the Administrative Law Judge does not schedule an oral hearing, the decision shall be based on the record. Where a party residing outside the United States at a place not readily accessible to the United States does not indicate that he wishes to appear in person or through a representative before an Administrative Law Judge, and there are no other parties to the hearing who wish to appear, the Administrative Law Judge may decide the case on the record. In any case where the decision is to be based on the record, the Administrative Law Judge shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and other documents which were considered in connection with the initial determination and reconsideration, and whatever additional relevant and material evidence the party or parties may present in writing for consideration by the Administrative Law Judge. Such documents shall be considered as all of the evidence in the case.

61. In § 410.650, paragraph (b) is revised to read as follows:

§ 410.650 Dismissal for cause.

The Administrative Law Judge (formerly called "hearing examiner") may, on his own motion, dismiss a hearing request, either entirely or as to any stated issue, under any of the following circumstances:

* * * * *

(b) *No right to hearing.* Where the party requesting a hearing is not a proper party under § 410.632 or § 410.633 or does not otherwise have a right to a hearing under § 410.630. This would include, but is not limited to, an individual claiming as a representative payee appointed pursuant to § 410.581 (see § 410.615).

* * * * *

62. Section 410.655 is revised to read as follows:

§ 410.655 Effect of Administrative Law Judge's decision.

The decision of the Administrative Law Judge (formerly called "hearing examiner") provided for in § 410.654, shall be final and binding upon all parties to the hearing unless it is reviewed by the Appeals Council (see §§ 410.663–410.665) or unless it is revised in accordance with § 410.671. If a party's request for review of the Administrative Law Judge's decision is denied (see § 410.662) or is dismissed (see § 410.667), such decision shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States, as provided in section 205(g) of the Social Security Act, as incorporated by section 413(b) of the Act (see § 410.670a), or unless the decision is revised in accordance with § 410.671.

63. Section 410.666 is revised to read as follows:

§ 410.666 Effect of Appeals Council's decision or refusal to review.

The Appeals Council may deny a party's request for review or it may grant review and either affirm or reverse the Administrative Law Judge's decision. The decision of the Appeals Council, or the decision of the Administrative Law Judge where the request for review of such decision is denied (see § 410.662), shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States under the provisions of section 205(g) of the Social Security Act, as incorporated by section 413(b) of the Act (see § 410.670a), or unless the decision is revised under the provisions described in § 410.671.

64. Section 410.669 is revised to read as follows:

§ 410.669 Extension of time to request hearing or review or begin civil action.

(a) *General.* Any party to a reconsidered determination, a decision of an Administrative Law Judge (formerly called "hearing examiner"), or a decision of the Appeals Council (resulting from an initial determination as described in § 410.610), may petition for an extension of time for filing a request for hearing or review or for commencing a civil action in a district court of the United States, although the time for filing such request or commencing such action (see §§ 410.631 and 410.661 and section 205(g) of the Social Security Act as incorporated by section 413(b) of the Act), has passed. If an extension of the time fixed by § 410.631 for requesting a hearing before an Administrative Law Judge is sought, the petition may be filed with an Administrative Law Judge. In any other case, the petition shall be filed with the Appeals Council. The petition shall be in writing and shall state the reasons why the request or action was not filed within the required time. For good cause shown, an Administrative Law Judge or the Appeals Council, as the case may be, may extend the time for filing such request or action.

(b) *Where civil action commenced against wrong defendant.* If a party to a decision of the Appeals Council, or to a decision of the Administrative Law Judge where the request for review of such decision is denied (see § 410.662), timely commences a civil action in a district court as provided by section 205(g) of the Social Security Act as incorporated by section 413(b) of the Act, but names as defendant the United States or any agency, officer, or employee thereof instead of the Secretary either by name or by official title, and causes process to be served in such action as required by the Federal Rules of Civil Procedure, the Administration shall mail notice to such party that he has named the incorrect defendant in such action; and the time within which such party may commence the civil action pursuant to section 205(g) of the Social Security Act against the Secretary shall be deemed to be extended to and including the 60th day following the date of mailing of such notice.

65. Section 410.670a is revised to read as follows:

§ 410.670a Judicial review.

A civil action may be commenced in a district court of the United States with respect to a decision of the Appeals Council, or to a decision of the Administrative Law Judge (formerly called "hearing examiner") where the request for review of such decision is denied by the Appeals Council, as provided in section 205 (g) and (h) of the Social Security Act, as incorporated by section 413(b) of the Act.

66. Following § 410.670a, a new § 410.670b is added to read as follows:

§ 410.670b Interim provision for the adjudication of certain claims filed prior to May 19, 1972.

(a) *General.* Section 6 of the Black Lung Benefits Act of 1972 added a section 431 to title IV of the Federal Coal Mine Health and Safety Act of 1969 which requires the Secretary to review, under the terms of the 1972 amendments, all claims for benefits which were filed prior to May 19, 1972 (the date of enactment of the 1972 amendments), and which were either pending before the Administration on that date, or which had been previously disallowed. Therefore, notwithstanding any other provision of this subpart, and in keeping with the objective of providing for effective and expeditious processing of the large backlog of claims that have to be reexamined under the 1972 amendments, all such claims for benefits will be adjudicated under the terms of the amended Act in accordance with this section.

(b) *Cases remanded by the Federal courts.* (1) Those claims described in paragraph (a) of this section which are remanded to the Secretary by the Federal courts are reviewed in the Bureau of Hearings and Appeals.

(2) A decision will be rendered by an Administrative Law Judge (formerly

called "hearing examiner") in all such claims which can be allowed under the 1972 amendments on the evidence then of record. Such decision shall be considered the Administrative Law Judge's decision referred to in § 410.654, and a party to the decision may request review thereof by the Appeals Council in accordance with §§ 410.660 and 410.661.

(3) A copy of such Administrative Law Judge's decision shall be mailed to such party at his last known address. The date of mailing of such decision will replace the date of any prior notice of an initial determination for purposes of § 410.672.

(4) Those claims described in paragraph (a) of this section which are remanded to the Secretary by the Federal courts and which cannot be allowed in the Bureau of Hearings and Appeals under the 1972 amendments on the evidence then of record, shall be remanded to the Administration's Bureau of Disability Insurance for a new determination.

(c) *Claims pending in the Bureau of Hearings and Appeals.* (1) Those claims described in paragraph (a) of this section which are pending before an Administrative Law Judge or the Appeals Council and which can be allowed under the 1972 amendments on the evidence then of record will be decided by an Administrative Law Judge or the Appeals Council, and this decision will constitute the decision referred to in § 410.654 or § 410.665(c).

(2) A copy of such Administrative Law Judge's decision shall be mailed to such party at his last known address. The date of mailing of such decision will replace the date of any prior notice of an initial determination for purposes of § 410.672. Such claims pending before an Administrative Law Judge or the Appeals Council which cannot be allowed under the 1972 amendments on the evidence then of record shall be remanded to the Administration's Bureau of Disability Insurance for a new determination.

(d) *Claims pending in, or remanded to, the Bureau of Disability Insurance.* (1) Those claims described in paragraph (a) of this section in which no timely request for hearing has been filed, or in which an Administrative Law Judge or the Appeals Council has previously rendered or affirmed a decision of disallowance, or which have been remanded by the Bureau of Hearings and Appeals in accordance with paragraph (b) or (c) of this section, shall be reviewed in the Bureau of Disability Insurance and a new determination made.

(2) Written notice of such determination shall be mailed to the party at his last known address. If such new determination is adverse to the party in whole or in part, the notice shall explain the basis for the determination. It shall also advise the party of his right to request further consideration of the determination by the Bureau of Disability Insurance if he has additional evidence or contentions as to fact or law to submit. The effective date of such notice shall be a date 30 days later than the date of mailing and shall be expressly indicated in such notice.

(3) Before this effective date, the party may request further consideration of the determination by the Bureau of Disability Insurance if he has additional evidence or contentions as to fact or law to submit. If such further consideration is requested timely, the new determination referred to in subparagraph (1) of this paragraph shall not go into effect. Rather, his claim will be further considered as requested and a further determination made. Written notice of the latter determination will be mailed to the party at his last known address. If this determination is adverse to the party in whole or in part, the notice shall explain the basis for the determination. The effective date of such notice shall be the date of mailing.

(4) The effective date of the determination referred to in subparagraph (2) or (3) of this paragraph shall replace the date of any prior notice of an initial determination for purposes of § 410.672.

(5) A determination made as provided in subparagraph (1) or (3) of this paragraph shall be final and binding upon all parties to such determination unless a hearing is requested within 6 months of the effective date of the notice of the determination, except where a previously filed hearing request or request for review by the Appeals Council or by a court is still pending, in which case the claim will be referred to an Administrative Law Judge for a hearing.

(6) Those claims described in paragraph (a) of this section in which no initial determination has been made shall be adjudicated under the 1972 amendments in accordance with the other provisions of this part.

§ 410.683a [Reserved]

67. Following § 410.683, reservation is made for a future § 410.683a and a new § 410.683b is added to read as follows:

§ 410.683b Transfer or assignment.

The Administration shall not certify any amount for payment to an assignee or transferee of the person entitled to such payment under the Act, nor shall the Administration certify such amount for payment to any person claiming such payment by virtue of an execution, levy, attachment, garnishment, or other legal process or by virtue of any bankruptcy or insolvency proceeding against or affecting the person entitled to the payment under the Act.

68. Section 410.686 is revised to read as follows:

§ 410.686 Authority of representative.

A representative, appointed and qualified as provided in §§ 410.684 and 410.685, may make or give, on behalf of the party he represents, any request or notice relative to any proceeding before the Administration under Part B of title IV of the Act, including reconsideration, hearing and review, except that such representative may not execute a claim for benefits, unless he is a person designated in § 410.222 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and allegations as to facts and law in any proceeding affecting the party he represents and to obtain information with respect to the claim of such party to the same extent as such party. Notice to any party of any administrative action, determination, or decision, or request to any party for the production of evidence may be sent to the representative of such party, and such notice or request shall have the same force and effect as if it had been sent to the party represented. (For fees to representatives for services performed before the Administration for an individual, see § 410.686b.)

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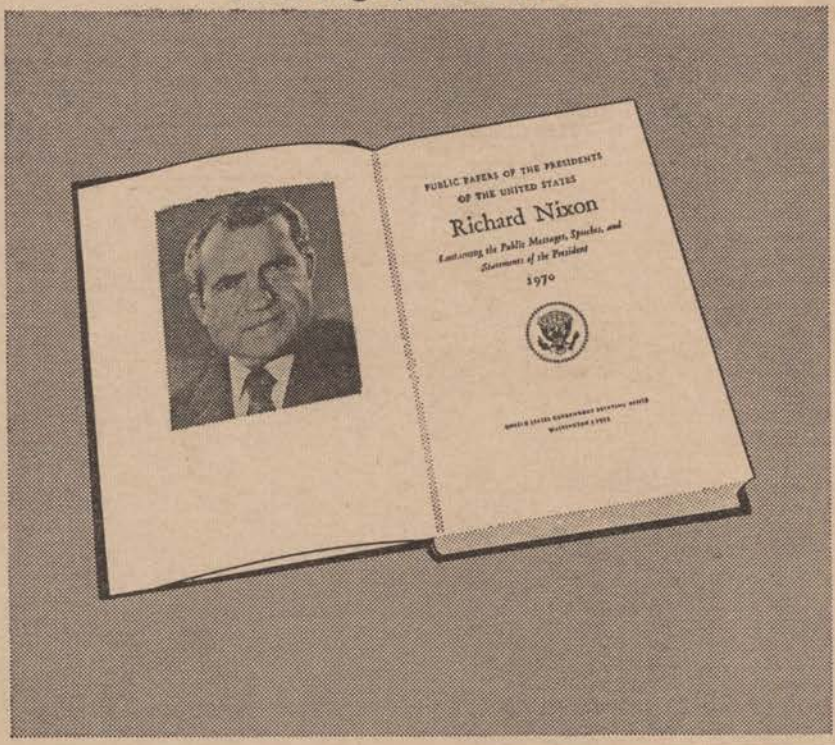

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