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PART I

(Part II begins on page 22933)

HIGHLIGHTS OF THIS ISSUE

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

NATIONAL SECURITY—NASA issues regulations regarding classification, declassification and downgrading of information and material; effective 6–1–72 22854

MEDICAL EDUCATION AND TRAINING—HEW solicits information in study to determine national average cost per student 22893

OCCUPATIONAL SAFETY AND HEALTH—HEW establishes procedures for awarding research and demonstration grants; effective 10–26–72 22864

DOOR-TO-DOOR SALES—FTC promulgates regulations requiring cooling-off period 22933

CHARTER FLIGHTS—

CAB amendments modifying surety bond requirements for overseas military personnel and certain study and tour groups (3 documents); effeltive 11–25–72 22849–22851

CAB proposes modifications to provide for air/sea cruise inclusive tours; comments by 11–25–72 22883

AIR CARRIER SCHEDULES—CAB amends filing time requirements for Form 41 reports; effective 11–25–72 22847

VETERANS BENEFITS—VA approves relief provisions when benefits are lost due to administrative error; effective 6–30–72 22864

PUBLIC MEETING—FDA announces meeting on food safety on 10–30–72 22892

(Continued inside)

FEDERAL REGISTER

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TRAFFIC SAFETY—
DoT adopts new regulations for preparing accident forms and amends injury protection criteria for seat belts (2 documents); effective 1–1–73 and 8–15–73 respectively..... 22868, 22871
DoT proposes application of Highway Safety Program Standards to federally administered areas; comments by 12–29–72..... 22876

GRAIN SALES—USDA amendment allowing dealers to retain certificates up to 90 days without discount penalties; effective 11–26–72..... 22875

COAL MINE SAFETY—Interior Dept. holds public hearing on proposed deenergization and automatic emergency brake requirements for self-propelled electric face equipment on 11–15–72.. 22883

Contents

AGRICULTURAL MARKETING SERVICE

Rules and Regulations

Cranberries grown in certain States; handler reporting requirements 22874
Oranges grown in Arizona and California; handling limitations:
Navel 22874
Valencia 22874

Proposed Rule Making

Irish potatoes grown in Red Valley of North Dakota and Minnesota; hearing on marketing agreement and order 22878

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Information Systems Office; Soil Conservation Service.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Rules and Regulations

Exotic Newcastle disease, and psittacosis or ornithosis in poultry; areas quarantined 22844
Hog cholera and other communicable swine diseases; areas quarantined and released 22844

ARMY DEPARTMENT

Notices

U.S. Army Research Office, Durham, N.C.; meeting 22886

ATOMIC ENERGY COMMISSION

Notices

Louisiana Power and Light Co.; establishment of Atomic Safety and Licensing Board 22895

CIVIL AERONAUTICS BOARD

Rules and Regulations

Modification of surety bond requirements:
Inclusive tours 22851
Overseas military personnel charters 22849
Study group charters 22850
Uniform system of accounts and reports for certificated air carriers; filing time requirements 22847

Proposed Rule Making

Air/sea cruise tours; inclusive tours by supplemental air carriers, certain foreign air carriers, and tour operators 22883

CIVIL SERVICE COMMISSION

Rules and Regulations

Excepted Service:
Department of Agriculture 22843
Department of Health, Education, and Welfare (2 documents) 22843
Environmental Protection Agency 22843
Export-Import Bank of the United States 22843
Securities and Exchange Commission 22843
Small Business Administration 22843

COAST GUARD

Rules and Regulations

San Joaquin River, Calif.; drawbridge operations 22863

Proposed Rule Making

Lifesaving equipment; specifications; correction 22876

COMMERCE DEPARTMENT

See Import Programs Office; Maritime Administration.

COMMODITY CREDIT CORPORATION

Rules and Regulations

Livestock feed program; sales of grain advanced by dealers 22875

Proposed Rule Making

Fire-cured, dark-air cured, and Virginia sun-cured tobacco; advance grade rates for price support on 1972 crop; correction 22883

CUSTOMS BUREAU

Rules and Regulations

Country of origin marking of articles and containers 22863

DEFENSE DEPARTMENT

See Army Department.

EMERGENCY PREPAREDNESS OFFICE

Notices

Amendments to notices of major disasters:
Virginia 22915
Wisconsin 22916

FEDERAL AVIATION ADMINISTRATION

Rules and Regulations

Airworthiness directives:
Handley Page airplanes 22846
Piper aircraft 22845
Rolls Royce Dart Engines 22845
Control zone; designation 22847
Transition area and control area extension; designation and revocation 22846

Proposed Rule Making

Transition area; designation 22876

Notices

Air Carrier District Office; Kansas City, Mo.; relocation 22895
Regional Directors; delegation of authority 22895

FEDERAL COMMUNICATIONS COMMISSION

Proposed Rule Making

FM broadcast stations in certain cities in Mississippi, West Virginia, and Florida; table of assignments; order extending time for filing comments 22877

(*Continued on next page*)

Notices

Hearings, etc.:
American Television Relay, Inc ---- 22896
Eastern Broadcasting Co. and Radio Harlan, Inc ---- 22897
Erway, Guy S., et al ---- 22899
Northwestern College ---- 22901

FEDERAL HIGHWAY ADMINISTRATION

Rules and Regulations

Recording and reporting of accidents; availability of, and instruction for completing forms ---- 22868

FEDERAL INSURANCE ADMINISTRATION

Rules and Regulations

Flood insurance program:
Areas eligible for sale of insurance; participating communities (2 documents) ---- 22860, 22861
Identification of special hazard areas (2 documents) ---- 22862, 22863

FEDERAL MARITIME COMMISSION

Notices

Agreements filed:
Association of West Coast Steamship Companies ---- 22902
City of Long Beach and National Molasses Co ---- 22902
Crescent Wharf and Warehouse Co. and Howard Terminal ---- 22902
Matson Navigation Co. and McCabe, Hamilton & Renny Co., Ltd ---- 22903
Pacific Maritime Association; first supplemental order severing jurisdiction issues regarding cooperative working arrangements ---- 22903

FEDERAL POWER COMMISSION

Proposed Rule Making

Statements and reports (schedules); imputed rate of return on jurisdictional rate base; extension of time for filing comments ---- 22884

Notices

Hearings, etc.:
Amoco Production Co. et al ---- 22907
Atlantic Richfield Co ---- 22904
Bahovec Power Project ---- 22904
Duke Power Co ---- 22904
Eastern Shore Natural Gas Co ---- 22905
Estes Brothers Inc ---- 22905
Northern Natural Gas Co ---- 22905
Smith, Jessie I ---- 22906
South Georgia Natural Gas Co. et al ---- 22906
Texas Gas Transmission Corp ---- 22906
Transcontinental Gas Pipe Line Corp ---- 22906
Warren Petroleum Co. et al ---- 22909

FEDERAL RESERVE SYSTEM

Notices

Acquisition of banks:
Fidelity American Bankshares, Inc. (2 documents) ---- 22910, 22911
First Alabama Bancshares, Inc ---- 22912
First Financial Corp ---- 22912
Ridge Bancorporation of Wisconsin; formation of bank holding company ---- 22913
Southridge Bank of Greendale; acquisition of assets and assumption of liabilities ---- 22914
United Virginia Bankshares, Inc.; acquisition of Crompton-Richmond Co., Inc., factors ---- 22914
Valley Agency Co.; order denying formation of bank holding company and continuation of insurance agency activities ---- 22914

FEDERAL TRADE COMMISSION

Rules and Regulations

Cooling-off period for door-to-door sales; trade regulation rule; basis and purpose ---- 22934

FISH AND WILDLIFE SERVICE

Rules and Regulations

Catahoula National Wildlife Refuge, La.; hunting ---- 22873

FOOD AND DRUG ADMINISTRATION

Proposed Rule Making

Nutritive sweeteners; request for comments on Recommended International Standards and a petition; correction ---- 22883

Notices

Beecham-Massengill Pharmaceuticals; daribiotic injectable; opportunity for hearing ---- 22891
Dow Chemical Co.; certain products containing neomycin and other drugs; withdrawal of approval of new animal drug applications ---- 22891
National Advisory Food Committee; meeting ---- 22892

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Food and Drug Administration; National Institutes of Health; Public Health Service.

Notices

Health manpower training; request for information on costs of educating various health professionals ---- 22893

HIGHWAY SAFETY PROGRAM STANDARDS

Proposed Rule Making

Highway Safety Program standards; applicability to federally administered areas; request for comments ---- 22876

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Insurance Administration.

IMPORT PROGRAMS OFFICE

Notices

Decisions on applications for duty-free entry of scientific articles:
State University College at Genesco et al ---- 22888
University of Akron ---- 22889
University of Chicago and Department of Interior ---- 22890
University of Texas Medical Branch et al ---- 22890
University of Washington ---- 22891

INFORMATION SYSTEMS OFFICE

Notices

Washington Data Processing Center; redesignation as Washington Computer Center ---- 22888

INTERIOR DEPARTMENT

See also Fish and Wildlife Service; Land Management Bureau; Mines Bureau; National Park Service.

Notices

Availability of environmental statements:
Shortcut pipeline modification; final ---- 22887
Twin Lakes Dam and Reservoir Enlargement and Mt. Elbert Forebay, Fryingpan-Arkansas Project, Colo.; draft ---- 22888

INTERNAL REVENUE SERVICE

Rules and Regulations

Income tax; bonds and other evidences of indebtedness ---- 22863

INTERSTATE COMMERCE COMMISSION

Rules and Regulations

Car service; authorization to operate over certain trackage:
Chicago, Milwaukee, St. Paul and Pacific Railroad Co ---- 22873
Delaware and Hudson Railroad Co ---- 22872
Norfolk and Western Railway Co ---- 22872
Penn Central Transportation Co. et al ---- 22872
Penn Central Transportation Co. et al.; restoration of service and rerouting of traffic ---- 22871

Proposed Rule Making

Remittance of demurrage charges by common carriers of property by rail ---- 22884

Notices
Assignment of hearings 22919
Motor carriers:
Alternate route deviation notices (2 documents) 22919, 22920
Applications and certain other proceedings 22921
Board transfer proceedings 22926
Port Royal Marine Corp.; petition for declaratory order 22927
Sun Oil Co.; increased freight rates, 1971 22928

LABOR DEPARTMENT
See Wage and Hour Division.

LAND MANAGEMENT BUREAU
Notices
Oregon; opening of public lands 22886

MARITIME ADMINISTRATION
Notices
Reconstruction to improve container lift capacity; computation of foreign cost 22888

MINES BUREAU
Proposed Rule Making
Self-propelled electric face equipment; public hearing 22883

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Rules and Regulations
NASA Security Classification Program 22854

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Rules and Regulations
Occupant crash protection; motor vehicle safety standards 22871

NATIONAL INSTITUTES OF HEALTH
Notices
Meetings:
Artificial Kidney-Chronic Uremia Advisory Committee 22893
National Advisory Allergy and Infectious Diseases Council 22893
National Advisory Environmental Health Sciences Council 22893
National Advisory Research Resources Council 22892
National Arthritis, Metabolism, and Digestive Diseases Advisory Council 22893
National Cancer Institute Board of Scientific Counselors 22892
National Institute of Allergy and Infectious Diseases Board of Scientific Counselors 22892
Public Health Review Committee 22892

NATIONAL PARK SERVICE
Notices
Olympic National Park; intention to issue concession permit 22887

NATIONAL SCIENCE FOUNDATION
Notices
Nimitz Marine Facility; summary statement of proposed Federal action affecting environment 22915

PUBLIC HEALTH SERVICE
Rules and Regulations
Grants for research and demonstrations relating to occupational safety and health 22864

SECURITIES AND EXCHANGE COMMISSION
Notices
Hearings, etc.:
Bowmar Instrument Corp. et al 22916
Enterprise Fund, Inc., et al 22916
Finevest Fund, Inc 22917

SOIL CONSERVATION SERVICE
Notices
Tallulah Creek (Long Creek Portion) Watershed Project, N.C.; availability of final environmental statement 22888

STATE DEPARTMENT
Notices
Dome Pipeline Corp.; request for modification of Presidential permit; public hearing on draft environmental impact statements 22886

TRANSPORTATION DEPARTMENT
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Highway Safety Programs Standards; National Highway Traffic Safety Administration.

TREASURY DEPARTMENT
See Customs Bureau; Internal Revenue Service.

VETERANS ADMINISTRATION
Rules and Regulations
Equitable relief from administrative error 22864

WAGE AND HOUR DIVISION
Notices
Certificates authorizing employment of students at special minimum wages 22917

List of CFR Parts Affected

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

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

5 CFR

213 (7 documents) 22843

7 CFR

907 22874
908 22874
929 22874
1475 22875

PROPOSED RULES:

Ch. IX 22878
1464 22883

9 CFR

76 22844
82 22844

14 CFR

39 (3 documents) 22845, 22846
71 (2 documents) 22846, 22847
241 22847
372 22849
373 22850
378 22851
1203 22854

PROPOSED RULES:

71 22876
378 22883

16 CFR

429 22934

18 CFR

PROPOSED RULES:

260 22884

19 CFR

11 22863

21 CFR

PROPOSED RULES:

26 22883

23 CFR

PROPOSED RULES:

230 22876

24 CFR

1914 (2 documents) 22860, 22861
1915 (2 documents) 22862, 22863

26 CFR

1 22863

30 CFR

PROPOSED RULES:

75 22883

33 CFR

117 22863

38 CFR

2 22864

42 CFR

87 22864

46 CFR

PROPOSED RULES:

160 22876

47 CFR

PROPOSED RULES:

73 22877

49 CFR

394 22868
571 22871
1033 (5 documents) 22871–22873

PROPOSED RULES:

Ch. X 22884

50 CFR

32 22873

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of Agriculture

Section 213.3113 is amended to show that positions of technical leader employed in the training of foreign nationals in the International Agricultural Development Service are no longer excepted under Schedule A.

Effective on publication in the FEDERAL REGISTER (10–26–72), paragraph (i) of § 213.3113 is revoked.

§ 213.3113 Department of Agriculture.

* * * * *

(i) [Revoked]

* * * * *

(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.72–18184 Filed 10–25–72;8:53 am]

PART 213—EXCEPTED SERVICE

Securities and Exchange Commission

Section 213.3130 is amended to show that accountant and auditor positions in GS–13 through 15 are excepted under Schedule A when filled under the SEC professional accounting fellow program. No more than two positions may be filled at any one time under this authority, and no appointment may extend for longer than 2 years.

Effective on publication in the FEDERAL REGISTER (10–26–72), paragraph (c) is added under § 213.3130 as set out below.

§ 213.3130 Securities and Exchange Commission.

* * * * *

(c) Positions of accountant and auditor, GS–13 thorugh 15, when filled by persons selected under the SEC accounting fellow program. No more than two positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years.

(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.72–18185 Filed 10–25–72;8:53 am]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that one position of Confidential Assistant to the Under Secretary is no longer excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (10–26–72), subparagraph (6) of paragraph (a) is amended under § 213.3316 as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

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

(6) Four Confidential Assistants to the Under Secretary.

* * * * *

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

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

[FR Doc.72–18187 Filed 10–25–72;8:53 am]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that one position of Deputy Assistant Secretary for Community and Field Services is no longer excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (10–26–72), subparagraph (12) of paragraph (n) of § 213.3316 is revoked.

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(n) *Office of the Assistant Secretary for Community and Field Services.* * * *

(12) [Revoked]

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–1958 Comp. p. 218)

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

[FR Doc.72–18188 Filed 10–25–72;8:53 am]

PART 213—EXCEPTED SERVICE

Environmental Protection Agency

Section 213.3318 of Schedule C is amended to reflect the following title change: From Secretary to the Director, Office of Legislation, to Staff Assistant to the Director, Office of Legislation.

Effective on publication in the FEDERAL REGISTER (10–26–72), subparagraph (3) of paragraph (b) is amended and subparagraph (4) of paragraph (b) is revoked under § 213.3318 as set out below.

§ 213.3318 Environmental Protection Agency.

* * * * *

(b) *Office of Legislation.* * * *

(3) Two Staff Assistants to the Director.

(4) [Revoked]

* * * * *

(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.72–18189 Filed 10–25–72;8:54 am]

PART 213—EXCEPTED SERVICE

Small Business Administration

Section 213.3332 is amended to show that one position of Special Assistant and Director, Office of Equal Employment Opportunity and Compliance, is no longer excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (10–26–72), paragraph (d) of § 213.3332 is revoked.

§ 213.3332 Small Business Administration.

* * * * *

(d) [Revoked]

* * * * *

(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.72–18186 Filed 10–25–72;8:53 am]

PART 213—EXCEPTED SERVICE

Export-Import Bank of the United States

Section 213.3342 is amended to show that one position of Administrative Assistant to the President and Chairman is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (10–26–72), paragraph (j) is added to § 213.3342 as set out below.

§ 213.3342 Export-Import Bank of the United States.

* * * * *

(j) One Administrative Assistant to the President and Chairman.

(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.72-18190 Filed 10-25-72;8:54 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

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

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

[Docket No. 72-569]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined and Released

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

1. In § 76.2, in paragraph (e) (11) relating to the State of Ohio, subdivision (ii) relating to Van Wert County is deleted, and a new subdivision (ii) relating to Clark County is added to read:

(e) * * *

(11) *Ohio.* * * *

(ii) That portion of Clark County bounded by a line beginning at the junction of County Road 235 and New Carlisle Pike, County Road 314; thence, following New Carlisle Pike, County Road 314 in an easterly, then southeasterly direction to U.S. Highway 40; thence, following U.S. Highway 40 in a generally easterly direction to U.S. Highway 68; thence, following U.S. Highway 68 in a southwesterly direction to the Clark-Greene County line; thence, following the Clark-Greene County line in a westerly, then northerly, then westerly direction to the junction of the Clark-Greene-Montgomery County lines; thence, following the Clark-Montgomery County line in a northerly direction to County Road 235; thence, following County Road 235 in a northerly, then northeasterly direction to its junction with New Carlisle Pike, County Road 314.

* * * * *

2. In § 76.2, paragraph (e) (15) relating to the State of Mississippi is amended to read:

(e) * * *

(15) *Mississippi.* The adjacent portions of Kemper and Lauderdale Counties bounded by a line beginning at the junction of State Highway 16 and State Highway 39 in Kemper County; thence following State Highway 39 in a generally southerly direction to Lizelia-Lauderdale Road in Lauderdale County; thence, following Lizelia-Lauderdale Road in a generally easterly direction to U.S. Highway 45; thence, following U.S. Highway 45 in a northeasterly, then northerly direction to State Highway 16 in Kemper County; thence, following State Highway 16 in a southwesterly direction to its junction with State Highway 39 in Kemper County.

3. In § 76.2, in paragraph (e) (7) relating to the State of Kentucky, subdivision (viii) relating to Montgomery, Clark, and Bourbon Counties is deleted.

4. In § 76.2, in paragraph (e) (3) relating to the State of North Carolina, subdivisions (iv) relating to Henderson County and (v) relating to Pitt County are deleted.

5. In § 76.2, paragraph (e) (8) relating to the State of South Carolina is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; sec. 1, 75 Stat. 481; secs. 3 and 11, 76 Stat. 130, 132, 21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended, 36 F.R. 20707, 21529, 21530, 37 F.R. 6327, 6505)

Effective date. The foregoing amendments shall become effective upon issuance.

The amendments quarantine a portion of Clark County in Ohio because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined area.

The amendments exclude a portion of Van Wert County in Ohio, a portion of Lauderdale County in Mississippi, a portion of Anderson County in South Carolina, portions of Pitt and Henderson Counties in North Carolina, and portions of Montgomery, Clark, and Bourbon Counties in Kentucky from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas contained in 9 CFR Part 76, as amended, do not apply to the excluded areas, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 apply to the excluded areas. No areas in South Carolina remain under quarantine.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera, they must be made effective immediately to accomplish their purpose in the public interest. Insofar as the amendments relieve restrictions presently imposed but no longer deemed necessary to prevent the spread of hog cholera, they should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 20th day of October 1972.

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

[FR Doc.72-18273 Filed 10-25-72;8:55 am]

PART 82—EXOTIC NEWCASTLE DISEASE; AND PSITTACOSIS OR ORNITHOSIS IN POULTRY

Areas Quarantined

Pursuant to the provisions of sections 1, 2, 3, and 4 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, sections 4, 5, 6, and 7 of the Act of May 29, 1884, as amended, and sections 3 and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 112, 113, 115, 117, 120, 123, 124, 125, 126, 134b, 134f), Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

In § 82.3, in paragraph (a) (1) relating to the State of California, subdivision (viii) relating to Kern County is deleted, and subdivision (v) relating to Los Angeles County is amended by adding a new subdivision (g) to read:

(a) * * *

(1) *California.* * * *

(v) The following areas in Los Angeles County:

* * * * *

(g) The premises of Morris and Rose Engle, 12005 Zelzah Avenue, Grenada Hills, bounded by a line beginning at the junction of Aliso Creek and Sesmon Boulevard; thence, following the west bank of Aliso Creek in a southeasterly direction to Rinalde Street; thence, following Rinalde Street in an easterly direction to Zelzah Avenue; thence, following Zelzah Avenue in a generally northwesterly direction to Bull Canyon Road; thence, following Bull Canyon Road in a northeasterly direction to Sesmon Boulevard; thence, following Sesmon Boulevard in a generally westerly direction to its junction with Aliso Creek.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f; 29 F.R. 16210, as amended; 37 F.R. 6327, 6505)

Effective date. The foregoing amendments shall become effective upon issuance.

The amendments quarantine a portion of Los Angeles County in California because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, apply to the quarantined area.

The amendments exclude a portion of Kern County in California from the areas quarantined because of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded area.

The amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish their purpose in the public interest. The amendments relieve certain restrictions presently imposed but no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to the affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 19th day of October 1972.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72-18208 Filed 10-25-72;8:54 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 72-EA-103, Amdt. 39-1545]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Piper PA-24 type airplanes.

During a flight reevaluation of the flutter characteristics of the PA-24 type airplane, a rudder flutter condition was determined to exist below the present Vne speed. Thus, a rule is being issued which will require speed reductions in the Vne and Vno criteria.

Since the foregoing deficiency involves air safety, notice and public procedure hereon are impractical and the rule 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, 14 CFR 11.89 (31 F.R. 13697) § 3913 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

PIPER. Applies to PA-24, PA-24-250, and PA-24-260 airplanes certificated in all categories.

To prevent possible adverse airplane vibration effects, accomplish the following:

(1) Within the next 10 hours in service after the effective date of this airworthiness directive, unless already accomplished, attach the following operating limitation placard near the airspeed indicator in full view of the pilot:

(a) For PA-24 type airplanes, "Do not exceed 188 m.p.h. cas (Vne)".

(b) For PA-24-250 and PA-24-260 type airplanes, "Max. structural cruising: 167 m.p.h. cas (Vno). Do not exceed 188 m.p.h. cas (Vne)."

(2) Within three (3) months after the effective date of this airworthiness directive, accomplish either:

(a) An alteration of the red radical Vne line and the cautionary yellow arc of the airspeed indicator to reflect the airspeeds noted in 1 above in accordance with an FAA-approved alteration; or

(b) An alteration of the rudder in accordance with Piper Service Kit No. 760705 or an FAA-approved equivalent alteration and an alteration of the airspeed instrument in accordance with an FAA-approved alteration to reflect the following speed restrictions:

Vne of 202 m.p.h. (cas) for PA-24; of 203 m.p.h. (cas) for PA-24-250 and PA-24-260 Vno of 180 m.p.h. (cas) for PA-24-250 and PA-24-260.

(3) FAA-approved alterations must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

This amendment is effective October 31, 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 Jamaica, N.Y., on October 16, 1972.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.72-18181 Filed 10-25-72;8:47 am]

[Docket No. 11629, Amdt. 39-1547]

PART 39—AIRWORTHINESS DIRECTIVES

Rolls Royce Dart Models 542-4, 542-4K, 542-10, 542-10J, and 542-10K Engines

Amendment 39-1381 (37 F.R. 666), AD 72-2-4, requires overhaul, and rebuilding as necessary, within 3,600 hours' time in service after its effective date, January 20, 1972, of all the subject engines that incorporate Rolls Royce Dart Modification No. 1527. The AD also requires initial and periodic inspections for freedom of engine rotation and for traces of aluminum dust in the engine oil. In addition, the initial inspection includes inspection for security of diffuser bolts for all subject engines and for those with 3,000 or more flights, inspection for aluminum spatter and impact damage. The AD further provides, for engines that had accumulated 3,000 or more flights by its effective date, that if the more extensive initial inspection required on those engines revealed no defects, the periodic inspections would not be required. After issuing Amendment 39-1381, upon further investigation, the FAA has determined that incorporation of Modification 1527 and slackness of diffuser bolts are not related to the condition involved. The FAA has further determined that less frequent, more effective monitoring of the condition involved may be accomplished, and that the inspections required to accomplish the monitoring must be performed periodically until the engine is rebuilt. In addition, the FAA has determined that rebuilding of the engine must be performed in accordance with a revised Service Bulletin, and is required only when evidence of metal spatter or impact damage is found.

Therefore, AD 72-2-4 is being superseded by a new AD, applicable to all the subject engines, that requires modification of the oil drainplug, P/N R[illegible], 35189, in the compressor front flange, and periodic inspection of the modified plug for aluminum particle. The maximum period between these inspections which may be adjusted by an FAA Maintenance Inspector, is 300 flights. The new AD continues the requirement of AD 72-2-4 for periodic inspections for freedom of engine rotation and for aluminum dust in the oil filter, while providing that they be performed at th e same intervals as the oil drainplug inspections or at intervals determined by the operator's continuous airworthiness maintenance program. Further, the new AD continues the requirement for inspection, as necessary, for evidence of metal spatter and foreign object damage, and rebuilding if such evidence is found. The rebuilding must be accomplished in accordance with the revised Service Bulletin DA 72-383, Revision 1, dated November 30, 1971, or an FAA approved equivalent. In addition, the new AD provides that the periodic inspections may be discontinued only upon accomplishment of the specified rebuilding.

Since a situation exists that requires immediate adoption of this rule it is found that notice and public procedure thereon are impracticable and contrary to the public interest and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, 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 adding the following new airworthiness directive:

ROLLS ROYCE (1971 LTD. Applies to Rolls Royce Dart Models 542-4, -4K, -10, -10J, and -10K engines. These engines are installed on, but not necessarily limited to Convair 340/440 airplanes that have had subject engines installed by modification, and NAMC YS-11 and YS-11A airplanes, all series. (Note: Subject Convair 340/440 airplanes are also known as Convair 600 and 640 airplanes.)

Compliance is required as indicated.

To prevent damage to the rear face of the first stage impeller that could lead to impeller disintegration in service, accomplish the following:

(a) Within the next 300 flights after the effective date of this AD, or before the accumulation of 2,000 flights on the compressor since installed new or since last compressor overhaul, as applicable, whichever occurs later, unless already accomplished, modify the oil drain plug, P/N RK.35189, and refit it to the engine in accordance with Rolls Royce Dart Aero Engine Service Bulletin Number DA 72-383, Revision 1, dated November 30, 1971, or an FAA-approved equivalent. Identify the modified drainplug as P/N RK.46404.

(b) Within the next 300 flights after incorporation of the modification specified by paragraph (a), and thereafter at intervals not to exceed 300 flights from the last inspection visually inspect the surfaces of the drain plug, P/N RK.46404, for the presence of aluminum particles. If aluminum particles are found during an inspection required by this paragraph, before further flight comply with paragraph (e).

NOTE: During inspections required by paragraph (b) particular attention should be directed to the sealing ring recess.

(c) For an engine that is subject to an FAA-approved continuous airworthiness maintenance program that includes periodic inspection for freedom of engine rotation and periodic inspection of the oil filter, comply with the following:

(1) At each inspection for freedom of engine rotation, listen for unusual noises from the compressor area; and

(2) At each inspection of the oil filter, visually inspect the filter for traces of fine aluminum dust in the bottom of the filter cap or in suspension in the residual oil in the filter cap.

(3) If any unusual noise emanates from the compressor area during an inspection required by subparagraph (c)(1) or if any trace of fine aluminum dust is found during an inspection required by subparagraph (c)(2), before further flight comply with paragraph (e).

Changes to an approved program that affect either the interval or performance of inspections required by this AD must be approved by the assigned FAA Maintenance Inspector.

(d) For engines that are not subject to an FAA-approved continuous airworthiness maintenance program that includes periodic inspection for freedom of engine rotation and periodic inspection of the oil filter, comply with the following:

(1) At each inspection required by paragraph (b)—

(i) Inspect the first stage impeller for freedom of rotation by rotating it at least one full turn in each direction, and listen for unusual noises from the compressor area.

(ii) Visually inspect the oil filter for traces of fine aluminum dust in the bottom of the filter cap or in suspension in the residual oil in the filter cap.

(2) If the first stage impeller does not rotate freely in each direction or if any unusual noise emanates from the compressor area during an inspection required by subparagraph (d)(1)(i), or if any trace of fine aluminum dust is found during an inspection required by subparagraph (d)(1)(ii), before further flight comply with paragraph (e).

(e) Remove one combustion chamber and visually inspect the compressor outle elbow, flame tube, discharge noggle, hp. nozzle guide vanes, and hp. turbine blades for evidence of metal spatter and surface roughness or impact damage due to the passage of a foreign object. If any of these indications are found, before further flight rebuild the engine in accordance with Rolls Roye Dart Aero Engine Service Bulletin Da 72-383, Revision 1, dated November 30, 1971, or an FAA-approved equivalent.

(f) For the purpose of complying with this AD, a flight is an operating sequence consisting of an engine start, takeoff operation, landing, and engine shutdown. The number of flights may be determined by actual count or, subject to accetpance by the assigned FAA Maintenance Inspector, may be calculated by dividing the compressor section's time in service by the operator's fleet average time for airplanes equipped with this subject type engines.

(g) At the request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Chief, Aircraft Certification Staff, FAA Europe, Africa, and Middle East Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

(h) The repetitive inspections required by this AD may be discontniued on engines that have been rebuilt in accordance with paragraph (e).

This amendment supersedes Amendment 39-1381 (37 F.R. 666), AD 72-2-4.

This amendment becomes effective October 26, 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 Washington, D.C., on October 17, 1972.

C. R. MELUGIN, Jr.,
Acting Director,
Flight Standards Service.

[FR Doc.72-18180 Filed 10-25-72;8:47 am]

[Docket No. 12323, Amdt. 39-1548]

PART 39—AIRWORTHINESS DIRECTIVES

Handley Page HP-137 Mark I Airplanes

There have been ruptures of the horizontal firewall under the engine "hot" section due to engine rotor failures or combustor torching flame penetrating the combustor case and firewall, on Handley Page HP-137 Mark I airplanes. This could result in fire entering the area behind the existing vertical firewall and causing structural damage to the aft nacelle, wing, and fuel tank. Since this condition is likely to exist or develop in other aircraft of the same type design, an airworthiness directive is being issued to require the installation, within 50 hours' time in service of its effective date, of additional fire shielding to protect the vulnerable area in case the existing horizontal firewall below the engine is penetrated, on Handley Page HP-137 Mark I airplanes.

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 adding the following new airworthiness directive:

HANDLEY PAGE (JETSTREAM AIRCRAFT LTD). Applies to Handley Page HP-137 Mark I airplanes.

Compliance is required within the next 50 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent fires, which could result from engine rotor failures and combustion chamber burn through torching flames, in the areas of the nacelle forward of the existing vertical firewall from entering the area aft of the vertical firewall and damaging wing structure or burning into the wing fuel tank in this area, install additional fire shielding to the lower nacelle area down from and aft of the existing vertical firewall in accordance with the following:

(a) Using fireproof materials which comply with FAR 23.1191, extend the existing vertical firewall and provide fireproof shielding for the area aft of the extended vertical firewall in accordance with Jetstream Aircraft Limited Modification No. 5001, Part 1, Issue 1, dated September 1971, and Part 2, Issue 2, dated December 1971, or other equivalent modification approved by the Chief, Engineering and Manufacturing Branch of an FAA Region (or, in the case of the Western Region, the Aircraft Engineering Division).

NOTE: Copies of Jetstream Aircraft Limited Modification No. 5001 may be obtained from the FAA, Engineering and Manufacturing Branch in the FAA Regions (or in the case of the Western Region, the Aircraft Engineering Division).

This amendment becomes effective October 31, 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 Washington, D.C., on October 17, 1972.

C. R. MELUGIN, Jr.,
Acting Director,
Flight Standards Service.

[FR Doc.72-18179 Filed 10-25-72;8:47 am]

[Airspace Docket No. 72-AL-13]

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

Designation of Transition Area and Revocation of Control Area Extension

On July 14, 1972, a notice of proposed rule making (NPRM) was published in the FEDERAL REGISTER (37 F.R. 13804) stating that the Federal Aviation Administration (FAA) was considering amendments to Part 71 of the Federal

Aviation Regulations that would alter the controlled airspace in the vicinity of Middleton Island, Alaska.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., January 4, 1973, as hereinafter set forth.

In § 71.181 (37 F.R. 2143) the Middleton Island transition area is designated as follows:

That airspace extending upward from 700 feet above the surface within 12 miles northwest and 7.5 miles southeast of the Middleton Island VORTAC 037° and 217° radials, extending from 22.5 miles northeast to 11.5 miles southwest of the VORTAC; and within 9.5 miles west of the Middleton Island RBN 011° bearing, extending from the RBN to 18.5 miles north of the RBN.

2. In § 71.165 (37 F.R. 2055) the Middleton Island control area extension is revoked.

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

Issued in Washington, D.C., on October 17, 1972.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-18182 Filed 10-25-72;8:47 am]

[Airspace Docket No. 72-RM-23]

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

Designation of Control Zone

On September 12, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 18472) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Greenwood Village, Colo. control zone.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received and the proposed amendment is hereby adopted without change.

Effective date. This amendment shall be effective 0901 G.m.t., January 4, 1973.

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

Issued in Aurora, Colo., on October 16, 1972.

M. M. MARTIN,
Director, Rocky Mountain Region.

In § 71.171 (37 F.R. 2056) the following control zone is added:

GREENWOOD VILLAGE, COLO.

That airspace within a 5-mile radius of the Arapahoe County Airport (latitude 30°34'28" N., longitude 104°51'02" W.), and within 2.5 miles each side of the 335° bearing from the Englewood RBN extending from the 5-mile radius zone to 5 miles northwest of the RBN, excluding that airspace within the Denver, Colo. control zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airmen's Information Manual.

[FR Doc.72-18183 Filed 10-25-72;8:52 am]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-773; Amdt. 241-2]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Filing Time Requirements

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of October 1972.

By notice of proposed rule making EDR-227, dated June 6, 1972,[1] the Board proposed to amend Part 241 of its Economic Regulations (14 CFR Part 241) so as to: (1) Make the timeliness of the filing of all CAB Form 41 schedules turn upon the date of receipt by the Board, rather than the postmark date; (2) prescribe a list of due dates, in place of the present list of time intervals, for such filings; and (3) require that requests for extensions of time for such filings be received not later than 10 days prior to the due date, except in cases of emergency.

Comments in response to the notice were submitted by Aloha Airlines, Inc. (Aloha), Eastern Air Lines, Inc., Frontier Airlines, Inc., Hawaiian Airlines, Inc. (Hawaiian), Kodiak Airways, Inc. (Kodiak), North Central Airlines, Inc. (North Central), Northwest Airlines, Inc., Overseas National Airways, Inc., Ozark Air Lines, Inc. (Ozark), Pan American World Airways, Inc., Seaboard World Airlines, Inc., Southern Airways, Inc., and Trans-World Airlines, Inc.[2]

Upon consideration of the comments, the Board has determined to adopt the proposed amendments, except as modified herein.

In EDR-227, the Board observed that, by amending the Part 241 instructions so as to eliminate references to postmarks, and requiring instead that the various schedules be received by the Board on or before a particular date (which, in most cases, would be the same as the presently prescribed postmark dates), the Board would be able to compile and issue the Form 41 data more quickly. We further noted that elimination of the postmark test would also preclude the ground for doubting whether a particular schedule was actually mailed on the date stamped, a suspicion which is made quite plausible by the prevalent use of postage meters.

The comments are virtually unanimous in opposing this portion of the proposal, upon the grounds that: (1) It would leave the timeliness of the filings dependent upon the speed of mail deliveries, and such deliveries are subject to delays, and (2) the time available for carriers to prepare and mail the schedules would be reduced, thus imposing an undue burden upon the carriers. In addition, Aloha, Hawaiian, and Kodiak contend that adoption of the specific due dates would impose particular hardships on them by virtue of their respective geographic locations.[3]

The Board has not found the arguments in opposition to the proposed specific due dates to be persuasive. Public policy requires that information, in order to serve the purpose for which it is collected and compiled, must be made available to users as soon as practicable after the date or period to which it relates. In this regard, the Office of Management and Budget (OMB) in Circular No. A-91 (revised) dated April 26, 1972, states that the shortest possible interval should exist between the date or period to which data refer and the date when compilation is completed, and that prompt public release of the figures should be made after compilation. In that circular, OMB also states that the prompt release of official statistics on a regular schedule is of vital importance to the proper management of both private and public affairs.

The present irregularity in receipt of Form 41 financial schedules from the carriers causes the Board's staff considerable administrative difficulty both in enforcing timely reporting by the carriers and in scheduling the coding, keypunching, editing, and processing of reported data.

Enforcement of timely reporting is essential because late reports from a few carriers can cause delay and sporadic availability of carrier data for staff analysis and reporting to the Board, evaluations of carrier financial fitness, compilations for Board publications, dissemination to other Government agencies, and for meeting commitments to international air transportation bodies. Under the present postmark due date requirements, the use of postage meters by many carriers has made it impossible to attribute the causes of delays for reports to either the U.S. Postal Service or the carriers. Thus, enforcement of timely reporting has been significantly hampered. The prescription of

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[1] Docket 24533, 37 F.R. 11685.

[2] These are 13 of the 49 carriers who would be affected by the proposed rule.

[3] North Central observes that carriers with headquarters in or near Washington, D.C., require shorter mailing times than other carriers.

specific due dates for receipt of reports would provide the soundest basis for enforcement of the reporting requirements.

Enforcement of timely reporting alone, however, would not completely eliminate the irregularity in receipt of reports by the Board. The contention that carriers cannot guarantee the timeliness of delivery by the U.S. Postal Service is partly what necessitates this amendment. Too often, the Form 41 information disseminated by the Board, for which there is considerable demand, has been delayed by the irregular receipt of carrier reports. Carrier group and industry summaries of information cannot be computed until essentially all data is received by the Board. Thus, a few late reporting carriers can cause considerable delays in scheduling staff activities and the eventual release of data compilations by the Board on a regular basis.

As stated in the notice of proposed rule making, the Board is aware that the time available for the preparation and mailing of the reports will be reduced by a few days. However, it should be noted that this regulation does not purport to, and is not intended to, restrict carriers to a specific means of delivery, such as the U.S. Postal Service. It should also be pointed out that this regulation does not represent a novel approach to the problem of on-time reporting. For example, the due dates for filing Form 41 statistical schedules are already determined by the date of receipt, and it has long been our practice to require that documents presented in proceedings before the Board be actually received on the date set for their filing, without regard to the mode of delivery.[4]

A number of carriers object to the portion of the proposed rule which would require that requests for extensions of time be received by the Board no later than 10 days prior to the due dates of the schedules in question, except in cases of emergency. It is urged that many circumstances which may necessitate such a request do not become manifest as early as 10 days in advance. Upon further consideration, we have determined to modify the proposed rule so as to require that extension requests be received by the Board, in writing, no later than 3 days prior to the due date, except in cases of emergency. This will provide the Board with sufficient time to give each request appropriate consideration while allowing for the submission of requests necessitated by difficulties which occur in close proximity to the due dates.[5]

[4] It has been the Board's experience that Form 41 statistical schedules, for which the due dates turn upon the date of receipt, are filed on a much more timely basis than the financial schedules for which the due dates turn upon the postmark date.

[5] Several carriers disagree with our statement in EDR-227 that employee illness does not necessarily constitute an emergency. Upon consideration, we have determined to adhere to the view that occasional employee illness is statistically foreseeable and as such can be provided for in a going concern.

Finally, Ozark requests clarification of the phrase, "timeliness of filing," and raises the question of whether carriers will be subject to penalty if for some reason the Board does not receive schedules on or before the due date. Pursuant to this regulation, the Board will henceforth regard as timely filings the receipt of Form 41 schedules on or before their due dates. Unless extension has been granted by the Director, Bureau of Accounts and Statistics, schedules received subsequent thereto will be regarded as delinquent. Delinquencies will be noted according to their frequency and degree, and will be referred to the Board's Bureau of Enforcement for appropriate action.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 241 of the Economic Regulations (14 CFR Part 241), effective November 25, 1972, as follows:

1. Amend section 22—General Reporting Instructions, as follows:

A. Revise the text of paragraph (a) to read as follows:

(a) Four copies of each schedule in the CAB Form 41 report shall be filed with the Civil Aeronautics Board and shall be received on or before the due date indicated for each such schedule in the list titled "Due Dates of Schedules in CAB Form 41 Report."

B. Revise the existing list of schedules in paragraph (a) by adding a title and deleting the column "Postmark interval (days)," the list as amended to read as follows:

LIST OF SCHEDULES IN CAB FORM 41 REPORT

Schedule No.	Schedule title	Filing frequency
• • •	• • •	• • •

C. Add a new list to paragraph (a) to read as follows:

DUE DATES OF SCHEDULES IN CAB FORM 41 REPORT

Due date[1]	*Schedule No.*
Jan. 30	B-1, P-1(a), T-1, T-2, T-3, T-7, T-41.
Feb. 10[2]	A, B-2, B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-12, P-2, P-2(a), P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.1, P-9.2, P-10, T-6, D-1.
Feb. 20[2]	Memorandum subclassifications of selected reported expenses and ground property investment.
Mar. 1	B-1, P-1(a), T-1, T-7.
Mar. 30	B-1, B-9, B-41, B-42, B-43, B-44, B-46, P-1(a), P-41, G-41, G-42, G-43, G-44, T-1, T-7.
Apr. 30	B-1, P-1(a), T-1, T-2, T-3, T-7.
May 10	A, B-2, B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a) P-6, P-7, P-8, P-9.1, P-9.2, P-10, T-6, D-1.
May 20	Memorandum subclassifications of selected reported expenses and ground property investment.
May 30	B-1, P-1(a), T-1, T-7.
June 30	B-1, P-1(a), T-1, T-7.
July 30	B-1, P-1(a), T-1, T-2, T-3, T-7.
Aug. 10	A, A-1, B-2, B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.1, P-9.2, P-10, T-6, D-1.
Aug. 20	Memorandum subclassifications of selected reported expenses and ground property investment.
Aug. 30	B-1, P-1(a), T-1, T-7.
Sept. 30	B-1, P-1(a), T-1, T-2, T-3, T-7.
Oct. 30	B-1, P-1(a), T-1, T-7, T-41.
Nov. 10	A, B-2, B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.1, P-9.2, P-10, T-6, D-1.
Nov. 20	Memorandum subclassifications of selected reported expenses and ground property investment.
Nov. 30	B-1, P-1(a), T-1, T-7.
Dec. 30	B-1, P-1(a), T-1, T-7.

[1] Due dates falling on a Saturday, Sunday, or national holiday will become effective the first following working day.

[2] B, P, and memorandum subclassification reporting dates are extended to Mar. 30, if preliminary schedules are filed at the Board by Feb. 10.

D. Revise paragraph (b) to read as follows:

(b) Each air carrier shall file the schedules of the CAB Form 41 reports with the Civil Aeronautics Board in accordance with the above instructions, except that the time for filing B and P report schedules for the final quarter of each calendar year may be extended to the following March 30, provided that preliminary schedules B-1, P-1.1, or P-1.2, P-3, and P-3(a) are submitted and are received on or before their respective due dates. At the request of an air carrier, and upon a showing by such air carrier that public disclosure of its preliminary yearend report would adversely affect its interests and would not be in the public interest, the Board will withhold such preliminary yearend report from public disclosure until such time as (1) the final report is filed, (2) the final report is due, or (3) information covered by the preliminary report is publicly released by the carrier concerned, whichever first occurs.

E. Revise paragraph (c) to read as follows:

(c) If circumstances prevent the filing of a report on or before the prescribed due date, consideration will be given to the granting of an extension upon receipt of a written request therefor. To provide ample time for consideration and communication to the air carrier of the action taken, such a request must be delivered to the Board in

writing at least three (3) days in advance of the due date, setting forth good and sufficient reason to justify the granting of the extension and the date when the report can be filed. Except in cases of emergency, no such request will be entertained which is not in writing and received by the Civil Aeronautics Board at least three (3) days before the prescribed due date. If a request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

2. Amend section 32—General Reporting Instructions, as follows:

A. Revise the text of paragraph (a) to read as follows:

(a) Four copies of each schedule in the CAB Form 41 report shall be filed with the Civil Aeronautics Board and shall be received on or before the due date indicated for each such schedule in the following list titled "Due Dates of Schedules in CAB Form 41 Report."

B. Revise the existing list of schedules in paragraph (a) by adding a title and deleting the column "Postmark interval (days)," the list as amended to read as follows:

LIST OF SCHEDULES IN CAB FORM 41 REPORT

Schedule No.	Schedule title	Filing frequency
• • •	• • •	• • •

C. Add a new list to paragraph (a) to read as follows:

DUE DATES OF SCHEDULES IN CAB FORM 41 REPORT

Due date [1]	*Schedule No.*
Jan. 30	B–11, T–3.1.
Feb. 10 [2]	A, B–1, B–2.1, B–7, B–8, B–10, B–12, B–13, B–14, P–1.1, P–1.2, P–2, P–3.1, P–4, P–5.1, P–5.2, P–5(a), P–6, P–7, T–6.
Mar. 1	B–11, T–3.1.
Mar. 30	B–11, B–41, B–43, B–44, B–46, G–41, G–42, G–43, G–44, T–3.1.
Apr. 30	B–11, T–3.1.
May 10	A, B–1, B–2.1, B–7, B–8, B–10, B–12, B–13, B–14, P–1.1, P–1.2, P–2, P–3.1, P–4, P–5.1, P–5.2, P–5(a), P–6, P–7, T–6.
May 30	B–11, T–3.1.
June 30	B–11, T–3.1.
July 30	B–11, T–3.1.
Aug. 10	A, A–1, B–1, B–2.1, B–7, B–8, B–10, B–12, B–13, B–14, P–1.1, P–1.2, P–2, P–3.1, P–4, P–5.1, P–5.2, P–5(a), P–6, P–7, T–6.
Aug. 30	B–11, T–3.1.
Sept. 30	B–11, T–3.1.
Oct. 30	B–11, T–3.1.
Nov. 10	A, B–1, B–2.1, B–7, B–8, B–10, B–12, B–13, B–14, P–1.1, P–1.2, P–2, P–3.1, P–4, P–5.1, P–5.2, P–5(a), P–6, P–7, T–6.
Nov. 30	B–11, T–3.1.
Dec. 30	B–11, T–3.1.

[1] Due dates falling on a Saturday, Sunday, or national holiday will become effective the first following working day.

[2] B and P schedule reporting dates are extended to Mar. 30 if preliminary schedules are filed at the Board by Feb. 10.

D. Revise paragraph (b) to read as follows:

(b) Each supplemental air carrier shall file the schedules of the CAB Form 41 reports with the Civil Aeronautics Board in accordance with the above instructions, except that the time for filing B and P report schedules for the final quarter of each calendar year may be extended to the following March 30, provided that preliminary schedules B–1, P–1.1, or P–1.2, and P–3.1 are submitted and are received on or before their respective due dates. At the request of a supplemental air carrier, and upon a showing by such air carrier that public disclosure of its preliminary yearend report would adversely affect its interests and would not be in the public interest, the Board will withhold such preliminary yearend report from public disclosure until such time as (1) the final report is filed, (2) the final report is due, or (3) information covered by the preliminary report is publicly released by the carrier concerned, whichever first occurs.

E. Revise paragraph (c) to read as follows:

(c) If circumstances prevent the filing of a report on or before the prescribed due date, consideration will be given to the granting of an extension upon receipt of a written request therefor. To provide ample time for consideration and communication to the air carrier of the action taken, such a request must be delivered to the Board in writing at least three (3) days in advance of the due date, setting forth good and sufficient reason to justify the granting of the extension and the date when the report can be filed. Except in cases of emergency, no such request will be entertained which is not in writing and received by the Civil Aeronautics Board at least three (3) days before the prescribed due date. If a request is denied the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(Secs. 204(a), 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72–18269 Filed 10–25–72;8:55 am]

SUBCHAPTER D—SPECIAL REGULATIONS

[Regs. SPR–63; Amdt. 372–3]

PART 372—OVERSEAS MILITARY PERSONNEL CHARTERS

Modification of Surety Bond Requirements

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of October 1972.

In a notice of proposed rule making, SPDR–26,[1] the Board proposed to amend Parts 373 (Study Group Charters by Direct Air Carriers and Study Group Charterers), 378 (Inclusive Tours by Supplemental Air Carriers, Certain Foreign Air Carriers, and Tour Operators) and 378a (Bulk Inclusive Tours by Tour Operators) with respect to the surety bond provisions of the respective parts and certain miscellaneous amendments therein. When the Board promulgated the overseas military personnel charter rule (SPR–54 adopted May 18, 1972, 37 F.R. 11159), the related proposed amendments in SPDR–26 were still pending. In making final the military charter rule the Board stated that the standards for acceptable surety companies with regard to military charters should be consistent with those in the other parts of the Board's regulations at that time. Accordingly, the Board determined not to adopt the proposed new standard (which was proposed in the military charter rule as well as in SPDR–26, supra) at that time for the purpose of the military charter proceeding, but rather to defer the question to the more general rule making proceeding in SPDR–26. Thus, the Board stated, pending final action on SPDR–26, the standard for an acceptable surety company under the new Part 372 was that which was presently contained in Parts 373, 378, and 378a. The Board further indicated that, by the same token, such standards as the Board might ultimately adopt in SPDR–26 for Parts 373, 378, and 378a, would at the same time be adopted for Part 372, by parallel amendment, so as to maintain consistency among all the charter rules on this question.

Contemporaneously with our taking final action on the proposed amendments in SPDR–26, we shall amend the overseas military charter rule so as to make uniform the surety company qualification provision and related surety bond provisions in Parts 372, 373, and 378 to the extent that these are involved in the SPDR–26 rule making proceeding. In other words, proposed amendments in SPDR–26, which are being made final contemporaneously herewith, will be incorporated into the military charter rule to the extent that the military charter rule and Parts 373 and 378 contain parallel provisions.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 372 of its special regulations (14 CFR Part 372), effective November 25, 1972, as follows:

1. Amend paragraphs (c) and (d) of § 372.24 to read as follows:

§ 372.24 Surety bond, depository agreement, escrow agreement.

• • • • •

(c) Any bond furnished under this section shall insure the financial responsibility of the charter operator and the supplying of the air transportation in accordance with the contract between the charter operator and the charter participants, and shall be in the form set forth as Appendix B attached to Part 372. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in

[1] Issued Oct. 26, 1971, Docket 23940 (36 F.R. 20895).

Best's Insurance Reports (fire and casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the charter originates or in which the charter operator is incorporated. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Board may identify the bond with the specific charter or charters to which it relates: *Provided, however,* That these data may be set forth in an addendum attached to the bond which addendum must be signed by the charter operator and the surety company. It shall be effective on or before the date the operating authorization becomes effective. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier and the charter operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject charters shall in no event be operated.

(d) Any bond furnished under this section shall provide that unless the charter participant files a claim with the charter operator, or, if he is unavailable, with the surety, within sixty (60) days after termination of the charter, the surety shall be released from all liability under the bond to such charter participant. The contract between the charter operator and the charter participants shall contain notice of this provision.

2. Amend Appendix B to read in part as follows:

APPENDIX B

CHARTER OPERATOR'S SURETY BOND UNDER PART 372 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD

* * * * *

The liability of the Surety shall not be discharged * * *

The bond shall cover the following charters: [2]

Surety company's bond No.	Date of flight departure	Place of flight departure

This bond is effective the __ day of _____, 19__, 12:01 a.m., standard time at the address of the principal as stated herein and shall continue in force until terminated as hereinafter provided. The principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of any of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation made by the principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements for the supplying of transportation made by the principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a charter participant who shall within sixty (60) days after the date scheduled for the furnishing of transportation, give written notice of claim to the charter operator or, if he is unavailable, to the surety, and all liability on this bond shall automatically terminate sixty (60) days after the date scheduled for the furnishing of transportation except for claims filed within the time provided herein.

* * * * *

(Secs. 101(3), 204(a), 401, 407, and 416(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, as amended, 743, 754, as amended, 766, as amended, and 771; 49 U.S.C. 1301, 1324, 1371, 1377, and 1386)

By the Civil Aeronautics Board.

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

[FR Doc.72-18268 Filed 10-25-72;8:55 am]

[2] These data may be supplied in an addendum attached to the bond. See § 372.24(c).

[Reg. SPR-64; Amdt. 373-4]

PART 373—STUDY GROUP CHARTERS BY DIRECT AIR CARRIERS AND STUDY GROUP CHARTERERS

Modification of Surety Bond Requirements

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of October 1972.

In a notice of proposed rule making, SPDR-26,[1] the Board proposed to amend Parts 373, 378 (Inclusive Tours by Supplemental Air Carriers, Certain Foreign Air Carriers, and Tour Operators), and 378a (Bulk Inclusive Tours by Tour Operators) with respect to the surety bond provisions of the respective parts and certain miscellaneous amendments therein. For the reasons set forth in SPR-26C, issued contemporaneously herewith, the Board has adopted the amendments proposed in SPDR-26, with modifications.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 373 of its Special Regulations (14 CFR Part 373), effective November 25, 1972, as follows:

1. Amend § 373.10 to read in part as follows:

§ 373.10 Study group statement.

* * * * *

(c) The statement shall be filed in duplicate and shall include two copies of each of the following: The charter contract, the contract between the study group charterer and the student participants, an original and one copy of the study group charterer's surety bond (and an additional copy of the surety bond shall be furnished the chartering direct air carrier), and where applicable, two copies of the depository agreement with a bank as provided in § 373.15(b)(2). It shall also contain the following information:

(1) The name and * * *

* * * * *

2. Amend § 373.15 (c) and (d) to read as follows:

§ 373.15 Surety bond.

* * * * *

(c) The bond required under paragraphs (a) and (b) of this section shall insure the financial responsibility of the study group charterer and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the study group charterer and the student participants, and shall be in the form set forth as Appendix A attached to Part 373.[2] Such bond shall be issued by a bonding or surety company: (1) Whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the study group charter originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Board may identify the bond with the specific charter or charters to which it relates: *Provided, however,* That these data may be set forth in an addendum attached to the bond which addendum must be signed by the study group charterer and the surety company. It shall be effective on or before the date the study group statement is filed with the Board. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier and the study group charterer by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject study group charter or study group charters shall in no event be operated.

(d) The bond required by this section shall provide that unless the student participant files a claim with the study group charterer, or, if he is unavailable, with the surety, within sixty (60) days after termination of the study group charter, the surety shall be released from all liability under the bond to such student participant. The contract between the study group charterer and the student participant shall contain notice of this provision: *Provided, however,* That this section shall not apply to study group charters conducted by an "educational institution" as defined herein (§ 373.2).

[1] Issued October 26, 1971, Docket 23940 (36 F.R. 20895).

[2] Filed as part of original issuance (SPR-46).

3. Amend § 373.18 to read in part as follows:

§ 373.18 Contract between the study group charterer and the student participants.

Contracts between study group charterers and student participants shall include provisions specifically stating:

* * * * *

(b–1) The right to refunds in the event of the study group charter's cancellation and the procedure for obtaining such refunds;

(c) The right to refunds in the event of the participant's change of plans and the procedure for obtaining such refunds;

(d) The dollar amounts of the carriers' liability limitations for participants' baggage, as set forth in the carriers' tariffs;

* * * * *

(f) That the study group charterer is the principal and is responsible to the participants in making the arrangements for all charter services and accommodations offered as constituting the charter: *Provided, however,* That this requirement shall not preclude the study group charterer from expressly providing in such contract that, in the absence of negligence in the part of the study group charterer, he is not responsible for personal injury or property damage arising out of the act or negligence of any direct air carrier, hotel, or other person rendering any of the services or accommodations being offered in such charter;

(g) The right to refunds in the event of change in itinerary or curriculum and the procedure for obtaining such refunds;

(h) That unless the student participant files a claim with the study group charterer, or, if he is unavailable, with the surety, within sixty (60) days after the termination of the charter, the surety shall be released from all liability under the bond to such student participant. (See § 373.15(d).);

(i) The name and address of the surety company issuing the surety bond;

(j) That, when the combined surety bond depository agreement, as provided in § 373.15(b) is used in connection with the charter program, all checks and money orders must be made payable to the escrow account at the depository bank (identify bank). Such a statement must be placed in all solicitation material, reservation coupons, etc.

4. Amend § 373.20 to read as follows:

§ 373.20 Postcharter report.

Within 30 days after the termination of the study group charter or series of study group charters, the direct air carrier and study group charterer shall file with the Board (Supplementary Services Division, Bureau of Operating Rights) a postcharter report. The postcharter report shall indicate whether or not the study group chart as authorized hereunder was, in fact, performed. To the extent that the operations differed from those described in the statement filed under § 373.10, such differences shall be fully detailed including the reasons therefor. However, the making of such explanation shall not operate as authority for or excuse any such deviation: *Provided, however,* That this section shall not apply to study group charters conducted by an "educational institution" as defined herein (§ 373.2). The report shall be in the form attached hereto as Appendix B.

5. Designate the appendix to Part 373 as Appendix A and amend it as follows:

APPENDIX A

STUDY GROUP CHARTERER'S SURETY BOND UNDER PART 373 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD

* * * * *

The liability of the Surety shall not be discharged * * *

The bond shall cover the following charters: [3]

Surety company's bond no.	Place of flight departure	Date of flight departure

This bond is effective the ------ day of ----------, 19--, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of any of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements for the supplying of transportation and other services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a student participant or student participants who shall within sixty (60) days after the termination of the particular study group charter described herein give written notice of claim to the study group charterer or, if he is unavailable, to the Surety and all liability on this bond shall automaticaly terminate sixty (60) days after the termination date of the particular study group charter covered by this bond shall automatically terminate sixty time provided herein.

* * * * *

6. Add Appendix B, Post-Charter Report, to read as follows:

APPENDIX B

POST-CHARTER REPORT

SGC No. -------

1. No. of charters operated -------.

2. No. of charters not operated -------.

3. Specifically identify those charters not operated.

4. Reason(s) charter(s) not operated.

5. If charter(s) not operated, did prospective student participants receive full refunds?

6. Whether charter(s) actually performed were operated substantially different (e.g., dates, points served, charter price, etc.) from their description in the Study Group Statement and, if so, the reasons therefor.

7. Total number of student participants carried on charter(s) -------.

Signature of direct air carrier

Signature of study group charterer

(Secs. 101(3), 101(33), 204(a), 401, 402, 407, 416(a), Federal Aviation Act of 1958, as amended, 72 Stat. 737 [as amended by 75 Stat. 467, 76 Stat. 143, 82 Stat. 867, 84 Stat. 921], 743, 754, 757, 766, 771; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386)

NOTE: The reporting requirements herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

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

[FR Doc.72-18270 Filed 10-25-72;8:55 am]

[3] These data may be provided in an addendum attached to the bond. See § 373.15(c), supra.

[Reg. SPR-62; Amdt. 378-5]

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS, CERTAIN FOREIGN AIR CARRIERS, AND TOUR OPERATORS

Modification of Surety Bond Requirements

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of October 1972.

In a notice of proposed rule making, SPDR-26,[1] the Board proposed to amend Parts 373 (Study Group Charters by Direct Air Carriers and Study Group Charterers), 378 and 378a (Bulk Inclusive Tours by Tour Operators)[2] with respect to the surety bond provisions of the respective parts and certain miscellaneous amendments therein. Pursuant to the notice, comments were filed by certain supplemental carriers,[3] the U.S. Government Small Business Administration, and the following tour operators or study group charterers: American Express Company (Amexco); American Institute for Foreign Study, Inc. (AIFS); Foreign Study League (FSL); and Royal Caribbean Tours, Inc. (Royal Tours). These comments in general support the proposed rule but suggest certain modi-

[1] Issued October 26, 1971, Docket 23940 (36 F.R. 20895).

[2] The exemption granted in Part 378a expired by its terms on April 1, 1972. Therefore, the amendments proposed in SPDR-26, supra, insofar as they pertain to Part 378a, are moot. Also, the references in present § 378.2(b)(4) to bulk inclusive tour fares have been deleted.

[3] Capitol International Airways, Inc.; Overseas National Airways, Inc.; Saturn Airways, Inc.; Trans International Airlines, Inc.; Universal Airlines, Inc.; and World Airways, Inc. (NACA carriers).

fications which will be discussed subsequently.

Upon consideration of the comments, the Board has determined, for the reasons set forth herein, to adopt the rule as proposed, with the following principal modifications: (1) With respect to the standards for an acceptable surety company, we shall require that the company's surety bonds be accepted by the Interstate Commerce Commission or that the company is listed in Best's Insurance Reports with a general policyholders' rating of "A" or better, instead of requiring both standards as proposed; (2) we shall permit the identification of the tour or tours to which the bond applies to be set forth in an addendum attached to the bond rather than on the bond itself, as proposed; (3) the contract between the tour operator and tour participant shall refer to the availability of trip health and accident insurance, rather than describing the details of such insurance, as proposed; (4) the contract between the tour operator and tour participant need not set forth the dollar amount of the bond; (5) the proposed "responsibility clause" in the tour operator-tour participant contract has been modified to permit the tour operator to aver his nonresponsibility for personal injury or property damage arising out of the act or negligence of any airline, hotel or other person rendering any of the services or accommodations being offered, as suggested in several comments; (6) air fare computations in Part 378 may be based on fares of foreign scheduled route carriers, provided that such fares are contained in tariffs on file with the Board; and (7) with respect to proposed air/sea cruise tours (proposed § 378.2(b)(2)), we shall modify the standard from that set forth in SPDR-26, supra, necessitating a new rule making proceeding which is being instituted contemporaneously herewith.[4]

Except as modified herein the tentative findings set forth in the Explanatory Statement of SPDR-26 are incorporated by reference and made final.

1. *Standards for an acceptable surety company.* The principal contention in the comments concerns the appropriate standard for an acceptable surety company. The present rule (§378.16(c)) requires that the surety bonds for inclusive tour charters be issued by a "reputable and financially responsible bonding or surety company * * *;" and that a bonding or surety company is "prima facie" qualified to issue surety bonds if the company's surety bonds are accepted by the Interstate Commerce Commission (ICC) and if the company is listed in Best's Insurance Reports with a policyholders' rating of "A" or better. The proposed rule would impose the following single objective standard for eligibility of a surety company to issue bonds under the rule: that the company's surety bonds are accepted by the ICC and that the company is listed in Best's Insurance Reports with a general policyholders' rating of "A" or better.

AIFS and the NACA carriers object to the proposed standard on legal and policy grounds. They assert, inter alia, that the Board is legally bound to accept bonds issued by companies holding Certificates of Authority from the Department of the Treasury under 6 U.S.C. 8 as implemented in 31 CFR 223. It is also asserted that the Board's proposed standard is unlawful for the reason that the Board would be abdicating its discretion in passing upon the qualification of a surety company to issue bonds acceptable under the rule by permitting such qualification to be determined by a private company, namely, Best's.

As indicated, we shall modify the proposed rule by providing for an alternate objective standard. One standard will be ICC acceptance of a surety company's bonds. However, in the event that the particular surety company has not sought ICC acceptance, the bonding company will be acceptable if its rating by Best's is "A" or better.

Contrary to the assertions in some of the comments, the Board is not legally bound to accept bonds issued by companies holding Certificates of Authority from the Department of the Treasury. The Treasury list of acceptable sureties was originally developed in 1895 to prescribe surety companies eligible to issue bonds required by certain federal officials. The current importance of the list lies in its use for announcing acceptable sureties for issuing building construction bonds, bail bonds, etc. Thus, the Treasury regulations are in terms, applicable only to "surety companies doing business with the United States." [4a] Accordingly, whatever may be the requirements where the U.S. Government is the obligee and the direct beneficiary of the bond, the Treasury list is not mandatory in the case of a bond required to be obtained to protect the public.[5]

As indicated above, the Treasury Department is primarily concerned with bail bonds, or building construction bonds where the U.S. Government is the sole beneficiary, whereas the ICC, on the other hand, which makes a thorough investigation of each of these surety companies, is concerned solely with assuring the financial responsibility of common carriers. For this reason its requirements are in fact more stringent than those of the Treasury Department.[6]

We also reject the contention that the alternative test of an "A" or better rating by Best's is an unlawful abdication of the Board's authority to determine the qualification of surety companies for Part 378 bond purposes. In the first place, the standard of an "A" rating by Best's is not the sole standard in the rule but merely an alternative one. Moreover, Best's is a generally recognized authority on insurance company qualifications and its ratings have wide acceptance. For example, the Department of Defense in prescribing qualifications for participation in the DOD Personal Property Movement and Storage program, requires that cargo insurance be underwritten by a company with a policyholders' rating of "A" or better in "Best's Insurance Guide." See C3, DOD 4500.34-R dated February 1972, pp. A-4, A-21.

2. *Language of surety bond.* The rule as proposed required that surety bonds be specifically identified by the issuing surety with a company bond numbering system and that the dates of flight departures be set forth on the face of the bond. The NACA carriers, FSL, AIFS, and Royal Tours suggest that the flights covered by the bond be identified in a separate attachment to the bond, rather than on the face thereof, thus avoiding the necessity of issuing a new bond each time a flight departure date is modified. We shall adopt this suggestion provided that the attachment to the bond is signed by the tour operator and the surety company. See § 378.16(c), infra.

3. *Effective date of the bond.* The proposed rule required that the bond be effective on or before the date the tour prospectus is filed with the Board. This is the practice currently required by the Board's staff.[7] Royal Tour, opposing this requirement, points out that a tour operator with a 1-year series of tours (which is permitted under the existing rule) would have to pay bond premiums for 2 years in order to meet the requirement that the bond be in effect when the tour prospectus is filed which is normally about 6 months before the initial flight departure. While this may be so, the tour participants' moneys must be fully protected during the entire period that tours are sold. Accordingly, the proposal will be made final.

4. *Contract between tour operator and tour participant.* a. The proposed rule calls for the contract to set forth the procedure for obtaining trip health and accident insurance and its cost to the individual tour participant. Royal Tours and the NACA carriers ask that the rule require only a notice alerting participants to the availability of trip health and accident insurance and that they should contact the tour operator for further details. We shall make this modification. See § 378.17(a-1), infra.

b. The proposed rule required a provision dealing with the participant's right to a refund under certain circumstances.[8]

[4] SPDR-26 C, dated October 10, 1972.

[4a] 31 CFR Part 223.

[5] Such is the case with surety bonds required by the ICC to be procured by motor carriers and freight forwarders for coverage on property and cargo damage and bodily injury liability. In these instances, the ICC does not accept sureties merely because they qualify on the U.S. Treasury Department's list, but refuses to accept any bond issued by a company not meeting the ICC's criteria. See 49 CFR 1043.9 for motor carriers and 49 CFR 1084.9 for freight forwarders.

[6] We understand that the ICC refuses to consider a surety company as acceptable unless it has a minimum surplus in excess of $1 million. In addition, the ICC scrutinizes the company's reinsurance treaties, the managerial competence of corporate officers (through formal conferences), and the company's general business policies and overall philosophy.

[7] The present rule is ambiguous as to when the bond is required to become effective.

[8] In the event of a participant's change of plans or the tour operator's change in itinerary.

A number of the comments requested that the Board make clear that it was not attempting to dictate the carrier's refund policy. We had no such intent in proposing this requirement. Rather, the refund provision on the contract only requires the tour operator to set forth the rules under which refunds will or will not be granted.

c. The rule as proposed would require a "responsibility clause," *i.e.*, that the tour operator is the principal and is responsible to the participants in making the arrangements for all tour services and accommodations offered as constituting the tour. The NACA carriers, Royal Tours, and Amexco, request a modification permitting the tour operator to state that he is not responsible for personal injury or property damage arising out of the act or negligence of any airline, hotel, or other person rendering any of the services or accommodations being offered. We shall make this requested clarification.[8a] See § 378.17(h), infra.

d. The proposed rule required a provision in the contract setting forth the dollar amount of the bond. The NACA carriers, FSL and Royal Tours, object to this because (1) it would mislead participants as to the actual protection available to them; (2) it might give rise to fraudulent and inflated claims; (3) it could lead to unmeritorious claims for alleged damages due to delays, baggage loss, etc., in the mistaken belief that the bond was intended to cover such occurrences; (4) it could lead to mechanical difficulties if the amount of the bond were increased to cover additional groups under a prospectus already on file whereas the contract between the tour operator and tour participant as set forth in the solicitation material would provide for a bond in the lesser amount. In light of the foregoing, we shall make the requested modification.

5. *Air fare computations in Part 378.* The proposed rule required that the prospectus indicate the individually ticketed fare, and the computation as provided in § 378.2(b)(4), and specify each fare used in such computation and each applicable tariff reference. The NACA carriers, objecting to this requirement, suggest that certain unofficial "memorandum tariffs" be permitted to be used. We shall not make the requested change. The regulation is clear that the fares used in the air fare computation must be contained in tariffs on file with the Board. It has been our experience that "memorandum tariffs" frequently contain fares which are not in tariffs on file with the Board. Accordingly, their use will not be permitted under the rule.

The NACA carriers also suggest that § 378.2(b)(4) be amended to allow the use of foreign air carrier fares in the air fare computation. They assert that requiring use of a U.S. air carrier's fare creates problems when a particular routing or fare is available only on a foreign air carrier. In such cases the foreign air carrier would have a monopoly unless a waiver is granted to a tour operator. We see merit in this contention; we shall therefore amend this provision to allow fares of U.S. certificated route carriers and/or foreign scheduled route carriers to be used as base fares for the purpose of inclusive tour charter fare computation. See § 378.2(b)(4), infra.

6. *Air/sea cruise tours.* SPDR–26, supra, proposed to amend Part 378 to grant blanket authorization for air/sea cruise ITC's under conditions specified therein. As set forth in SPDR–26C, issued contemporaneously herewith, the NACA carriers suggested a substitute rule which the Board believes is worthy of consideration but which requires a supplemental notice of rule making. Accordingly, we are withdrawing the proposal for air/sea cruise ITC's in SPDR–26 and substituting a new proposal as set forth in SPDR–26C, supra.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 378 of its special regulations (14 CFR Part 378), effective November 25, 1972, as follows:

1. Amend § 378.2(b)(4) to read as follows:

§ 378.2 Definitions.

* * * * *

(b) * * *

(4) The charge to the passengers for the tour, as set forth in the tour prospectus, shall be not less than 110 percent of any available fare or fares, embodied in a tariff on file with the Board, charged by a route carrier, or combination of such carriers (including charge for stopovers) for individually ticketed service on the circle route beginning at the point of origin, to the various points where stopovers are made, and return to the point of origin: *Provided*, That the tour shall be subject to the terms and conditions which are applicable to such fare or fares, as set forth in the tariff of the route carrier or carriers. For purposes of this provision, (i) the term "route carrier" shall mean a certificated route air carrier or foreign route air carrier authorized under section 401 or 402 of the Federal Aviation Act of 1958, as amended, respectively, to transport persons; and (ii) the term "available fare" includes promotional or discount fares, such as family fares, children's fares, excursion fares, fares applicable to special classes of persons, group fares, etc. Where similar promotional or discount fares are offered on both jet and propeller aircraft, the available fare shall be that charged for jet services. Where no regularly scheduled service is provided between the points involved, the available fare shall be based on the fares to the nearest point served by a route carrier; and

* * * * *

2. Amend § 378.13 to read in part as follows:

§ 378.13 Tour prospectus.

The prospectus shall be filed in duplicate and shall include two copies of the following: The charter contract, the contract between the tour operator or foreign tour operator and tour participants, the tour operator's or foreign tour operator's surety bond (an original bond and a copy thereof), and, where applicable, two copies of the depository agreement with a bank as provided in § 378.16(b)(2). It shall also contain the following information:

(a) Name and address * * *

* * * * *

(h) The individually ticketed air fare, computed as provided in § 378.2(b)(4), specifically identifying each fare used in the computation and each tariff citation.

* * * * *

3. Amend paragraphs (c) and (d) of § 378.16 to read as follows:

§ 378.16 Surety bond.

* * * * *

(c) The bond required under paragraphs (a) and (b) of this section shall insure the financial responsibility of the tour operator or foreign tour operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the tour operator or foreign tour operator and the tour participants, and shall be in the form set forth as Appendix A following § 378.31.[9] Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the tour originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Board may identify the bond with the specific tour or tours to which it relates: *Provided, however*, That these data may be set forth in an addendum attached to the bond which addendum must be signed by the tour operator and the surety company. It shall be effective on or before the date the tour prospectus is filed with the Board. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the supplemental air carrier and the tour operator or foreign tour operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected

[8a] The rule as revised does not permit the tour operator to exculpate himself from responsibility for his negligence in performing services to participants or in the selection of others to provide such services.

[9] Filed as part of reissued document (SPR–40).

within the time set forth in such notification, the subject tour or tours shall in no event be operated.

(d) The bond required by this section shall provide that unless the tour participant files a claim with the tour operator or foreign tour operator, or, if he is unavailable, with the surety, within sixty (60) days after termination of the tour, the surety shall be released from all liability under the bond to such tour participant. The contract between the tour operator or foreign tour operator and the tour participant shall contain notice of this provision.

4. Amend § 378.17 to read in part as follows:

§ 378.17 Contract between tour operators or foreign tour operators and tour participants.

Where each participant in a tour receives the same accommodations, land tours, etc., the contract between the tour operator or foreign tour operator and the tour participants shall be the same. Contracts between tour operators or foreign tour operators and tour participants shall include provisions specifically stating:

* * * * *

(a–1) That trip health and accident insurance is available and that upon request the tour operator will furnish details thereof;

(b) The right to refunds in the event of the tour's cancellation and the procedure for obtaining such refunds;

(b–1) The right to refunds in the event of the participant's change of plans and the procedure for obtaining such refunds;

(b–2) The right to refunds in the event of change in itinerary and the procedure for obtaining such refunds;

(c) The dollar amounts of the carriers' liability limitations for participants' baggage, as set forth in the carriers' tariffs;

* * * * *

(e) The name and address of the surety company issuing the surety bond;

(f) [Reserved]

(g) [Reserved]

(h) That the tour operator is the principal and is responsible to the participants in making the arrangements for all tour services and accommodations offered as constituting the tour: *Provided, however,* That this requirement shall not preclude the tour operator from expressly providing in such contract that, in the absence of negligence on the part of the tour operator, he is not responsible for personal injury or property damage arising out of the act or negligence of any direct air carrier, hotel or other person rendering any of the services or accommodations being offered in such tour;

(i) That unless the tour participant files a claim with the tour operator or foreign tour operator, or, if he is unavailable, with the surety, within sixty (60) days after termination of the tour, the surety shall be released from all liability under the bond to such participant (see § 378.16(d));

(j) That, when the combined surety bond-depository agreement, as provided in § 378.16(b) is used in connection with the tour program, all checks and money orders must be made payable to the escrow account at the depository bank (identify bank) or, where the tour is sold to the participant by a retail travel agent, checks and money orders may be made payable to the agent, who must in turn make his check payable to the escrow account at the depository bank. Such a statement must be placed in all solicitation material, reservation coupons, etc.

5. Amend § 378.20(a) to read as follows:

§ 378.20 Post-tour reporting.

(a) Within 30 days after termination of a tour or series of tours, the supplemental air carrier and tour operator or foreign tour operator shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights) a posttour report: *Provided,* That in the case of a series of tours which exceeds 6 months between commencement of the first tour and departure of the last tour, the supplemental air carrier and tour operator or foreign tour operator shall file a joint interim report within 30 days after the expiration of 6 months from commencement of the first tour, covering tours terminated during such 6 months. The posttour and interim report shall indicate whether or not the tours authorized hereunder were, in fact, performed. To the extent that the operations differed from those described in the prospectus filed under § 378.10, such differences shall be fully detailed including the reasons therefor. However, the making of such an explanation shall not of itself operate as authority for or excuse any such deviation. The report shall be in the form attached hereto as Appendix B.

* * * * *

6. Designate the appendix to Part 378 as Appendix A and amend it as follows:

APPENDIX A

TOUR OPERATOR'S SURETY BOND UNDER PART 378 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD

* * * * *

The liability of the Surety shall not be discharged * * *

The bond shall cover the following tours: [10]

Surety company's bond No.	Date of flight departure	Place of flight departure

This bond is effective the _____ day of _____, 19__, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Prinicipal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of any of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements for the supplying of transportation and other services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a tour participant or tour participants who shall within sixty (60) days after the termination of the particular tour described herein give written notice of claim to the tour operator or, if he is unavailable, to the Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of the particular tour covered by this bond except for claims filed within the time provided herein.

* * * * *

7. Add Appendix B, Post-Tour Report, to read as follows:

APPENDIX B

POST-TOUR REPORT

It No. _____.

1. No. of tours operated _____.
2. No. of tours not operated _____.
3. Specifically identify those tours not operated.
4. Reason(s) tour(s) not operated.
5. If tour(s) not operated, did prospective tour participant receive full refunds?
6. Whether tour(s) actually performed were operated substantially different (e.g., dates, points served, tour price, etc.), from their description in the Tour Prospectus and, if so, the reasons therefor.
7. Total number of tour participants carried on tour(s) _____.

_____
Signature of direct air carrier

_____
Signature of tour operator or foreign tour operator

(Secs. 101(3), 101(33), 204(a), 401, 402, 407, 416(a), Federal Aviation Act of 1958, as amended, 72 Stat. 737 [as amended by 75 Stat. 467, 76 Stat. 143, 82 Stat. 867, 84 Stat. 921], 743, 754, 757, 766, 771; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386)

NOTE: The reporting requirements herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-18267 Filed 10-25-72;8:55 am]

[10] These data may be supplied in an addendum attached to the bond. See § 378.16, supra.

Chapter V—National Aeronautics and Space Administration

PART 1203—NASA SECURITY CLASSIFICATION PROGRAM

This new Part 1203 codifies NASA regulations governing the classification, declassification, and downgrading of national security information and material

under NASA security classification program, and assigns authority and responsibilities for the management and direction of the program. These regulations have been approved by the Interagency Classification Review Committee as required by Executive Order 11652 and the National Security Council Directive issued pursuant thereto, on May 17, 1972.

These regulations are effective as of June 1, 1972.

GEORGE M. LOW,
Deputy Administrator.

Subpart A—Applicability and References

Sec.
1203.100 Applicability.
1203.101 References.

Subpart B—NASA Security Classification Program

1203.200 NASA policy.
1203.201 Security classification objectives.
1203.202 Responsibilities.
1203.203 Degree of protection.

Subpart C—Classification Principles and Considerations

1203.300 General.
1203.301 Reason for classification.
1203.302 Identification of information requiring protection.
1203.303 Combination, interrelation, or compilation.
1203.304 Dissemination considerations.
1203.305 Internal effect.
1203.306 Restricted data.

Subpart D—Classification Guidelines

1203.400 Specific classifying guidelines.
1203.401 Effect of open publication.
1203.402 Classifying material other than documentation.
1203.403 State-of-the-art and intelligence.
1203.404 Handling of unprocessed data.
1203.405 Proprietary information.
1203.406 Additional classification factors.
1203.407 Follow-on actions.
1203.408 Assistance by installation security classification officers.
1203.409 Exceptional cases.

Subpart E—Declassification and Downgrading

1203.500 General.
1203.501 General declassification schedule.
1203.502 Exemptions from general declassification schedule.
1203.503 Mandatory review of exempted material.
1203.504 Previously classified material.
1203.505 Declassification—after 30 years.
1203.506 Restricted data.
1203.507 Request for classification review.
1203.508 Burden of proof.
1203.509 General review requirements.

Subpart F—Delegations of Authority To Make Determinations in Security Classification Matters

1203.600 Delegation.
1203.601 Redelegation.

Subpart G—NASA Security Classification Program

1203.700 Establishment.
1203.701 Responsibilities.
1203.702 Membership.
1203.703 Ad Hoc committees.
1203.704 Meetings.

AUTHORITY: The provisions of this Part 1203 are issued under Executive Order 11652, March 9, 1972 (37 F.R. 5209, March 10, 1972), the National Security Council Directive of May 17, 1972 (37 F.R. 10053, May 19, 1972); and section 304(a), National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2455).

Subpart A—Applicability and References

§ 1203.100 Applicability.

The provisions of this part 1203 are applicable to all NASA installations for purposes of making security classifications, and downgrading and declassifying national security information and material.

§ 1203.101 References.

(a) Executive Order 11652, "Classification and Declassification of National Security Information and Material," dated March 8, 1972.

(b) NASA Handbook, NHB 1640.4B, "NASA Security Classification Program," effective June 1, 1972.

(c) NASA Management Delegation, NMD/A 1640.7A, "Power and Authority—To Make Determinations in Security Classification Matters," effective June 1, 1972.

(d) NASA Management Instruction, NMI 1152.19B, "NASA Security Classification Program Committee," effective June 1, 1972.

(e) NASA Handbook, NHB 1620.3, "NASA Physical Security Handbook."

Subpart B—NASA Security Classification Program

§ 1203.200 NASA policy.

It is NASA policy:

(a) To insure that information is classified and protected only when a sound basis exists for such classification and only for such period as is necessary in the interest of national security; and

(b) To downgrade or declassify information when circumstances necessitate the original classification change or the requirement for such classification no longer exists.

(c) In interpreting and applying the guidance contained in Executive Order 11652, and this part, NASA officials must act in harmony with the work of other agencies in the executive branch of the Government. A positive and continuing obligation exists to insure specifically that any disclosure of information generated by or on behalf of NASA is consonant with the intent of Executive Order 11652.

(d) Certain of NASA's activities may produce scientific, technological, or operational information or material having a direct bearing on national security. Executive Order 11652 establishes a positive responsibility for the timely identification and protection of that NASA information the disclosure of which would be contrary to the best interest of national security. Accordingly, the determination in each case must be based on a judgment as to whether disclosure of the information could reasonably be expected to result in damage to the security interests of the United States.

§ 1203.201 Security classification objectives.

The objectives of the NASA Security Classification Program are to:

(a) Insure that information is classified and protected only when a sound basis exists for such classification and only for such period as is necessary.

(b) Prevent the unwarranted classification and the overclassification of NASA information.

(c) Insure the greatest practicable uniformity within NASA in the classification of information.

(d) Insure effective coordination and reasonable uniformity with other Government departments and agencies, particularly in areas where there is an interchange of information, techniques, or hardware.

(e) Provide an effective means for downgrading or declassifying information when the circumstances necessitating the original classification change or no longer exist.

§ 1203.202 Responsibilities.

(a) The Assistant Administrator for DOD and Interagency Affairs in his capacity as Special Assistant to the Administrator is designated to:

(1) Manage and direct the NASA Security Classification Program in accordance with NASA policies and objectives and applicable laws and regulations, and

(2) Serve as chairman of the NASA Security Classification Program Committee and is responsible for:

(i) Insuring effective compliance with and implementation of Executive Order 11652 and the NSC Directive of May 17, 1972, relating to security classification matters.

(ii) Approving procedures, guidelines, standards, and other documentation necessary for the conduct of the NASA Security Classification Program.

(iii) Reviewing in consultation with the NASA Security Classification Program Committee questions, suggestions, and complaints concerning the NASA Security Classification Program and making determinations concerning them.

(iv) Coordinating NASA security classification matters with NASA installations, the Department of Defense, the Atomic Energy Commission, and other Government agencies.

(v) Issuing Security Classification Guides for NASA programs and projects.

(vi) Reviewing all appeals of requests for records under section 552 of title 5 U.S.C. (Freedom of Information Act) when the proposed denial is based on their continued classification.

(vii) Recommending to the Administrator appropriate administrative action to correct abuse or violations of any provision of this part, including notifications by warning letter, formal reprimand, and to the extent permitted by law, suspension without pay and removal.

(viii) Establishing a data index system in accordance with section VII of the NSC Directive of May 17, 1972.

(b) All NASA officials and employees are responsible for bringing to the attention of the Chairman of the NASA Security Classification Program Committee (see Subpart G of this part) any security classification problems in need

of resolution, any areas of interest wherein security classification guidance is lacking and is needed, and any other matters of substance likely to impede achievement of the objectives prescribed in this part.

(c) Each NASA official to whom the authority for original classification is delegated shall be accountable for the propriety of the classifications attributed to him (see Subpart F of this part) and is responsible for:

(1) Insuring that his classification determinations are consistent with the policy and objectives prescribed above, and with other applicable guidelines.

(2) Bringing to the attention of the Chairman of the NASA Security Classification Program Committee, for resolution, his disagreement with classification determinations made by other NASA officials.

(3) Insuring that information and material under his cognizance which no longer requires its present level of protection in the interest of national security is promptly downgraded or declassified in accordance with applicable guidelines.

(d) Other Officials-in-Charge of Headquarters Offices are responsible for:

(1) Insuring that information or material prepared within their respective offices is marked in a manner consistent with security classification assignments.

(2) Insuring that material proposed for public release, prepared within their offices or referred to their respective offices for review, is reviewed to eliminate classified information.

(e) Directors of Field Installations and, for Headquarters, the Director of Headquarters Administration, are responsible for:

(1) Initiating proposed Security Classification Guides corresponding to the missions and project assignments of their installations.

(2) Insuring that material prepared in their respective installations is marked in a manner consistent with classification assignments.

(3) Insuring that material prepared within the installations for public release is properly reviewed to eliminate classified information.

(4) Designating Security Classification Officers in their respective installations, to whom the responsibilities listed in subparagraphs (1), (2), and (3) of this paragraph may be reassigned.

(f) The Chief, Security Classification Management and Industrial Security Branch, Security Division, NASA Headquarters, who serves as a member and Executive Secretary of the NASA Security Classification Program Committee is the primary point of contact for the coordination of security classification matters.

(g) The Director of Security is responsible for establishing procedures for the safeguarding classified information or material (e.g., accountability, control, access, storage, transmission, marking, etc.). These procedures are contained in NASA Handbook 1620.3.

§ 1203.203 Degree of protection.

(a) *General.* If it is decided that certain information or material must be classified to protect the national security, then the next step is to determine the degree of protection (security classification) against unauthorized disclosure commensurate with the sensitivity of the information. The lowest category of classification necessary to provide the appropriate degree of protection should be assigned. If the classifier has any substantial doubts as to which security classification category is appropriate, or as to whether the material should be classified at all, he should designate the less restrictive treatment.

(b) *Authorized categories of classification.* The three categories of classification, in descending order of importance, as authorized and defined in Executive Order 11652, are "Top Secret," "Secret," and "Confidential." No other restrictive markings are authorized to be placed on NASA documents or materials except as expressly provided by statute or by NASA Issuances.

Subpart C—Classification Principles and Considerations

§ 1203.300 General.

(a) In general, the types of NASA-generated information and material required to be protected in the interest of national security lie in the areas of applied research and technology and operations. Ordinarily, basic scientific research or the results thereof (i.e., the phenomena of nature) will not be classified.

(b) Information and material generated in the NASA program which requires protection in the interest of national security shall be classified in one of the three categories authorized in § 1203.203(b).

(c) Within the provisions of the category definitions, each security classification decision shall be based primarily on a judgment as to the importance or significance of the item of scientific, technical, or operational information or material to national security interests and the damage to those interests if unauthorized disclosure were to occur.

§ 1203.301 Reason for classification.

Having determined that certain information requires protection, the related document or other material is classified either:

(a) Because of the information which may be acquired by study, analysis, observation, or use of it; or

(b) Because of the information it may reveal when associated with other information, including that which the classifier knows has already been made available to the public.

§ 1203.302 Identification of information requiring protection.

Classification determinations must be preceded by an exact identification of each item of information or material which may require security protection in the interest of national security. This process involves identification of that specific information which, if compromised, could reasonably be expected to cause damage to the national security.

§ 1203.303 Combination, interrelation, or compilation.

An interrelationship of individual items, classified or unclassified, within a program or project or in different programs or projects may result in a combined item requiring a higher classification than that of any of the individual items. Compilations of unclassified information are considered unclassified unless some additional significant factor is added in the process of compilation. For example: (a) The way unclassified information is compiled may be classified; (b) the fact that thei nformation is complete for its intended purpose may be classified; or (c) the fact the compilation represents an official evaluation may be classified. In these cases, of course, the compilations are classified.

§ 1203.304 Dissemination considerations.

(a) The degree of intended or anticipated dissemination, use of the information, and whether the end purpose to be served renders effective security control impractical are factors which must be considered. These factors do not necessarily preclude classification, but they do force consideration of the extent to which classification under such circumstances may degrade the classification system by attempting to impose security controls which are impractical to enforce. Determinations significantly dependent upon these factors shall not be made below the level of authority of the official having original classification authority over the particular plan, program, project, or item.

(b) An intended limited dissemination of the item through administrative procedures, were it to remain unclassified, should not be a factor in the judgment as to whether the item requires classification.

§ 1203.305 Internal effect.

The effect of the degree of protection on the progress and cost of the program involved and on other functional activities of NASA should be considered. Impeditive effects and added costs inherent in a security classification must be assessed in light of the detrimental effects on the national security interests which would result from failure to classify.

§ 1203.306 Restricted data.

Information which meets the definition of restricted data or formerly restricted data is so classified when originated, as required by the Atomic Energy Act of 1954, as amended. Specific guidance for the classification of restricted data is provided in "Classification Guides" published by the Atomic Energy Commission.

Subpart D—Classification Guidelines

§ 1203.400 Specific classifying guidelines.

Technological and operational information and material, and in some exceptional cases scientific information, falling within any one or more of the following categories should be classified if its unauthorized disclosure could reasonably be expected to cause a degree of damage to the national security. In cases where it is believed that a contrary course of action would better serve the interests of national security, the matter should be referred to the chairman of the NASA Security Classification Program Committee for a determination. It is not intended that this list be exclusive; classifiers are responsible for initially classifying any other type of information which, in their judgment, requires protection within the classification categories of Executive Order 11652:

(a) Information which provides the United States, in comparison with other nations, with a significant scientific, engineering, technical, operational, intelligence, strategic, or tactical advantage related to national security.

(b) Information the disclosure of which would significantly diminish the technological lead of the United States in any military system, subsystem, or component thereof.

(c) Scientific or technological information in an area where an advanced military application that would in itself be classified is foreseen during exploratory development.

(d) Information the knowledge of which there is sound reason to believe would:

(1) Provide a foreign nation with an insight into the defense application or the war or defense plans or posture of the United States.

(2) Allow a foreign nation to develop, improve, or refine a similar item of defense application;

(3) Provide a foreign nation with a base upon which to develop effective countermeasures;

(4) Weaken or nullify the effectiveness of a defense or military plan, operation, project, or activity which is vital to the national security.

(e) Information or material which is important to the national security of the United States vis-a-vis other nations when there is sound reason to believe that those nations are unaware that the United States has or is capable of obtaining the information or material.

(f) Information the disclosure of which could be exploited in a manner prejudicial to the national security posture of the United States by discrediting its technological power, capability, or intentions.

(g) Information which reveals an unusually significant scientific or technological "breakthrough" which there is sound reason to believe is not known to or within the state-of-the-art capability of other nations, if the "breakthrough" supplies the United States with an important advantage of a technological nature; classification also would be appropriate if the potential application of the information, although not specifically visualized would afford the United States a significant advantage in terms of technological lead time.

(h) Information of such nature that an unfriendly government in possession of it would be expected to use it for purposes prejudicial to U.S. national security and which, if classified, could not be obtained by an unfriendly power without a considerable expenditure of resources.

(i) Information the disclosure of which to a foreign government would enhance its military research and development programs to the detriment of U.S. counterpart or competitive programs.

(j) Operational information pertaining to the command and control of space vehicles the possession of which would facilitate malicious interference with U.S. space missions, that might result in damage to the national security.

(k) Information and material resulting from a classified project undertaken at the specific request of another government agency; such information and material will be given the same security classification as that assigned to the project by the requesting agency.

(l) Information the disclosure of which could jeopardize the foreign relations of the United States; for example, the premature release of information relating to the subject matter of international negotiations, or information regarding the placement or withdrawal of NASA tracking stations on foreign territory.

§ 1203.401 Effect of open publication.

Public disclosure, regardless of source or form, of information currently classified or being considered for classification does not preclude initial or continued classification. However, such disclosure requires an immediate reevaluation to determine whether the information has been compromised to the extent that downgrading or declassification is indicated. Similar considerations must be given to related items of information in all programs, projects, or items incorporating or pertaining to the compromised items of information. In these cases, if a release were made or authorized by an official government source, classification of clearly identified items may no longer be warranted. Questions as to the propriety of continued classification should be referred to the Chairman, NASA Security Classification Program Committee. Official confirmation of compromised information without a formal declassification by a proper authority is a violation of security.

§ 1203.402 Classifying material other than documentation.

Items of equipment or other physical objects may be classified only where classified information may be derived from them by visual observation of internal or external appearance, structure, operation, test, application, or use The overall classification assigned to equipment or other physical objects shall be at least as high as the highest classification of any of the items of information which may be revealed by the equipment or objects, but may be higher if the classifying authority determines that the sum of classified or unclassified information warrants such higher classification. In every instance where classification of an item of equipment or other physical object is determined to be warranted, such determination must be based on a finding that there is at least one aspect of the item or object which requires protection. If mere knowledge of the existence of the item of equipment or physical object would compromise or nullify the reason or justification for its classification, the fact of its existence should be classified.

§ 1203.403 State-of-the-art and intelligence.

A logical approach to classification requires consideration of the extent to which the same or similar information is known or is available to others. It is also important to consider whether it is known publicly, either domestically or internationally, that the United States has the information or even is interested in the subject matter. The known state-of-the-art in other nations is an additional substantive factor requiring consideration.

§ 1203.404 Handling of unprocessed data.

It is the usual practice to withhold the release of raw scientific data received from spacecraft until it can be calibrated, correlated, and properly interpreted by the experimenter under the monitorship of the cognizant NASA office. During this process, the data are withheld through administrative measures, and it is not necessary to resort to security classification to prevent premature release. However, if at any time during the processing of raw data it becomes apparent that the results require protection under the criteria set forth in this Subpart D, it is the responsibility of the cognizant NASA office to apply the appropriate security classification.

§ 1203.405 Proprietary information.

Proprietary information is protected from unauthorized publication by statute. However, proprietary information made available to NASA is subject to examination for classification purposes under the criteria set forth in this subpart. Where the information is in the form of a proposal and accepted by NASA for support, it should be categorized in accordance with the criteria of § 1203.400. If NASA does not support the proposal but believes that security classification would be appropriate under the criteria of § 1203.400 if it were under Government jurisdiction, the contractor should be advised of the reasons why safeguarding would be appropriate, unless security considerations preclude release of the explanation to the contractor. NASA should identify the Government department, agency, or activity whose national security interests might be compromised. The contractor should be instructed to protect the proposal as though classified pending further advisory classification

opinion by the Government activity whose interests are involved. If such a Government activity cannot be identified, the contractor should be advised that the proposal is not under NASA jurisdiction for classification purposes, but that, if the information were NASA information, it would be classified at a stated level.

§ 1203.406 Additional classification factors.

In making the determination as to the appropriate classification category, the following additional factors should be taken into account:

(a) *Practicability.* The feasibility of effectively protecting the information in the environment in which it has been or is to be developed and used should be weighed in determining the degree of protection that will be practicable.

(b) *Uniformity within Government activities.* The effect classification will have on technological programs of other Government departments and agencies should be considered. Classification of official information must be reasonably uniform within the Government.

(c) *Applicability of classification directives of other Government agencies.* It is necessary to determine whether authoritative classification guidance exists elsewhere for the information under consideration which would make it necessary to assign a higher classification than that indicated by the applicable NASA guidance. In general, the classification by NASA should not be higher than that of equivalent information in other departments or agencies of the Government.

§ 1203.407 Follow-on actions.

Upon making the determination to classify, the following actions should be taken as practicable:

(a) *Applicability of predetermined downgrading or declassification.* At the time of classification, select and indicate the earliest dates or events when the classified information may be downgraded or declassified.

(b) *Technological lead time.* In cases where information is classified to maintain a technological lead, indicate the earliest time or event in the program when it may be downgraded or declassified.

(c) *Periodical reviews.* Ensure that the information or material classified will be periodically reviewed for downgrading or declassification.

§ 1203.408 Assistance by installation security classification officers.

Installation security classification officers, as the installation point-of-contact, will assist installation personnel in:

(a) Interpreting security classification guides and classification assignments for his installation.

(b) Answering questions and considering suggestions concerning security classification matters.

(c) Ensuring a continuing review of classified information for the purpose of declassifying or downgrading in accordance with Subpart E of this part.

(d) Reviewing and approving, as the representative of the contracting officer, the DD Form 254, Contract Security Classification Specification, issued to contractors by his installation.

§ 1203.409 Exceptional cases.

In those cases where a person not authorized to classify information originates or develops information which is believed to require classification, he should safeguard that material as though it was classified until it has been evaluated and a decision made by an appropriate classifying authority. For NASA employees the classifying authority is normally the installation security classification officer. Persons other than NASA employees should forward material in which NASA has primary interest to the NASA Security Classifiction Program Committee, Code DHZ, Washington, D.C. 20546.

Subpart E—Declassification and Downgrading

§ 1203.500 General.

To ensure that information is protected for only such period as is necessary, Executive Order 11652 provides for the automatic downgrading and declassification of information according to a general declassification schedule.

§ 1203.501 General declassification schedule.

Unless declassified earlier, the following schedule will be followed:

(a) *Top Secret.* Information or material originally classified "Top Secret" shall become automatically downgraded to "Secret" at the end of the second full calendar year following the year in which it was originated, downgraded to "Confidential" at the end of the fourth full calendar year following the year in which it was originated, and declassified at the end of the 10th full calendar year following the year in which it was originated.

(b) *Secret.* Information or material originally classified "Secret" shall become automatically downgraded to "Confidential" at the end of the second full calendar year following the year in which it was originated, and declassified at the end of the eighth full calendar year following the year in which it was originated.

(c) *Confidential.* Information or material originally classified "Confidential" shall become automatically declassified at the end of the sixth full calendar year following the year in which it was originated.

§ 1203.502 Exemptions from general declassification schedule.

(a) Certain classified information or material may warrant some degree of protection for a period exceeding that provided in the general declassification schedule. Officials authorized to originally classify NASA information or material "Top Secret" (see Subpart F of this part) may exempt from the general declassification schedule any level of classified information or material if it falls within one of the categories described in paragraph (b) of this section. Unless exemption guidance is provided in a security classification guide, issued by the chairman of the Security Classification Program Committee, covering a specific mission or project, all requests for the exemption of classified information from the general declassification schedule shall be directed to the chairman for approval.

(b) The authority for an exemption shall be specified in writing on the material, the exemption category being claimed, and unless impossible, a date or event for automatic declassification. The use of the exemption authority shall be kept to the absolute minimum consistent with national security requirements and shall be restricted to the following categories:

(1) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence.

(2) Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods.

(3) Classified information or material disclosing a system, plan, installation, project, or specific foreign relations matter the continuing protection of which is essential to the national security.

(4) Classified information or material the disclosure of which would place a person in immediate jeopardy.

§ 1203.503 Mandatory review of exempted material.

(a) All classified information and material originated by NASA after June 1, 1972, which is exempted from the General Declassification Schedule shall be subject to a classification review at any time after the expiration of 10 years from the date of origin provided:

(1) A Department or member of the public requests a review;

(2) The request describes the record with sufficient particularity to enable NASA to identify it; and

(3) The record can be obtained with only a reasonable amount of effort.

(b) Information or material which no longer qualifies for exemption shall be declassified. Information or material continuing to qualify for exemption shall be so marked and, unless impossible, a date for automatic declassification shall be set.

§ 1203.504 Previously classified material.

Information or material classified before June 1, 1972, and which is assigned to Group 4 under Executive Order 10501, as amended by Executive Order 10964, shall be subject to the General Declassification Schedule. All other information or material classified before June 1, 1972, whether or not assigned to Groups 1, 2,

or 3 of Executive Order 10501, as amended, shall be excluded from the General Declassification Schedule. However, at any time after the expiration of 10 years from the date of origin it shall be subject to a mandatory classification review and disposition under the same conditions and criteria that apply to classified information and material created after June 1, 1972, as set forth in §§ 1203.502 and 1203.503.

§ 1203.505 Declassification—after 30 years.

All classified information or material which is 30 years old or more, whether originating before or after June 1, 1972, shall be declassified under the following conditions:

(a) All information and material classified after June 1, 1972, shall, whether or not declassification has been requested, become automatically declassified at the end of 30 full calendar years after the date of its original classification except for such specifically indentified information or material which the Administrator personally determines in writing at that time to require continued protection because such continued protection is essential to the national security or disclosure would place a person in immediate jeopardy. In such case, the Administrator shall also specify the period of continued classification.

(b) All information and material classified before June 1, 1972, and more than 30 years old shall be systematically reviewed for declassification by the Archivist of the United States by the end of the 30th full calendar year following the year in which it was originated. In his review, the Archivist will separate and keep protected only such information or material as is specifically identified by the Administrator in accordance with paragraph (a) of this section. In such case, the Administrator shall also specify the period of continued classification.

§ 1203.506 Restricted data.

Material designated as Restricted Data and Formerly Restricted Data shall be downgraded and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and the regulations of the Atomic Energy Commission.

§ 1203.507 Request for classification review.

Request for review of material existing under and in accordance with the conditions described in § 1203.502, § 1203.503, § 1203.504, or § 1203.505 should be addressed to the NASA Security Classification Officer, Code DHZ, Washington, D.C. 20546. The request will be acknowledged in writing and the requestor will be advised of any service fee to charged pursuant to law. Further, the requestor will be advised, within 30 days of the classification determination, including appeal right to the NASA Security Classification Program Committee, if the material must remain classified. If the material no longer warrants classification, it shall be declassified and made proptly available to the requestor, if not otherwise exempt from disclosure under section 552(b) of title 5 U.S.C. (Freedom of Information Act) or other provision of law.

§ 1203.508 Burden of proof.

In responding to a request for review, the burden of proof is on NASA to show that continued classification is warranted.

§ 1203.509 General review requirements.

(a) All information and material classified after June 1, 1972, which is determined under applicable records administration standards to be of sufficient historical or other value to warrant preservation as permanent records, shall be systematically reviewed on a timely basis by the appropriate custodian for the purpose of making such information and material publicly available if, after consideration under § 1203.501, § 1203.502, § 1203.503, or § 1203.504, it is declassified.

(b) Whenever possible, without destroying the integrity of the files, such information and material should be set aside for public release on request.

Subpart F—Delegations of Authority To Make Determinations in Security Classification Matters

§ 1203.600 Delegation.

(a) The NASA officials listed in paragraph (c) of this section are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. Such actions shall be in accordance with applicable criteria, guidelines, laws, and regulations and shall be subject to any contrary determination that has been made by the Chairman of the NASA Security Classification Program Committee or by any other NASA official authorized to make such a determination.

(b) The NASA officials listed in paragraph (c)(1) of this section are authorized to exempt from the General Declassification Schedule any level of classified information eligible under the provisions set forth in § 1203.502.

(c) Designated officials:

(1) *Top Secret classification authority.* (i) Administrator, (ii) Deputy Administrator, (iii) Executive Officer, (iv) Chairman, Security Classification Program Committee.

(2) *Secret and Confidential classification authority.* (i) Officials listed in subparagraph (1) of this paragraph, (ii) Associate Administrator, (iii) Associate Deputy Administrator, (iv) Deputy Associate Administrator, (v) General Counsel. (vi) Associate Administrators for: (*a*) Aeronautics and Space Technology, (*b*) Manned Space Flight, (*c*) Space Science, (*d*) Applications, (*e*) Tracking and Data Acquisition, (*f*) Organization and Management. (vii) Assistant Administrators for: (*a*) DOD and Interagency Affairs, (*b*) International Affairs. (viii) Director, Headquarters Administration, (ix) Director, NASA Pasadena Office, (x) Manager, Space Nuclear Systems Office (Germantown, Md.), (xi) Field Installation Directors, (xii) NASA Security Classification Manager, (xiii) Installation Security Classification Officers, (xiv) Director of Security, NASA Headquarters, (xv) Heads of Other Component Installations, (xvi) Such other officials as the Administrator may designate from time to time in writing.

§ 1203.601 Redelegation.

(a) For "Top Secret" and "Secret" security classifications and the authority to "exempt classified information" from the General Declassification Schedule—None Authorized.

(b) Confidential security classification authority may be redelegated by memorandum to a limited number of subordinate officials without the power of further redelegation. A copy of each redelegation shall be furnished to the Executive Secretary, NASA Security Classification Program Committee, NASA Headquarters.

Subpart G—NASA Security Classification Program

§ 1203.700 Establishment.

This subpart continues in existence and reconstitutes the NASA Security Classification Program Committee (hereafter referred to as the Committee) as a part of the permanent administrative structure of NASA. The Chairman of the Committee reports to the Administrator.

§ 1203.701 Responsibilities.

The Committee is responsible for supporting and advising the Chairman in connection with the management and direction of the NASA Security Classification Program as provided for in Subpart B of this part.

§ 1203.702 Membership.

(a) The Committee will be comprised of the Chairman, the Executive Secretary, and one member designated by each of the following officials:

(1) Associate Administrators for:

Manned Space Flight.
Space Science.
Aeronautics and Space Technology.
Tracking and Data Acquisition.
Applications.

(2) Assistant Administrators for:

International Affairs.
Public Affairs.
Industry Affairs and Technology Utilization.

(3) General Counsel.

§ 1203.703 Ad hoc committees.

The Chairman is authorized to establish such ad hoc panels or subcommittees as may be necessary in the conduct of the Committee's work. Such ad hoc committees or subcommittees will be comprised of NASA employees.

§ 1203.704 Meetings.

(a) Meetings will be held at the call of the Chairman.

(b) Records of the meetings will be maintained by the Executive Secretary.

[FR Doc.72-18201 Filed 10-25-72;8:52 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: (1) The effective date of the authorization of the sale of flood insurance in the area under the emergency or under the regular flood insurance program; (2) the effective date on which the community became ineligible for the sale of flood insurance because of its failure to submit land use and control measures as required pursuant to § 1909.24(a); or (3) the effective date of a community's formal reinstatement in the program pursuant to § 1909.24(b). 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
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	Lake	Lakeport	I 06 033 1800 01 through I 06 033 1800 03	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 Director of Public Works, City of Lakeport, City Hall Annex, Lakeport, Calif. 95453.	Aug. 28, 1971. Emergency. Oct. 20, 1972. Regular.
Connecticut	New Haven	Guilford				Oct. 20, 1972. Emergency.
Do	do	North Branford				Do.
Florida	Broward	Unincorporated areas.	I 12 011 0000 02 through I 12 011 0000 04	Department of Community Affairs, 309 Office Plaza, Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304.	Broward County Engineering Department, Room 365, County Courthouse, Fort Lauderdale, Fla. 33301.	Dec. 29, 1970. Emergency. Oct. 20, 1972. Regular.
Do	do	Sea Ranch Lakes Village.				Oct. 20, 1972. Emergency.
Do	Brevard	Satellite Beach				Do.
Illinois	Cook	Hazel Crest Village.				Do.
Minnesota	Anoka	Coon Rapids				Do.
New York	Suffolk	Amityville Village.				Do.
Do	do	Southold				Do.
Do	Westchester	White Plains				Do.
North Carolina	Pender	Topsail Beach				Do.
North Dakota	Hettinger	Mott				Do.
Ohio	Medina and Wayne.	Rittman				Do.
Oregon	Clackamas	West Linn				Do.
Pennsylvania	Cumberland	Camp Hill Borough.				Do.
Do	Perry	Duncannon Borough.				Do.
Do	do	Wheatfield Township.				Nov. 2, 1971. Emergency. Dec. 31, 1971. Suspended. Oct. 13, 1972. Reinstated.
Do	Luzerne	Hanover Township.				Oct. 20, 1972. Emergency.
Do	Schuylkill	Schuylkill Haven Borough.				Do.
Vermont	Washington	Montpelier				Do.
Do	Addison	New Haven				Do.
Wisconsin	Vernon	Stoddard	I 55 123 4650 01	Department of Natural Resources, Post Office Box 450, Madison, WI 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, WI 53703.	Office of the Village Clerk, Village Office, village of Stoddard, Stoddard, Wis. 54658.	Apr. 27, 1971. Emergency. Oct. 20, 1972. Regular.
Do	Dane	Unincorporated areas.				Oct. 20, 1972. Emergency.

(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: October 17, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[F.R. Doc.72-18113 Filed 10-25-72;8:45 am]

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
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Connecticut	Litchfield	Winchester				Oct. 27, 1972. Emergency.
Florida	Broward	Lauderdale-By-The-Sea.	I 12 011 1780 02	Department of Community Affairs, 309 Office Plaza, Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304.	Town Hall, 4501 Ocean Dr., Lauderdale-By-The-Sea, FL 33308.	Feb. 17, 1971. Emergency. Oct. 27, 1972. Regular.
Do	do	Wilton Manors	I 12 011 3250 01 through I 12 011 3250 03	do	Office of the City Administrator, 524 North 21st Court, Wilton Manors, FL 33305.	Nov. 2, 1971. Emergency. Oct. 27, 1972. Regular.
Do	do	Lauderhill				Oct. 27, 1972. Emergency.
Do	do	Oakland Park				Do.
Do	do	Pembroke Pines				Do.
Illinois	Cook	Mount Prospect Village.				Do.
Massachusetts	Barnstable	Barnstable				Do.
North Carolina	Beaufort	Belhaven				Do.
Ohio	Clermont	Moscow				Do.
Pennsylvania	Lycoming	Jersey Shore Borough.				Do.
Do	Luzerne	Plymouth Borough.				Do.
Tennessee	Anderson	Oak Ridge	I 47 001 1850 01 through I 47 001 1850 24	Tennessee State Planning Commission, Room C2-208, Central Services Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219.	Office of the City Clerk, Municipal Bldg., Post Office Box I, Oak Ridge, TN 37830.	Dec. 23, 1971. Emergency. Oct. 27, 1972. Regular.
Do	Hamilton	East Ridge	I 47 065 0750 01 through I 47 065 0750 04	do	East Ridge City Hall, 1501 Tombras Ave., East Ridge, TN 37412.	Mar. 3, 1972. Emergency. Oct. 27, 1972. Regular.

(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: October 18 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-18116 Filed 10-25-72;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

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

§ 1915.3 List of communities with special hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	Lake	Lakeport	H 06 033 1800 01 through H 06 033 1800 03	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 Director of Public Works, City of Lakeport, City Hall Annex, Lakeport, Calif. 95453.	Aug. 28, 1971.
Connecticut	New Haven	Guilford				Oct. 20, 1972.
Do	do	North Branford				Do.
Florida	Broward	Unincorporated areas.	H 12 011 0000 02 through H 12 011 0000 04	Department of Community Affairs, 309 Office Plaza, Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304.	Broward County Engineering Department, Room 365 County Courthouse, Fort Lauderdale, Fla. 33301.	Dec. 29, 1970.
Do	do	Sea Ranch Lakes Village.				Oct. 20, 1972.
Do	Brevard	Satellite Beach				Do.
Illinois	Cook	Hazel Crest Village.				Do.
Louisiana	Orleans Parish		H 22 071 0000 02 through H 22 071 0000 30	State Department of Public Works, Post Office Box 44155, Capitol Station, Baton Rouge, LA 70804. Louisiana Insurance Department, Box 44214, Capitol Station, Baton Rouge, LA 70804.	City Planning Commission, Room 4W04 City Hall, 1300 Perdido St., New Orleans, LA 70112.	July 11, 1970, May 6, 1970, and Oct. 15, 1971.
Minnesota	Anoka	Coon Rapids				Oct. 20, 1972.
New York	Suffolk	Amityville Village.				Do.
Do	do	Southold				Do.
Do	Westchester	White Plains				Do.
North Carolina	Pender	Topsail Beach				Do.
North Dakota	Hettinger	Mott				Do.
Ohio	Medina and Wayne.	Rittman				Do.
Oregon	Clackamas	West Linn				Do.
Pennsylvania	Cumberland	Camp Hill Borough.				Do.
Do	Perry	Duncannon Borough.				Do.
Do	Luzerne	Hanover Township.				Do.
Do	Schuylkill	Schuylkill Haven Borough.				Do.
Vermont	Washington	Montpelier				Do.
Do	Addison	New Haven				Do.
Wisconsin	Vernon	Stoddard	H 55 123 4650 01	Dept. of Natural Resources, Post Office Box 450, Madison, WI 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, WI 53703.	Office of the Village Clerk, Village Office, village of Stoddard, Stoddard, Wis. 54658.	Apr. 27,1971.
Do	Dane	Unincorporated areas.				Oct. 20. 1972

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

Issued: October 17, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-18114 Filed 10-25-72;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

§ 1915.3 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:

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Connecticut	Litchfield	Winchester				Oct. 27, 1972.
Florida	Broward	Lauderdale-By-The-Sea.	H 12 011 1780 02	Department of Community Affairs, 309 Office Plaza, Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304.	Town Hall, 4501 Ocean Dr., Lauderdale-By-The-Sea, FL 33308.	Feb. 17, 1971.
Do	do	Wilton Manors	H 12 011 3250 01 through H 12 011 3250 03	do	Office of the City Administrator, 524 North 21st Court, Wilton Manors, FL 33305.	Nov. 2, 1971.
Do	do	Lauderhill				Oct. 27, 1972.
Do	do	Oakland Park				Do.
Do	do	Pembroke Pines				Do.
Illinois	Cook	Mount Prospect Village.				Do.
Massachusetts	Barnstable	Barnstable				Do.
North Carolina	Beaufort	Bellhaven				Do.
Ohio	Clermont	Moscow				Do.
Pennsylvania	Lycoming	Jersey Shore Borough.				Do.
Do	Luzerne	Plymouth Borough.				
Tennessee	Anderson	Oak Ridge	H 47 001 1850 01 through H 47 001 1850 24	Tennessee State Planning Commission, Room C2-208, Central Services Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219.	Office of the City Clerk, Municipal Bldg., Post Office Box 1, Oak Ridge, TN 37830.	Dec. 23, 1971.
Do	Hamilton	East Ridge	H 47 065 0750 01 through H 47 065 0750 04	do	East Ridge City Hall, 1501 Tombras Ave., East Ridge, TN 37412.	Mar. 3, 1972.

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

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GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72–18117 Filed 10–25–72;8:45 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 72–262]

PART 11—PACKING AND STAMPING; MARKING; TRADEMARKS AND TRADE NAMES; COPYRIGHTS

Country of Origin Marking

Correction

In F.R. Doc. 72–16629 appearing at page 20318 of the issue for Friday, September 29, 1972, the following changes should be made:

1. The first boldface line reading "§§ 11.12, 11.12a and 11.12b [amended]" should read "§§ 11.8, 11.10, 11.11 [Deleted]".

2. The second boldface line reading "§§ 11.12, 11.12(b) [Amended]" should read "§§ 11.12, 11.12a, 11.12b [Amended]".

3. In the second line in the second amendatory paragraph, the reference to "11.12(b)" should read "11.12b(b)".

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 72–7213]

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

Bonds and Other Evidences of Indebtedness

Correction

In F.R. Doc. 72–17604 appearing at page 21991 of the issue for Wednesday, October 18, 1972, the following changes should be made:

1. In § 1.1232–3(b)(2)(iii)(b), the material now designated as (3) should be run into the flush paragraph preceding it, and the "(3)" deleted.

2. In § 1.1232–3A(e)(5)(iii), in the table following (ii) of Example (2), the last two figures in the sixth column, now reading "3.1933" and "1.3275", should read "3.1935" and "1.3273", respectively.

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

[CGFR 72–94a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

San Joaquin River, Calif.

This amendment extends the previously authorized period that the draws of the U.S. Navy Highway Bridge No. 10 between Rough and Ready Island and Stockton may remain closed to the passage of vessels. Notice of this action to permit redecking of this bridge was published as CGFR 72–92R in 37 F.R. 10802 of May 31, 1972. This extension is required because of unexpected delays in completing the redecking. The Coast Guard has found that good cause exists for granting this extension without notice of proposed rule making on the basis that it would be contrary to the public interest to delay this work.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding the following revised sentence to paragraph (a)(2) to § 117.714 to read as follows:

§ 117.714 San Joaquin River and its tributaries, California.

(a) * * *

(2) U.S. Navy Highway Bridge No. 10 between Rough and Ready Island and Stockton. The draw shall open on signal if at least 12 hours notice has been given. However, from June 15, 1972, through November 17, 1972, the draw need not open for the passage of vessels.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 4–9, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(c)(4))

Effective date. This revision should be effective on June 15, 1972, except the sentence in § 117.714(a)(2) beginning with "However, from" and ending with "vessels." shall be effective June 15, 1972, and terminate November 17, 1972.

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

[FR Doc.72-18213 Filed 10-25-72;8:50 am]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 2—DELEGATIONS OF AUTHORITY

Equitable Relief From Administrative Error

On page 18475 of the Federal Register of September 12, 1972, there was published a notice of proposed regulatory development to revise § 2.7, Title 38, Code of Federal Regulations, to extend equitable relief from administrative error. Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulation.

No written objections have been received and the proposed regulation is hereby adopted without change and is set forth below.

Effective date. This VA Regulation is effective June 30, 1972.

Approved: October 19, 1972.

By direction of the Administrator.

[SEAL] Fred B. Rhodes,
Deputy Administrator.

Part 2 of Title 38 is amended by revising § 2.7 to read as follows:

§ 2.7 Delegation of authority to provide relief on account of administrative error.

(a) Section 210(c)(2) of title 38, United States Code, provides that if the Administrator determines that benefits administered by the Veterans Administration have not been provided by reason of administrative error on the part of the Federal Government or any of its employees, he is authorized to provide such relief on account of such error as he determines equitable, including the payment of moneys to any person whom he determines equitably entitled thereto.

(b) Section 210(c)(3) of title 38, United States Code, provides that if the Administrator determines that any veteran, widow, child of a veteran, or other person, has suffered loss, as a consequence of reliance upon a determination by the Veterans Administration of eligibility or entitlement to benefits, without knowledge that it was erroneously made, he is authorized to provide such relief as he determines equitable, including the payment of moneys to any person equitably entitled thereto. The Administrator is also required to submit an annual report to the Congress, containing a brief summary of each recommendation for relief and its disposition. Preparation of the report shall be the responsibility of the General Counsel.

(c) The authority to grant the equitable relief, referred to in paragraphs (a) and (b) of this section, has not been delegated and is reserved to the Administrator. Recommendation for the correction of administrative error and for appropriate equitable relief therefrom will be submitted to the Administrator, through the General Counsel. Such recommendation may be initiated by the head of the department having responsibility for the benefit, or of any concerned staff office, or by the Chairman, Board of Veterans Appeals. When a recommendation for relief under paragraph (a) or (b) of this section is initiated by the head of a staff office, or the Chairman, Board of Veterans Appeals, the views of the head of the department having responsibility for the benefit will be obtained and transmitted with the recommendation of the initiating office.

[FR Doc.72-18226 Filed 10-25-72;8:51 am]

Title 42—PUBLIC HEALTH

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

SUBCHAPTER G—OCCUPATIONAL SAFETY AND HEALTH RESEARCH AND RELATED ACTIVITIES

PART 87—GRANTS FOR RESEARCH AND DEMONSTRATIONS RELATING TO OCCUPATIONAL SAFETY AND HEALTH

On April 19, 1972, a notice of proposed rule making was published in the Federal Register (37 F.R. 7706) to add a new Part 87 to Title 42, Code of Federal Regulations. As proposed, the part set forth the conditions and procedures for awarding grants for research and demonstration projects relating to occupational safety and health pursuant to section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)).

Interested persons were afforded the opportunity to participate in the rule making through the submission of comments and several comments were received from industry, each of which objected to the determination not to make grants to profitmaking organizations. It is the stated policy of the Department that profitmaking organizations are not eligible for grants except in those cases where the statute specifically makes such organizations eligible for funding only through grants (Grants Administration Manual 1–00–10A).

While the Occupational Safety and Health Act would authorize research grants to profitmaking organizations, there is no specific restriction that such organizations be funded for research only through grants; Federal support of research activities by profitmaking organizations may be carried out by contract. Accordingly, the Department policy prohibiting grants to profitmaking organizations would apply to the research and demonstration grants authorized by the Occupational Safety and Health Act. Since the Institute conducts a substantial contract research program, the Government will not be deprived of the benefits to be obtained from the expertise in the profitmaking sector of the economy if grants are limited to public and nonprofit agencies and institutions.

The proposed regulations, as set forth below, are hereby adopted, without change, to be effective on the date of their publication in the Federal Register (10–26–72).

Dated: September 28, 1972.

Vernon E. Wilson,
Administrator, Health Services and Mental Health Administration.

Approved: October 19, 1972.

John G. Veneman,
Acting Secretary.

Chapter I of Title 42 is amended by adding a new Part 87, to read as follows:

Subpart A—Applicability and Definitions

Sec.
87.1 Applicability.
87.2 Definitions.

Subpart B—Eligibility, Award, and Termination

87.10 Nature and purpose of grant.
87.11 Eligibility.
87.12 Application for grant.
87.13 Evaluation and disposition of applications.
87.14 Grant awards.
87.15 Termination and withholding of payments.

Subpart C—Grant Conditions—Obligations of Grantee

87.20 Use of funds; changes in project and project period.
87.21 Principal investigators; project directors.
87.22 Inventions or discoveries.
87.23 Publications and copyright.
87.24 Records, reports, inspections.
87.25 Nondiscrimination.
87.26 Other conditions.

Subpart D—Grantee Accountability

Sec.
87.30 Date of final accounting.
87.31 Accounting for grant award payments.
87.32 Accounting for equipment.
87.33 Accounting for grant related income.
87.34 Final settlement.

AUTHORITY: The provisions of this Part 87 issued under sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657(g).

Subpart A—Applicability and Definitions

§ 87.1 Applicability.

The regulations of this part apply to grants awarded pursuant to section 20 (a)(1) of the Occupational Safety and Health Act of 1970 for the support of research, experiments, demonstrations, and studies related to occupational safety and health.

§ 87.2 Definitions.

Any term defined in the Occupational Safety and Health Act of 1970 and not defined below shall have the meaning given it in the Act. As used in this part—

(a) "Act" means the Occupational Safety and Health Act of 1970.

(b) "Nonprofit agency or institution" means an agency, corporation, or association no part of the net earnings of which inures or may lawfully inure to the benefit of any shareholder or individual.

(c) "Principal investigator" for a research project or the "project director" for a demonstration project means a single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the scientific and technical direction of the project.

(d) "Project period" means the period of time, not exceeding 7 years in the case of a research project, or 5 years in the case of a demonstration project, which the Secretary finds is reasonably required to initiate and conduct a project meriting support by means of one or more grants within the scope of § 87.10, except that such period may be extended by the Secretary beyond 7 or 5 years respectively, solely to permit continuation or completion of the same approved project by use of funds previously awarded but remaining unencumbered by the grantee at the end of such years. The project period may include the time required for initial staffing and acquisition of facilities and for the preparation and publication of the results of the project. The approval and support of a research or demonstration project for the maximum project period shall not preclude additional support of that project beyond such period if such support of the continued project is requested, evaluated and approved on the same basis as a new or initial application in accordance with §§ 87.12 and 87.13.

(e) "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 may be delegated.

Subpart B—Eligibility, Award, and Termination

§ 87.10 Nature and purpose of grant.

(a) A research project grant is the award by the Secretary of funds to an eligible institution or organization hereinafter called the "grantee," to assist in meeting the costs of conducting an identified activity or program hereinafter termed the "project" that is intended and designed to establish, discover, develop, elucidate, or confirm information or the underlying mechanisms relating to occupational safety or health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety or health problems.

(b) A demonstration project grant is the award by the Secretary of funds to an eligible institution or organization hereinafter called the "grantee," to assist in meeting the costs of conducting an identified activity or program hereinafter termed the "project" that is intended and designed to demonstrate, either on a pilot or full-scale basis, the technical or economic feasibility or application of: (1) A new or improved occupational safety or occupational health procedure, method, technique, or system; or (2) an innovative method, technique, or approach for dealing with occupational safety or health problems.

§ 87.11 Eligibility.

(a) *Eligible applicants.* Any public or nonprofit private agency or institution is eligible to apply for a grant under this part, except Federal agencies or institutions not specifically authorized by law to receive such a grant.

(b) *Projects eligible for research grants.* Any project found by the Secretary to be a research project within the meaning of § 87.10(a) shall be eligible for a grant award. Eligible projects may consist of laboratory, clinical, population, field, statistical, basic, applied, or other types of investigations, studies or experiments, or combinations thereof, and may either be limited to one, or a particular aspect of a, problem or subject, or may consist of two or more related problems or subjects for concurrent or consecutive investigation and involving multiple disciplines, facilities, and resources.

(c) *Projects eligible for demonstration grants.* Any project found by the Secretary to be a demonstration project within the meaning of § 87.10(b) shall be eligible for a grant award. Eligible projects may consist of, but are not limited to, feasibility studies, design, operation, maintenance, evaluations of a new or improved procedure, method, technique, or system, and plans and specifications in connection therewith.

§ 87.12 Application for grant.

(a) An application for a grant under this part shall be submitted to the Secretary at such time and in such form and manner as the Secretary may prescribe.[1] Such application shall set forth the nature, duration, purpose, and plan of the research or demonstration project, the name and qualifications of the principal investigator or project director and the qualifications of the principal staff members to be responsible for the project, the total facilities and resources that will be available, a justification of the amount of grant funds requested, and such other pertinent information as the Secretary may require.

(b) The application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award, including the regulations of this part.

§ 87.13 Evaluation and disposition of applications.

(a) *Evaluation.* All applications filed in accordance with § 87.12 shall be evaluated by the Secretary through such officers and employees and such experts or consultants engaged for this purpose as he determines are specially qualified in the areas of research or demonstration involved in the project. The Secretary's evaluation shall take into account, among other pertinent factors, the scientific merit and significance of the project, the competency of the proposed staff in relation to the type of research or demonstration involved, the feasibility of the project, the likelihood of its producing meaningful results, the proposed project period, the adequacy of the applicant's resources available for the project and the amount of grant funds necessary for completion.

(b) *Disposition.* On the basis of his evaluation of an application pursuant to paragraph (a) of this section the Secretary shall (1) approve, (2) defer because of either lack of funds or a need for further evaluation, or (3) disapprove, support of the proposed project in whole or in part. With respect to approved projects, the Secretary shall determine the project period during which the project may be supported. Any deferral or disapproval of an application shall not preclude its reconsideration or a reapplication.

§ 87.14 Grant awards.

(a) General: Within the limits of funds available for such purpose, the Secretary shall award a grant to those applicants whose approved projects will in his judgment best promote the purposes of § 87.10 on the basis of his evaluation under § 87.13(a). The date specified by the Secretary as the beginning of the project period shall be no later than 9 months following the date of any initial or new award statement unless the

[1] Applications are available upon request to the Office of Extramural Activities, NIOSH Room 8145, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202.

Secretary finds that because of the nature of a project or the grantee's particular circumstances earlier assurance of grant support is required to initiate the project. All amounts awarded, whether provisional or otherwise, remain subject to accountability as provided under Subpart D of this part.

(b) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for all or a designated portion of direct project costs plus an additional amount for indirect costs, if any, which will be calculated by the Secretary either (1) on the basis of his estimate of the actual indirect costs reasonably related to the project, or (2) on the basis of a percentage of all, or a portion of, the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the approximate actual indirect costs. Such award may include an estimated provisional amount for indirect costs or for designated direct costs subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Secretary: *Provided, however,* That no grant shall be made for an amount equal to the total cost as found necessary by the Secretary for the carrying out of the project. In determining the grantee's share of the project costs, (i) costs for which Federal grants from other sources have been or may be claimed or received, or (ii) costs used to match other Federal grants (except as may be otherwise provided by law), or (iii) costs to be met from the Federal share of grant related income (except as may be permitted by chapter 1–420 of the Department of Health, Education, and Welfare Grants Administration Manual [3]), may not be included.

(c) Except as may otherwise be provided by the regulations of this part, the identification of direct and indirect costs will be consistent with the generally accepted and established accounting practices that the grantee applies to its own activities and in conformance with the applicable principles set forth in chapters 1–76, 2–65, 2–66, and 5–60 of the Department of Health, Education, and Welfare Grants Administration Manual.

(d) All grant awards shall be in writing and shall set forth the amount of funds granted and the period for which support is recommended.

(e) Neither the approval of any project nor any grant award shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved project or portion thereof.

(f) Multiple, concurrent, initial awards: Whenever a project involves a number of different but related problems, activities or disciplines so as to require evaluation by different groups, or whenever support for a project could be more effectively administered by separate handling of separate aspects of the project, the Secretary may evaluate and approve two or more concurrent applications each dealing with one or more specified aspects of the project, and he may make two or more concurrent grant awards with respect to such a project.

(g) Supplemental and continuation awards: The Secretary may from time to time within the project period make additional grant awards with respect to any approved project continued without change except as provided in § 87.20 (b) and (c) where he finds, on the basis of such progress and accounting reports as he may require, either that (1) the amount of any prior award was less than the amount necessary to carry out the approved project within the period used for estimating the amount of such prior award (a supplemental grant), or (2) the progress made within the period with respect to which any prior awards were made justifies support for an additional, specified portion or the remainder of the project period (a continuation grant). The amount of any supplemental or continuation grant shall be determined as provided in paragraph (b) of this section.

(h) Payments: The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement for expenses to be incurred or incurred in the project period, to the extent he determines such payments necessary to promote prompt initiation and advancement of the approved project. All such payments shall be recorded by the grantee in accounting records separate from all other fund accounts, including funds derived from other grant awards. Amounts paid shall be available for expenditure by the grantee in accordance with the regulations of this part throughout the project period subject to such limitations as the Secretary may prescribe.

§ 87.15 Termination and withholding of payments.

(a) *Discontinuance by agreement.* Whenever in the judgment of the Secretary and the grantee, continuation of an approved project would produce results of no value in furthering the purposes of § 87.10, grant support shall be terminated.

(b) *Termination by Secretary.* Whenever the Secretary finds that a grantee has failed in a material respect to comply with the regulations of this part or the terms of the grant, he may, after affording the grantee reasonable notice and an opportunity to present its views and evidence, 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 regulations of this part. The views and evidence of the grantee shall be (1) presented in writing unless the Secretary determines that an oral presentation is desirable, and (2) confined to matters relevant to whether the grantee has failed in a material respect to comply with the regulations of this part or the terms of the grant.

(c) *Termination by the grantee.* A grantee may at any time terminate or cancel its conduct of an approved project by notifying the Secretary in writing setting forth the reasons for such termination.

(d) *Accounting.* Upon any termination or transfer of a grant from a grantee under § 87.21, the grantee shall render an accounting pursuant to Subpart D of this part: *Provided, however,* That to the extent the termination is due in the judgment of the Secretary to no fault of the grantee, credit shall be allowed for the amount required to settle at minimum costs any noncancellable obligations properly incurred by the grantee prior to receipt of notice of termination.

Subpart C—Grant Conditions—Obligations of Grantee

§ 87.20 Use of funds; changes in project and project period.

(a) *Use of funds.* Any funds granted pursuant to § 87.14 shall be expended by the grantee solely for carrying out the approved project in accordance with the regulations of this part, and, except as otherwise may be provided in this part, the applicable cost principles set forth in the Department of Health, Education, and Welfare Grants Administration Manual. The grantee may not in whole or in part delegate or transfer this responsibility for the use of such funds to any other person.

(b) *Changes in project.* The permissible changes by the principal investigator or the project director in the approved project shall be limited to changes in methodology, approach, or other aspects of the project that would expedite achievement of the project's objectives, including changes that grow out of the approved project and serve the best scientific strategy. Whenever the grantee and the principal investigator or project director are uncertain as to whether a change complies with these provisions, the question shall be referred to the Secretary for a final determination. Other changes in the project may be made only with the prior approval of the Secretary.

(c) *Changes in project period.* The project period determined pursuant to § 87.13(b) may be extended by the Secretary, with or without additional grant support, for such an additional period as he determines may be required to complete, or fulfill the purposes of the approved project provided the total period as extended does not exceed 7 years, in the case of a research project or 5 years in the case of a demonstration project, except with respect to the grantee's unencumbered balances as provided in § 87.2(d).

[3] The Department Grants Administration Manual is available for inspection at the Public Information Office of the Several Department Regional Offices and available for purchase at the Government Printing Office, GPO document No. 894–523.

§ 87.21 Principal investigators; project directors.

All grant awards shall be subject to the condition that the principal investigator or project director designated in the application as responsible for the conduct of the approved project shall continue responsible for the duration of the project period. Whenever any such investigator or director shall become unavailable for any reason to discharge this responsibility, the grant shall be terminated unless (a) the grantee replaces such investigator or director with another person found by the Secretary to be qualified to direct and conduct the approved project, or (b) the Secretary, upon application in accordance with the provisions of § 87.12, transfers the grant to any agency or institution eligible under § 87.11 for continuation of the currently supported project provided he finds that the change in the conduct of the project is consonant with the previous evaluation and approval of the project under § 87.13.

§ 87.22 Inventions or discoveries.

Any grant award pursuant to § 87.14 is subject to the regulations of the Department of Health, Education, and Welfare as set forth in 45 CFR Parts 6 and 8, as amended. Such regulations shall apply to any activity for which grant funds are in fact used whether within the scope of the project as approved or otherwise. Appropriate measures shall be taken by the grantee and by the Secretary to assure that no contracts, assignments, or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligation. Laboratory notes, related technical data and information pertaining to inventions or discoveries shall be maintained for such periods, and filed with or otherwise made available to the Secretary or those he may designate at such times and in such manner, as he may determine necessary to carry out such Department regulations.

§ 87.23 Publications and copyright.

Except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films, or similar materials developed or resulting from a research or demonstration project supported by a grant under this part, subject, however, to a royalty-free, nonexclusive license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

§ 87.24 Records, reports, inspections.

(a) *Records and reports.* Each grant award pursuant to § 87.14 shall be subject to the condition that the grantee shall maintain such progress and fiscal records, and file with the Secretary such progress and fiscal reports relating to the conduct and results of the approved project and the use of grant funds as the Secretary may prescribe. Such records shall be retained, as follows:

(1) Records may be destroyed 3 years after the end of the budget period if the grantee has been notified of the completion of the Federal audit by such time.

(2) If the grantee has not been so notified, such records shall be retained until the grantee is notified of the completion of the Federal audit or until 5 years following the end of the budget period, whichever comes first.

(3) 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.

(b) *Inspection and audit.* Any application for a grant award filed pursuant to § 87.12 shall constitute the consent of the applicant to inspections at reasonable times by persons designated by the Secretary of the facilities, equipment and other resources of the applicant and to interviews with principal staff members to the extent such resources and personnel will be, or are, involved in the project. In addition, the acceptance of any grant award under § 87.14 shall constitute the consent of the grantee to inspections and fiscal audit by such persons of the supported activity and of progress and fiscal records relating to the approved project.

§ 87.25 Nondiscrimination.

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.) and in particular section 601 of such act which provides that no person in the United States shall, on account 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. Regulations implementing title VI have been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80) and apply with respect to research or demonstration project grants awarded under this part.

§ 87.26 Other conditions.

The Secretary may with respect to any grant award or class of awards 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 or the conservation of grant funds.

Subpart D—Grantee Accountability

§ 87.30 Date of final accounting.

In addition to such other accounting as the Secretary may require, a grantee shall render, with respect to each approved project, a full accounting as provided herein, as of a termination date which shall be either (a) the end of the project period as determined pursuant to § 87.13(b) or its extension as provided in § 87.20 (c), or (b) the date of any termination of grant support as provided in § 87.15, whichever first occurs.

§ 87.31 Accounting for grant award payments.

With respect to each approved project the grantee shall account for the sum total of all amounts paid under § 87.14(h) by presenting or otherwise making available vouchers or any other evidence satisfactory to the Secretary of expenditures for direct and indirect costs meeting the requirements of § 87.14: *Provided, however,* That where the amount awarded for indirect cost was based on a predetermined fixed-percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

§ 87.32 Accounting for Equipment.

As used in this section the term "equipment" means an article of property procured or fabricated which is complete in itself, is of a durable nature, and has an expected service life of more than 1 year. Equipment on hand on the date of termination for which accounting is required in accordance with the procedures set forth in chapter 1–410–50 of the Department of Health, Education, and Welfare Grants Administration Manual shall be identified and reported by the grantee in accordance with such procedures, and, accounted for, or accountability waived, by one or a combination of the following methods, as determined by the Secretary:

(a) *Retention of equipment for other occupational safety and health projects.* Equipment may be used, without adjustment of accounts, on other grant supported projects (whether or not federally supported) within the scope of the Act, and no other accounting for such equipment shall be required; *Provided, however,* (1) That during such period of use no charge for depreciation, amortization or for other use of the equipment shall be made against any existing or future Federal grant or contract, and (2) if, within the period of its useful life, the equipment is transferred by sale or otherwise for use outside the scope of the Act, the Federal portion of the fair market value at the time of transfer shall be refunded to the Federal Government.

(b) *Sale or other disposition of equipment, crediting of proceeds or value.* The equipment may be sold by the grantee and the net proceeds of the sale credited to the grant account for project use, or they may be used or disposed or in any manner by the grantee by crediting to the grant account the Federal share of the fair market value on the termination date. To the extent equipment purchased from grant funds is used for credit or trade-in on the purchase of new equipment, the accounting obligation shall apply to the same extent to such new equipment.

(c) *Return or transfer of equipment.* The equipment may be returned to the Federal Government by the grantee or, in accordance with the provisions of chapter 1–410–50B of the Department of Health, Education, and Welfare Grants

Administration Manual, may be transferred to another grantee for the purpose of continuing the project for which the equipment was purchased.

(d) *Waiver of equipment accountability.* Where the grantee is an organization within the terms of the Act of September 6, 1958 (72 Stat. 1793; Public Law 85–934), the obligation to account for the value of any equipment may be waived by the Secretary as provided by such Act.

§ 87.33 Accounting for grant related income.

(a) *Interest.* Pursuant to section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), a State will not be held accountable for interest earned on grant funds, pending their disbursement for grant purposes. A State, as defined in section 102 of the Intergovernmental Cooperation Act, means any one of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State. All grantees other than a State, as defined in this subsection, must return all interest earned on grant funds to the Federal Government.

(b) *Royalties.* Royalties earned from publications or similar material produced from a grant must first be used to reduce the Federal share of the grant to cover the costs of publishing or producing the materials. Royalties in excess of the costs of publishing or producing the materials shall be distributed as in paragraph (c) of this section.

(c) *Other income.* Other income earned by the grantee shall be disposed of in accordance with one of the alternatives specified in Chapter 1–420 of the Grants Administration Manual as determined by the Secretary in the grant award.

§ 87.34 Final settlement.

There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(a) Any amount not accounted for pursuant to § 87.31;

(b) Any credits for material on hand as provided in § 87.32;

(c) Any credits for earned interest pursuant to § 87.33(a);

(d) Any other settlements required pursuant to § 87.33 (b) and (c).

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by set off or other action as provided by law.

[FR Doc.72–18200 Filed 10–25–72;8:52 am]

Title 49—TRANSPORTATION

Chapter III—Federal Highway Administration, Department of Transportation

SUBCHAPTER B—MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC–36; Notice No. 72–18]

PART 394—RECORDING AND REPORTING OF ACCIDENTS

Availability of, and Instructions for Completing Accident Report Forms

For the convenience of motor carriers and others concerned with reporting accidents to the Bureau of Motor Carrier Safety, the Director of the Bureau is adding a new § 394.20 to Part 394 of the Motor Carrier Safety Regulations. Part 394, which specifies accident-reporting requirements, was recently completely revised (37 F.R. 18078). The accident-reporting forms have also been changed substantially. On and after the January 1, 1973, effective date of the revisions, motor carriers will be required to use the new forms to report their accidents.

The new § 394.20 contains instructions for completing the revised forms. The instructions are in two parts: One set of instructions deals with completion of Form MCS 50–T, which is filed by carriers of property; the other relates to the completion of Form MCS 50–B, which is filed by carriers of passengers. To facilitate the availability of the instructions and for ease of reference, both sets of instructions are now being made a part of the text of Part 394.

In addition, the Director is amending § 394.9 to refer to the instructions set forth in the new § 394.20 and to inform interested persons about how to obtain a supply of the new accident report forms.

Since these amendments do not affect any substantive right, duty, or privilege, notice and public procedure thereon are unnecessary. They are effective on January 1, 1973.

In consideration of the foregoing, Part 394 of Subchapter B in Chapter III of Title 49, CFR is amended (1) by revising § 394.9 to read as set forth below; and (2) by adding a new § 394.20 at the end thereof, reading as set forth below.

These amendments are issued under the authority of section 204 of the Interstate Commerce Act, as amended, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 CFR 1.48 and 389.4, respectively.

Issued on October 20, 1972.

KENNETH L. PIERSON,
Acting Director,
Bureau of Motor Carrier Safety.

I. Section 394.9 is revised to read as follows:

§ 394.9 Reporting of accidents.

(a) Within 15 days after a reportable accident occurs, the motor carrier must file the original and two copies of Form MCS 50–T (property) or Form MCS 50–B (passengers), completed as specified in paragraph (b) of this section, with the Director, Regional Motor Carrier Safety Office of the Federal Highway Administration region in which the carrier's principal place of business is located. The addresses and jurisdictions of the Federal Highway Administration regions are specified in § 390.40 of this subchapter.

(b) The motor carrier must fill in the report form in accordance with the instructions in § 394.20, completely and accurately with the most reliable information available to him at the time the report is filed.

(c) Supplies of accident report forms may be purchased from the Superintendent of Documents, Washington, D.C. 20402, at the prevailing price.

II. A new § 394.20 is added at the end of Part 394, reading as follows:

§ 394.20 Instructions for preparing accident reports.

(a) Reports of accidents on Form MCS 50–T shall be prepared in accordance with the following instructions:

General:	Every applicable item must be filled in as fully and as accurately as information accessible to the motor carrier at the time of filing the report will permit. The numbers in parentheses under each item are for use in data processing and are to be ignored by the carrier filing the report. *Circle* or *X* through appropriate boxes.
Item 1:	Enter complete corporate name, partnership name or sole proprietary business name.
Item 2:	Enter the address of your principal place of business.
Item 3:	Authorized common and contract carriers enter Interstate Commerce Commission MC Docket Number. Private or other carriers enter Internal Revenue Service Employer Identification Number.
Item 4:	Mark box A if intercity operation. Mark box B if accident occurred in local or pickup and delivery service.
Item 5:	Enter city or town in or near where the accident occurred and the State.
Item 5A:	Mark one box to indicate the type of district.
Items 6 and 6A:	Under the appropriate item give information fixing the accident location as exactly as possible. This is especially important when highway design or condition, or some other local feature was involved in any way.

Item 7: Mark appropriate box to identify the day of the week on which the accident occurred.

Item 8: Indicate numerically the date of accident—month/day/year.

Item 9: Enter the time when the accident occurred using military time to the nearest hour. The comparative times are listed below.

Ordinary Time	*Military Time*	*Ordinary Time*	*Military Time*	*Ordinary Time*	*Military Time*
1 a.m.	0100	9 a.m.	0900	5 p.m.	1700
2 a.m.	0200	10 a.m.	1000	6 p.m.	1800
3 a.m.	0300	11 a.m.	1100	7 p.m.	1900
4 a.m.	0400	Noon	1200	8 p.m.	2000
5 a.m.	0500	1 p.m.	1300	9 p.m.	2100
6 a.m.	0600	2 p.m.	1400	10 p.m.	2200
7 a.m.	0700	3 p.m.	1500	11 p.m.	2300
8 a.m.	0800	4 p.m.	1600	Midnight	2400

Item 10A: If noncollision accident, mark box A. If accident involved a collision, mark appropriate box B or C. Mark one box only.

Item 10B: If noncollision, mark box A. If collision occured, mark appropriate box to identify first or primary involved object. Mark one box only.

Item 10C: If noncollision, mark box ZZZ. Otherwise mark appropriate boxes to identify the primary accident classification for each vehicle. Your vehicle is always identified as vehicle No. 1. Other vehicles identified as vehicles 2 or 3. If more vehicles involved, state total number in item 27.

Item 10D: If accident involved a collision, mark box A. If noncollision, mark appropriate box to indicate major accident occurrence. Mark one box only.

Item 10E: Mark appropriate box to indicate secondary occurrence. Mark one box only.

Items 11A through 11H: All items to be filled in for the driver of any vehicle under your direct control whether owned or leased. Enter name and address of the person at the wheel when the accident occurred, or who last drove the vehicle if it was stopped or parked without a driver at the time of the accident.

Item 11D: If driver employed less than 1 year, enter the figure 1. If driver working on an occasional, casual or trip lease basis, enter the figure 0. For definition of employed, see Part 391.

Item 11E: Enter to the nearest hour total hours driving since last 8 consecutive hours off duty until time of accident, excluding on-duty, not-driving time. Mark box "not applicable" when the 8-hour rest period was accumulated in two periods of rest in a sleeper berth.

Item 11F: Enter to the nearest hour the estimated driving time since last period of 8 consecutive hours off duty to complete the trip, or portion of trip, if accident had not occurred, excluding on-duty, not-driving time. Mark box "not applicable" when the 8-hour rest period was accumulated in two periods of rest in a sleeper berth.

Item 11G: Mark appropriate box or boxes to indicate condition of driver at time of accident.

Item 11H: Indicate the month/day/year of the last DOT medical certificate issued to the driver. If driver has not been physically examined within the last 2 years, enter all zeros.

Item 12: Identify your vehicle(s) involving listing each vehicle in combination. Make no entries for other vehicles involved in the accident.

Item 13: Enter total length of your vehicle or combination, including load.

Item 13A: Enter total width of your vehicle, or cargo, at widest point. Exclude mirrors.

Item 13B: Enter weight of cargo at time of accident. If vehicle was empty, enter 0.

Item 13C: Enter the total weight of your vehicle and cargo. If vehicle was empty, enter weight of empty vehicle.

Item 14: Mark appropriate box for fuel type. If vehicle was powered by liquefied natural gas, electricity, etc., mark box D and enter fuel type.

Item 15: Mark only one box. If your cargo included hazardous materials, specify the classification as described in section 172.5 of the Hazardous Materials Regulations, e.g., F.L.—Flammable Liquids; Expl. A.—Class A Explosives.

Item 16: Indicate the principal type of cargo in your vehicle at the time of the accident. If the vehicle, or any unit of a combination of vehicles, was itself the cargo being transported, mark "F." If your commodity is not listed, mark "other" and specify, e.g., petroleum products; textile; paper and paper products; leather and rubber products; lumber and wood products; food and beverages; livestock; glass and ceramic products; building materials.

Item 17: Mark appropriate box.

Item 17A: Mark appropriate box if driver was not killed. (Bodily injury means receiving medical treatment away from the accident scene).

Item 17B: Mark appropriate box. If no relief driver, mark box C.

Item 17C: Mark appropriate box. If your relief driver was killed, or no relief driver, mark box C.

Items 18 and 18A: Indicate number of other persons in your vehicle killed or injured. If no other persons other than driver on vehicle, enter the figure "0." For definition of authorized persons, see Part 392.

Item 19: Indicate the total number of all other persons killed or injured in the accident. Do not include those persons listed in previous items.

Item 19A: Enter the best available estimate of the total amount of damage (in dollars) to all vehicles and property involved in the accident. If there was no property damage, write "0."

Item 20: Mark either box A or B.

Item 21: If mechanical defects or failures were apparent on your vehicle at time of accident, mark the appropriate boxes. Mark each defect known to exist before the accident, brought to light by the accident itself, or discovered by investigation following the accident. Do not show breakage of sound parts which resulted from the accident. Include defects which caused the vehicle to be stopped, if the accident occurred while it was stopped.

Item 22: Mark either box A or B.

Item 23: Mark either box A or B.

Items 24A, 24B, 24D, and 24E: If another vehicle involved in the accident was operated by a motor carrier, regardless of ownership, the name and address of that carrier should be given. If not a motor carrier, write the name and address of the person who was operating the vehicle at the time of the accident.

Items 24C and 24F: For the type of vehicle enter general terms such as, car, bus, truck or tractor-trailer.

Items 25 and 25A: Mark appropriate boxes to indicate general prevailing weather conditions and lighting conditions.

Items 26 through 26B: Mark appropriate boxes to indicate road surface condition, number of lanes, and if the highway was divided by a median or curbing.

Item 26C: Mark appropriate box.

Item 27: An account of the accident containing the most reliable information to which the motor carrier has access at the time of reporting, sufficiently detailed and complete to convey an understanding of his version of the accident shall be entered under this item. This account should be continued on an extra sheet of paper if more space is needed.

Item 28: Print or type name and title of person signing report.

Items 29, 30 and 31: Complete appropriate entries. In item 30 include area code.

(b) Reports of accidents on Form MCS50–B shall be prepared in accordance with the following instructions:

General: Every applicable item must be filled in as fully and as accurately as information accessible to the motor carrier at the time of filing the report will permit. The numbers in parentheses under each item are for use in data processing and are to be ignored by the carrier filing the report. *Circle* or *X* through appropriate boxes.

Item 1: Enter complete corporate name, partnership name or sole proprietary business name.

Item 2: Enter the address of your principal place of business.

Item 3: Authorized common and contract carriers enter Interstate Commerce Commission MC Docket Number. Other carriers specify type of operation

Item 4: Mark box A if trip was intercity operation. Mark box B if trip was city operation.

Item 4A: Mark appropriate box.

Item 5: Enter city or town in or near where the accident occurred and the State.

Item 5A: Mark one box to indicate the type of district.

Items 6 and 6A: Under the appropriate item give information fixing the accident location as exactly as possible. This is especially important when highway design or condition, or some other local feature was involved in any way.

Item 7: Mark appropriate box to identify the day of the week on which the accident occurred.

Item 8: Indicate numerically the date of accident—month/day/year.

Item 9: Enter the time when the accident occurred at the location of the accident using military time to the nearest hour. The comparative times are listed below.

Ordinary Time	*Military Time*	*Ordinary Time*	*Military Time*	*Ordinary Time*	*Military Time*
1 a.m.	0100	9 a.m.	0900	5 p.m.	1700
2 a.m.	0200	10 a.m.	1000	6 p.m.	1800
3 a.m.	0300	11 a.m.	1100	7 p.m.	1900
4 a.m.	0400	Noon	1200	8 p.m.	2000
5 a.m.	0500	1 p.m.	1300	9 p.m.	2100
6 a.m.	0600	2 p.m.	1400	10 p.m.	2200
7 a.m.	0700	3 p.m.	1500	11 p.m.	2300
8 a.m.	0800	4 p.m.	1600	Midnight	2400

Item 10A: If noncollision accident, mark box A. If accident involved a collision, mark appropriate box B or C. Mark one box only.

Item 10B: If noncollision, mark box A. If collision occurred, mark appropriate box to identify first or primary involved object. Mark one box only.

Item 10C: If noncollision, mark box ZZZ. Otherwise mark appropriate boxes to identify the primary accident classification for each vehicle. Your vehicle is always identified as vehicle No. 1. Other vehicles identified as vehicles 2 or 3. If more vehicles involved, state total number in item 28.

Item 10D: If accident involved a collision, mark box A. If noncollision, mark appropriate box to indicate major accident occurrence. Mark one box only.

Item 10E: Mark appropriate box to indicate secondary occurrence. Mark one box only.

Items 11A through 11H: All items to be filled in for the driver of any vehicle under your direct control whether owned or leased. Enter name and address of the person at the wheel when the accident occurred, or who last drove the vehicle if it was stopped or parked without a driver at the time of the accident.

Item 11D: If driver employed less than 1 year, enter the figure 1. If driver working on an occasional, casual or trip lease basis, enter the figure "0." For definition of employed, see Part 391.

Item 11E: Enter to the nearest hour total hours driving since last period of 8 consecutive hours off duty until time of accident, excluding on-duty, not-driving time.

Item 11F: Enter to the nearest hour the estimated driving time since last period of 8 consecutive hours off duty to complete the trip, or portion of trip, if accident had not occurred, excluding on-duty, not-driving time.

Item 11G: Mark appropriate box or boxes to indicate condition of driver at time of accident.

Item 11H: Indicate the month/day/year of the last DOT medical certificate issued to the driver. If driver has not been physically examined within the last 2 years, enter all zeros.

Item 12: Identify your vehicle involved. Make no entries for other vehicles involved in the accident.

Item 13: Enter total length of your vehicle.

Item 13A: Enter total width of your vehicle. Exclude mirrors.

Item 13B: Enter weight of vehicle.

Item 14: Mark appropriate box for fuel type. If vehicle was powered by fuel other than that listed, mark box D and enter fuel type.

Item 15: Mark box A if only passengers and baggage on vehicle. Mark box B if other cargo included and specify, i.e., mail, parcel post, express, etc. If hazardous materials, specify classification as described in section 172.5 of the Hazardous Materials Regulations, e.g., F.L.—Flammable Liquids; Expl. A.—Class A Explosives, etc.

Item 16: Indicate number of persons on vehicle, including driver.

Item 17: Enter seating capacity of vehicle, including driver's seat.

Item 18: Mark appropriate box.

Item 18A: Mark appropriate box if driver was not killed. (Bodily injury means receiving medical treatment away from the accident scene).

Item 19: Enter number of authorized personnel traveling at the direction of the company.

Item 19A: Indicate number of passengers in your vehicle killed or injured.

Item 20: Indicate the total number of all other persons killed or injured in the accident. Do not include those persons listed in previous items.

Item 21: Enter the best available estimate of the total amount of damage (in dollars) to all vehicles and property involved in the accident. If there was no property damage, write "0."

Item 22: Mark either box A or B:

Item 22A: If mechanical defects or failures were apparent on your vehicle at time of accident, mark the appropriate boxes. Mark each defect known to exist before the accident, brought to light by the accident itself, or discovered by investigation following the accident. Do not show breakage of sound parts which resulted from the accident. Include defects which caused the vehicle to be stopped, if the accident occurred while it was stopped.

Item 23: Mark appropriate boxes.

Item 24: Mark either box A or B:

Items 25A, 25B, 25D, and 25E: If another vehicle involved in the accident was operated by a motor carrier, regardless of ownership, the name and address of the person who was operating the vehicle at the time of the accident.

Items 25C and 25F: For type of vehicle enter general terms such as, car, bus, truck, or tractor-trailer.

Items 26 and 26A: Mark appropriate boxes to indicate general prevailing weather conditions and lighting conditions.

Items 27 through 27B: Mark appropriate boxes to indicate road surface condition, number of lanes, and if the highway was divided by a median or curbing.

Item 27C: Mark appropriate box.

Item 28: An account of the accident containing the most reliable information to which the motor carrier has access at the time of reporting, sufficiently detailed and complete to convey an understanding of his version of the accident shall be entered under this item. This account should be continued on an extra sheet of paper if more space is needed.

Item 29: Print or type name and title of person signing report.

Items 30, 31 and 32: Complete appropriate entries. In item 31 include area code.

[FR Doc.72-18230 Filed 10-25-72;8:51 am]

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

[Docket No. 69–7; Notice 23]

PART 571—MOTOR VEHICLE SAFETY STANDARDS

Occupant Crash Protection

The purpose of this notice is to reply to petitions filed pursuant to 49 CFR 553–35 requesting reconsideration of the requirements of Motor Vehicle Safety Standard No. 208 relating to seatbelts in vehicles manufactured after August 15, 1973, as amended by Notices 19 and 20 of Docket 69–7 (37 F.R. 12393; 37 F.R. 13265).

1. *Seatbelts and the injury criteria of S6.* The primary objection raised by petitioners is that Notices 19 and 20 did not altogether revoke the requirement that seatbelts used to meet the 1973 interlock option must be capable of meeting the injury criteria of S6. Although review of the petitions suggests that additional modification of the head injury criterion is advisable, the NHTSA declines to grant petitioners' request for complete relief from the injury criteria.

Review of the petitions for reconsideration of Notice 16 showed that belts would have difficulty meeting the full criteria. Since leadtime was insufficient for major design changes in belts before 1973, it was found necessary either to remove the injury criteria or modify them so that the changes needed to enable belts to conform could be made in 1973.

Upon review, it was concluded that the injury criteria, even in modified form, would have the beneficial effect of regulating the overall protection characteristics of the occupant compartment and belt system. Regulation of the seatbelt as a separate component, as in Standard 209, does not insure that the belt will be installed in a manner calculated to insulate the occupant from injurious contact with the interior of the vehicle. It was therefore decided to retain the injury criteria, with such modifications as seemed necessary to allow manufacturers to conform to S4.1.2.3 by August 15, 1973.

The most significant, though by no means the only, agent of head injury is impact with the vehicle interior. In reviewing the petitions on Notice 16, it was decided that no interim criteria would be acceptable that disregarded any impact-related accelerations. Notice 19 therefore amended the head injury criterion in a manner that was intended to include all impact accelerations and to disregard the effect of nonimpact accelerations. As several petitioners point out, however, the amendment did not fully carry out this intent. S6.2, as amended, would have disregarded only those accelerations occurring before the head impacted the vehicle and would have counted all accelerations after that point. One effect of this formula was that a glancing impact, in itself insignificant, would cause all subsequent nonimpact accelerations to be counted even though such accelerations would not be distinguishable in kind from the preimpact acceleration. To avoid this result, the agency has decided to include in the calculation of the head injury criterion only those accelerations that occur while the head is in contact with the vehicle.

Some petitioners suggested that even while the head is touching the vehicle, a significant part of the head's deceleration is due to the restraining action of the belt and not to the surface the head strikes. Although there is undeniably more than one force that contributes to head deceleration, the force produced by the impacted surface becomes increasingly important as the duration of the impact increases. If the accelerations during an impact are of such an amplitude and duration that a HIC value of 1,000 is approached, the acceleration caused by the belt is generally insignificant. The criterion therefore counts all accelerations during the impact phase.

The chest injury criterion of S6.2 was modified for seatbelts by Notice 20, which substituted a severity index of 1,000 for the 60g 3 millisecond criterion applied to other restraint systems. Although the use of the severity index as an indicator of chest injury has not been common practice, the agency has decided that it provides a reasonable interim measure of the effectiveness of the belt system. The severity index of 1,000 is therefore retained as the criterion for belt systems until August 15, 1975.

2. *Passive belts and injury criteria after August 15, 1975.* Several petitioners stated that any relief granted to seat belts in the period 1973–75 should be extended to passive belt systems in the period beyond 1975. However, the NHTSA adopted the interim criteria out of consideration for leadtime problems, not because it considered them to be fully satisfactory. The agency does not consider any criterion to be acceptable, on a permanent basis, that omits potentially injury-causing accelerations from its computation. Even though impact accelerations may be the major threat to belted occupants, the effects of nonimpact accelerations are not negligible and should not be ignored. It is expected that belts will be able to meet the full injury criteria by 1975. The petitions requesting extension of the modified criteria beyond 1975 are therefore denied.

3. *MPV's and trucks manufactured before August 15, 1977.* The adoption of the interlock option for passenger cars under S4.1.2.3 permitted multipurpose passenger vehicles and trucks of less than 10,000 pounds GVWR to continue to use belt systems (with interlocks) in the period between 1975 and 1977. The agency's intent was to permit these vehicles to have the same interlock system during 1975–77 that is permitted for passenger cars during 1973–75. In response to several petitioners, who pointed out that S6.2 and S6.3 could be understood to require these vehicles to meet the full injury criteria during this period, the sections are hereby amended to extend the injury criteria modifications until August 15, 1977, for MPV's and trucks of less than 10,000 pounds GVWR.

In consideration of the foregoing, Motor Vehicle Safety Standard No. 208, Occupant Crash Protection, 49 CFR 571.208, is amended as follows:

1. S6.2 is amended to read:

S6.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{t_2-t_1}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 1,000, where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points in time during the crash. However, in the case of a passenger car manufactured before August 15, 1975, or a truck or multipurpose passenger vehicle with a GVWR of 10,000 pounds or less manufactured before August 15, 1977, when the dummy is restrained by a seatbelt system, t_1 and t_2 are any two points in time during any interval in which the head is in continuous contact with a part of the vehicle other than the belt system.

2. S6.3 is amended to read as follows:

S6.3 The resultant acceleration at the center of gravity of the upper thorax shall not exceed 60g, except for intervals whose cumulative duration is not more than 3 milliseconds. However, in the case of a passenger car manufactured before August 15, 1975, or a truck or multipurpose passenger vehicle with a GVWR of 10,000 pounds or less manufactured before August 15, 1977, when the dummy is restrained by a seatbelt system, the resultant acceleration at the center of gravity of the upper thorax shall not exceed a severity index of 1,000, calculated by the method described in SAE Information Report J885a, October 1966.

Effective date: August 15, 1973.

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1407, delegation of authority at 49 CFR1.51)

Issued on October 18, 1972.

DOUGLAS W. TOMS,
Administrator.

[FR Doc. 72-18271 Filed 10-24-72;9:13 am]

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Rev. S.O. 1110, Amdt. 1]

PART 1033—CAR SERVICE

Penn Central Transportation Co. et al.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 19th day of October 1972.

Upon further consideration of Revised Service Order No. 1110, and good cause appearing therefor:

It is ordered, That: § 1033.1110 *Service Order 1110* (Penn Central Transportation Co., George P. Baker, Richard C.

Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees, required to restore service at the Buttonwood (Wilkes-Barre), Pa., Gateway and to reroute traffic originally routed via that gateway) Revised Service Order No. 1110 be, and it is hereby amended by substituting the following paragraphs (a) and (e) for paragraphs (a) and (e) thereof:

(a) The Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees (Penn Central) be, and it is hereby, ordered to restore service via its Buttonwood (Wilkes-Barre), Pa., gateway on or before November 25, 1972.

(e) *It is further ordered,* That this order shall become effective at 11:59 p.m., September 15, 1972, and, as to paragraph 1033.1110(b), shall expire at 11:59 p.m., November 25, 1972, unless sooner vacated by order of this Commission upon restoration of service through the Buttonwood (Wilkes-Barre) Gateway.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Intercepts or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the 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 notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

ROBERT L. OSWALD,
Secretary.

[SEAL]

[FR Doc. 72–18256 Filed 10–25–72; 8:48 am]

[S.O. 1111, Amdt. 1]

PART 1033—CAR SERVICE

Delaware and Hudson Railway Co. Authorized To Operate Over Tracks of Erie Lackawanna Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 19th day of October 1972.

Upon further consideration of Service Order No. 1111, and good cause appearing therefor:

It is ordered, That § 1033.1111 *Service Order No. 1111* (Delaware and Hudson Railway Co. authorized to operate over tracks of Erie Lackawanna Railway Co., Thomas F. Patton and Ralph S. Tyler, Jr., trustees). Service Order No. 1111 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 25, 1972, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., October 21, 1972.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

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

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc. 72–18255 Filed 10–25–72;8:48 am]

[S.O. 1113]

PART 1033—CAR SERVICE

Penn Central Transportation Co. Authorized To Operate Over Tracks of the Norfolk and Western Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 17th day of October 1972.

It appearing that the Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees (PC) is unable to operate over its line between Connersville, Ind., and Brookville, Ind., because of track conditions; that shippers located on the line of the PC at Connersville and stations north thereof are thereby being deprived of service; that the Norfolk and Western Railway Co. (N&W) has consented to use by the PC of its line between Cambridge City, Ind., and Beesons, Ind., a distance of approximately 6.6 miles, thereby enabling the PC to continue serving all shippers on its line between Connersville and Beesons; that operation by the PC over the aforementioned N&W tracks is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1113 Service Order No. 1113.

(a) *Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees, authorized to operate over tracks of the Norfolk and Western Railway Co.* The Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees (PC) be, and it is hereby, authorized to operate over tracks of the Norfolk and Western Railway Co. (N&W) between Cambridge City, Ind., and Beesons, Ind., a distance of approximately 6.6 miles.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the PC over tracks of the N&W is deemed to be due to carrier's disability, the rates applicable to traffic moved by the PC over these tracks of the N&W shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 11:59 p.m., October 19, 1972.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., February 28, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the 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 notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72–18254 Filed 10–25–72;8:48 am]

[S.O. 1114]

PART 1033—CAR SERVICE

Norfolk and Western Railway Co. Authorized To Operate Over Tracks of Penn Central Transportation Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 18th day of October 1972.

It appearing, that the Norfolk and Western Railway Co. (N&W) is unable to operate over its line in Streator, Ill., because of the unsafe condition of its bridge over the Vermilion River; that shippers located on the N&W between its Vermilion River Bridge and Streator, Ill., are thereby deprived of railroad service; that these shippers are in need of

the railroad services of the N&W; that the Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees (PC) has consented to use by the N&W of its line between Reddick, Ill., and Streator, Ill., a distance of approximately 31.9 miles; that operation by the N&W over the aforementioned PC tracks is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1114 Service Order No. 1114.

(a) *Norfolk and Western Railway Co., authorized to operate over tracks of Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees.* The Norfolk and Western Railway Co. (N&W) authorized to operate over tracks of the Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees (PC) between Reddick, Ill., and Streator, Ill., a distance of approximately 31.9 miles.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the N&W over tracks of the PC is deemed to be due to carrier's disability, the rates applicable to traffic moved by the N&W over these tracks of the PC shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 11:59 p.m., October 19, 1972.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., February 28, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17 (2). Interprets or applies secs. 1(10–17), 15 (4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17 (2))

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the 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 notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

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

[FR Doc.72-18257 Filed 10-25-72;8:48 am]

[S.O. 1115]

PART 1033—CAR SERVICE

Chicago, Milwaukee, St. Paul and Pacific Railroad Co. Authorized To Operate Over Tracks of Chicago, Rock Island and Pacific Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 18th day of October 1972.

It appearing, that the Chicago, Rock Island and Pacific Railroad Company (RI) is unable to operate over its line serving Postville, Iowa, because of track and bridge conditions; that shippers located on this line are in need of continued railroad service; that the Chicago, Milwaukee, St. Paul and Pacific Railroad Co. (Milw.) has agreed to operate over RI tracks in Postville, Iowa, for the purpose of serving shippers located on such tracks; that the RI has consented to this use of its tracks by the Milw; that operation by the Milw over the aforementioned RI tracks is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1115 Service Order No. 1115.

(a) *Chicago, Milwaukee, St. Paul and Pacific Railroad Co. authorized to operate over tracks of Chicago, Rock Island and Pacific Railroad Co.* The Chicago, Milwaukee, St. Paul and Pacific Railroad Co. (Milw) be, and it is hereby, authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Co. (RI) at Postville, Iowa.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the Milw over tracks of the RI is deemed to be due to carrier's disability, the rates applicable to traffic moved by the Milw over these tracks of the RI shall be the rates which were applicable on the shipments at the time of shipment as orginally routed.

(d) *Effective date.* This order shall become effective at 11:59 p.m., October 19, 1972.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1972, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the 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 notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

ROBERT L. OSWALD, *Secretary.*

[SEAL]

[FR Doc.72-18258 Filed 10-25-72;8:48 am]

Title 50—WILDLIFE AND FISHERIES

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

PART 32—HUNTING

Catahoula National Wildlife Refuge, Louisiana

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER (10–26–72).

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

LOUISIANA

CATAHOULA NATIONAL WILDLIFE REFUGE

Public hunting of deer is permitted within the fenced portion of the Catahoula National Wildlife Refuge only on the area designated by signs as open to hunting. This area, comprising 3,000 acres or 55 percent of the total refuge area, is delineated on a map available at the refuge headquarters or from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Deer hunting will be in accordance with all applicable State and Federal regulations subject to the following special conditions.

(1) Season and hours: January 6–7, 1973, inclusive, one-half hour before sunrise until one-half hour after sunset.

(2) Free and nontransferable permits will be issued each morning.

(3) Entrance and exit will be restricted to headquarters access road.

(4) Still hunting for buck deer only. No dogs allowed.

(5) Hunters may enter area 30 minutes prior to legal shooting hours and must exit 30 minutes after legal hours.

(6) No vehicles may be parked more than 50 yards from existing roads or trails. No ATV vehicles other than jeep type will be allowed.

(7) Persons under 18 years of age must be accompanied by an adult.

(8) Unmarked feral hogs may be taken by deer hunters.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas

generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 7, 1973.

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

OCTOBER 17, 1972.

[FR Doc.72-18170 Filed 10-25-72;8:47 am]

Title 7—AGRICULTURE

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

[Navel Orange Reg. 272]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.572 Navel Orange Regulation 272.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel 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 recommendations and information submitted by the Navel 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 Navel 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 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 Navel oranges 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 Navel oranges; 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 October 24, 1972.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period October 27 through November 2, 1972, are hereby fixed as follows:

(i) District 1: 342,224 cartons;
(ii) District 2: Unlimited;
(iii) District 3: Unlimited.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: October 25, 1972.

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

[FR Doc.72-18424 Filed 10-25-72;12:03 pm]

[Valencia Orange Reg. 415]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 908.715 Valencia Orange Regulation 415.

(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 recommendations 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 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 Valencia oranges 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 Valencia oranges; 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 regulation 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 October 24, 1972.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period October 27 through November 2, 1972, are hereby fixed as follows:

(i) District 1: 303,000 cartons;
(ii) District 2: 247,000 cartons;
(iii) District 3: Unlimited.

(2) As used in this section, "handler", "District 1", "District 2", "District 3", and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: October 25, 1972.

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

[FR Doc.72-18425 Filed 10-25-72;12:03 pm]

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Handler Reporting Requirements

Notice was published in the FEDERAL REGISTER on October 4, 1972 (37 F.R. 20867), that the Department was giving consideration to a proposed amendment

of § 929.105 *Reporting* (Subpart—Rules and Regulations; 7 CFR 929.100–929.150; 37 F.R. 5600), currently in effect pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 929, as amended (7 CFR Part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The notice afforded 10 days for interested persons to submit written data, views, or arguments in connection with said proposal. None were received.

The amendment of said rules and regulations was unanimously recommended by the Cranberry Marketing Committee, established under said amended marketing agreement and order, as the agency to administer the terms and provisions thereof. The amendment would lengthen the period of time during which handlers must submit reports to the committee. The committee reports that the period of time afforded handlers for filing reports with the committee, especially with respect to information on the quantities of cranberries and cranberry products held by the handler on specified, dates has proved to be insufficient.

After consideration of all relevant matters presented, including that in the notice, and other available information, it is hereby found that the amendment, as hereinafter set forth, is in accordance with said amended marketing agreement and order and will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) Notice of proposed rule making concerning this amendment was published in the FEDERAL REGISTER on October 4, 1972 (37 F.R. 20867), and no objection to this amendment was received; (2) this amendment relieves restrictions on handler reporting requirements; and (3) cranberries are in the process of being acquired and handled and to be of maximum benefit the provisions of this amendment should become effective on the date hereinafter specified to contribute to more effective operations under the marketing agreement and order.

Accordingly, the language in paragraph (b) of § 929.105 is amended to read as follows:

§ 929.105 Reporting.

* * * * *

(b) Certified reports shall be submitted to the committee by each handler not later than the 20th day of November, February, May, and August of each fiscal period showing (1) the total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled during the 3-month period ending the last day of the month preceding the date the report is due and (2) the respective quantities of cranberries and cranberry products held by the handler on the 1st day of each of the specified months.

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

Dated: October 20, 1972, to become effective upon publication in the FEDERAL REGISTER (10–26–72).

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

[FR Doc.72–18209 Filed 10–25–72;8:52 am]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[Rev. 3, Amdt. 10]

PART 1475—EMERGENCY FEED PROGRAM

Subpart—Livestock Feed Program

SALES OF GRAIN ADVANCED BY DEALERS

The regulations issued by the Commodity Credit Corporation published by 29 F.R. 13475, 30 F.R. 2854, 6909, 31 F.R. 13532, 32 F.R. 14372, 34 F.R. 14206, 36 F.R. 9497, 37 F.R. 7149, 13635, and 37 F.R. 18181, which contain specific requirements for the Livestock Feed Program are further amended to change § 1475.211(e)(3), the period of days after the effective date of the certificate from 30 days to 90 days. Since this change is urgently needed in emergency areas and since the amendment will extend the time a certificate may be retained by a dealer without a discount penalty, it is hereby determined that compliance with the notice of proposed rule making procedures is impracticable and contrary to the public interest with respect to this amendment.

Accordingly, § 1475.211(e)(3) is amended as follows:

§ 1475.211 Sales of grain advanced by dealers.

* * * * *

(e) * * *

(3) A Dealer's Certificate will be accepted at face value when presented to the Kansas City Commodity Office or other office designated by that office or DASCO and applied to the purchase of a feed grain. Such acceptance at face value will be made under a contract which specifies a "date of sale" not more than 90 days after the effective date of the certificate. If the specified date of sale is after the 90th day the face value shall be reduced by one twenty-fifth of 1 percent for each day beginning on the 91st day after the effective date of the certificate excluding the date of sale specified in the CCC contract to which it is applied. The certificates may be transferred by endorsement to any other person. CCC reserves the right to determine the time and place of delivery and the class, grade, and quality of feed grain to be delivered in redemption of Dealer's Certificates. Feed grain sold under a Dealer's Certificate shall be sold at the applicable current market price determined by CCC. Overdeliveries of the quantity of grain requested shall be adjusted at the applicable market price.

* * * * *

(Secs. 1–4 of 73 Stat. 574, as amended; secs. 407 and 421 of 63 Stat. 1055, as amended; secs. 4 and 5 of 62 Stat. 1070, as amended; 7 U.S.C. 1427, 1427 note and 1433; 15 U.S.C. 714 b and c)

Effective date: Upon publication in the FEDERAL REGISTER (10–26–72).

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

KENNETH E. FRICK,
Executive Vice President, Commodity Credit Corporation.

[FR Doc.72–18274 Filed 10–25–72;8:55 am]

Proposed Rule Making

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Part 160]

LIFESAVING EQUIPMENT

Proposed Specifications

Correction

In F.R. Doc. 72-17049 appearing at page 21266 of the issue for Friday, October 6, 1972, the following changes should be made:

1. The lines appearing in §§ 160.002-6 (b), 160.005-6(b), and 160.055-8(b), which read, "Approved for use on all vessels by persons weighing more than 90 pounds or less than 90 pounds.", should read, "Approved for use on all vessels by persons weighing (more than 90 pounds *or* less than 90 pounds)."

2. The lines appearing in §§ 160.047-6 (a), 160.052-8(a), 160.060-8(a), and 160.064-4(a)(1), which read, "Approved for use on uninspected commercial vessels less than 40 feet in length not carrying passengers for hire and all recreational boats by persons weighing more than 90 pounds or 50 to 90 pounds or less than 50 pounds.", should read as follows: "Approved for use on uninspected commercial vessels less than 40 feet in length not carrying passengers for hire and all recreational boats by persons weighing (more than 90 pounds *or* 50 to 90 pounds *or* less than 50 pounds)."

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-CE-23]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Audubon, Iowa.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106. All communications received within 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.

A new public use instrument approach procedure has been developed for the Audubon, Iowa, Municipal Airport. Consequently, it is necessary to provide controlled airspace protection for aircraft executing the new approach procedure by designating a transition area at Audubon, Iowa.

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 added:

AUDUBON, IOWA

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Audubon Municipal Airport (latitude 41°42'30" N., longitude 94°55'00" W.); and that airspace extending upward from 1,200 feet above the surface within 4½ miles southwest and 9½ miles northeast of the Audubon NDB 149° bearing extending from the airport to 18½ miles southeast of the airport.

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 28, 1972.

JOHN R. WALLS,
Acting Director, Central Region.

[FR Doc.72-18176 Filed 10-25-72;8:46 am]

Highway Safety Program Standards

[23 CFR Part 230]

[Docket No. 72-29]

PROGRAM STANDARDS

Applicability to Federally Administered Areas; Request for Comments

The purpose of this notice is to request public comment on a proposal to apply highway safety program standards published in 23 CFR Chapter II to federally administered areas where a Federal department or agency controls the highways or supervises traffic operation.

A major goal of the Highway Safety Act of 1966 (23 U.S.C. 402 et seq.) was to encourage the development of uniformity in traffic regulation and control, to enhance the safety and efficiency of interstate road travel throughout the Nation. Recognizing the need for a strong leadership effort at the Federal level, and for the development of uniform guidelines for State programs, the Congress also recognized "that death on the highway does not distinguish highway financing or administrative jurisdiction." The standards, therefore, were to apply to all highways, whether on or off the Federal-aid system. Moreover, it was noted during the hearings on the Act that a wide disparity of safety standards existed among lands administered by different Federal agencies:

> A number of Federal agencies have had active traffic safety programs in federally administered areas, but others have not. There appears to be no data available on a departmental or Government-wide basis to indicate the involvement of private vehicles in accidents on federally administered areas. There have been complaints that nonuniformity of signs and signals continues to be a chronic problem for many Federal installations. The significant increase in travel through national parks, national forests, et cetera, requires that these roads be subject to the same safety standards as are all other highways. H. Rep. No. 1700, 89th Cong., 2d Sess., p. 23.

A provision was therefore included in section 402(a) of the Act stipulating that:

> Such programs as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.

To date, only Standard No. 13, Traffic Engineering Services (23 CFR 204.4), has been made applicable to all Federal departments and agencies. A study group composed of representatives of Federal landholding departments and agencies has met with the NHTSA and the FHWA and after reviewing the highway safety problems in their respective areas, recommended that the highway safety program standards be made applicable to all Federal agencies. The Department of Transportation agrees with that recommendation.

The proposed Part 230 would apply the highway safety program standards to all landholding Federal departments and agencies, to the extent that they engage in activities covered by the standards. The agencies would be re-

quired to review their activities and the standards, and develop implementation programs appropriate to their own safety problems. Programs and statistical data from Federal departments and agencies would be required by the Department of Transportation for use in developing reports to the President and the Congress pursuant to section 202 of the Highway Safety Act of 1966. NHTSA and FHWA will be available to assist other agencies in developing procedures needed to implement the standards. The review and developmental efforts should also include analysis of budgetary needs of each agency. Funds authorized under the Highway Safety Act are available only to the States.

Actions under the Highway Safety Act of 1966 do not require public notice and comment. This request for comments is issued, however, to afford the public and all Federal departments and agencies the opportunity to comment and to obtain the widest possible range of views on this subject.

Interested persons are invited to submit written data, views, and arguments in response to this request. Comments should refer to the docket number and should 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 six copies be submitted.

All comments received before the close of business on December 29, 1972, will be considered, and will be available 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. However, action may be taken at any time after that date, and comments filed after the above date and too late for consideration in regard to the action will be treated as suggestions for future action. Relevant material will be filed, 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.

In consideration of the foregoing, it is proposed that a new Part 230, Highway Safety Program Standards, Applicability to Federally Administered Areas, be added to 23 CFR Chapter II, Subchapter B, as set forth below, effective February 15, 1972. This request for comments is issued under authority of the Highway Safety Act of 1966, 23 U.S.C. 402, and the delegations of authority at 49 CFR 1.49 and 1.51.

Issued on October 19, 1972.

JAMES L. FOLEY, Jr.,
Director, Office of Highway Safety, Federal Highway Administration.

JAMES E. WILSON,
Associate Administrator, Traffic Safety Programs, National Highway Traffic Safety Administration.

PART 230—HIGHWAY SAFETY PROGRAM STANDARDS—APPLICABILITY TO FEDERALLY ADMINISTERED AREAS

§ 230.1 Scope.

This part establishes requirements for implementation of highway safety program standards set out in this chapter by Federal departments or agencies where a Federal department or agency controls highways open to public travel or supervises traffic operations in federally administered areas.

§ 230.2 Purpose.

The purpose of this part is to insure that uniform standards established to regulate highway safety activities apply uniformly throughout the United States, including on those highways and for those activities administered by a Federal agency.

§ 230.3 Applicability.

Pursuant to 23 U.S.C. 402, the highway safety program standards set out in 23 CFR Chapter II, are hereby applied to Federal departments and agencies that control highways open to public travel within federally administered areas or supervise traffic operations on such highways, to the extent that they engage in activities covered by the highway safety program standards set out in this chapter.

§ 230.4 Requirements.

Each department or agency shall implement the highway safety program standards, to the extent that they are relevant to the activities of the department or agency. Implementation activities shall include but not be limited to:

(a) Review of the department's or agency's activities to determine which are covered by the highway safety program standards.

(b) Review of the current status of those activities with regard to the relevant requirements of the standards.

(c) Development and periodic updating of a multiyear comprehensive plan for highway safety in accordance with the highway safety program standards.

(d) Preparation of an annual work program which details the work to be done for a given year to implement its comprehensive plan.

§ 230.5 Annual report.

For inclusion in the report to the President for transmittal to the Congress as required by section 202(a) of the Highway Safety Act of 1966 (Public Law 89-564), each department or agency shall submit annually to the Secretary of Transportation a comprehensive report on the administration of its highway safety program for the preceding calendar year. Such report shall include but not be limited to: (a) Thorough statistical data on the accidents and injuries which occurred within its federally administered area during the year; (b) the scope of observance of applicable Federal standards; and (c) the effectiveness of its highway safety programs.

[FR Doc.72-18172 Filed 10-25-72;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19413]

FM BROADCAST STATIONS IN CERTAIN CITIES IN MISSISSIPPI, WEST VIRGINA AND FLORIDA

Proposed Table of Assignments; Order Extending Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.202(b), *Table of assignments,* FM Broadcast Stations. (Hattiesburg, Miss., Parkersburg, W. Va., Tallahassee, Fla.), Docket No. 19413. RM-1758, RM-1767, RM-1772.

1. A further notice of proposed rule making in the above captioned proceeding was adopted on August 29, 1972, and published in the FEDERAL REGISTER on September 9, 1972, 37 F.R. 18402. Comment and reply comment dates presently designated are October 17 and October 26, 1972, respectively.

2. On October 10, 1972, the Board of Regents of Florida, acting for and on behalf of Florida State University (Board of Regents), licensee of noncommercial educational FM Station WFSU, Tallahassee, Fla., filed a petition for extension of time in which to file comments to and including November 17, 1972. The Board of Regents states the additional time is necessary because the Station Manager of WFSU-FM is presently ill and will not be able to coordinate with counsel the material required for the comments. It also states that its Consulting Engineer is out of the country for several weeks. Counsel for Station WTAL (proponent in this proceeding), has stated he has no objection to a grant of this request.

3. We are of the view that the requested time is warranted and would serve the public interest: *Accordingly, it is ordered,* That the time for filing comments in the above docket is extended to and including November 17, and for the filing of reply comments to and including November 27, 1972.

4. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §0.281(d)(8) of the Commission's rules and regulations.

Adopted: October 16, 1972.

Released: October 18, 1972.

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.72-18231 Filed 10-25-72;8:51 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Ch. IX]

[Docket No. AO-375]

IRISH POTATOES GROWN IN RED RIVER VALLEY OF NORTH DAKOTA AND MINNESOTA

Notice of Hearing on Proposed Marketing Agreement and Order

Notice is hereby given of a public hearing to be held in the Auditorium of the Nodak Rural Electric Cooperative, 1405 First Avenue North, Grand Forks, N.D., beginning at 9:30 a.m. local time, November 29, 1972, with respect to a proposed marketing agreement and order program. The proposal would authorize regulation of the handling of Irish potatoes grown in the Red River Valley of North Dakota and Minnesota production area.

The hearing is called pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900).

The hearing is for the purpose of receiving evidence with respect to economic and marketing conditions which relate to the proposed marketing agreement and order, hereinafter set forth, and to any appropriate modifications thereof.

The proposed marketing agreement and order program was submitted with a request for a hearing thereon by the Red River Valley Potato Growers Association on behalf of potato producers in the production area. The proposal is as follows:

DEFINITIONS

§ ___.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer, or member of the U.S. Department of Agriculture, who is, or may hereafter be authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ ___.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, as amended, 7 U.S.C. 601–674).

§ ___.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ ___.4 Production area.

"Production area" means all territory included within the boundaries of the Counties of Towner, Ramsey, Cavalier, Pembina, Walsh, Grand Forks, Nelson, Steele, Traill, Cass, and Richland of the State of North Dakota, and of Kittson, Marshall, Polk, Pennington, Red Lake, Norman, Mahnomen, Clay, Becker, Wikin, and Otter Trail of the State of Minnesota.

§ ___.5 Potatoes.

"Potatoes" means all varieties of Irish potatoes grown within the production area.

§ ___.6 Handler.

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

§ ___.7 Handle.

"Handle" means to pack, sell, ship, transport, or in any other way to place potatoes, or cause potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof; or from any points specified by the Secretary outside the production area to any other point: *Provided,* That, the definition of "handle" shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes prepared for market, or stored, except that the committee may impose safeguards pursuant to § ___.39 with respect to such potatoes.

§ ___.8 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of potatoes for market.

§ ___.9 Fiscal period.

"Fiscal period" means the period beginning on August 1 of each year and ending July 31 of the following year, or such other period as the Secretary may establish pursuant to recommendation of the committee.

§ ___.10 Grading.

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

§ ___.11 Grade and size.

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

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

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

(c) U.S. Standards for Grades of Seed Potatoes (§§ 51.3000 through 51.3014 of this title), or amendments thereto or modifications thereof, or variations based thereon.

§ ___.12 Maturity.

"Maturity" means the stage of development or condition of the outer skin (epidermis) of the potato determined according to skinning classifications defined by the U.S. Standards for Potatoes (§§ 51.1540 to 51.1566, inclusive of this title).

§ ___.13 Varieties.

"Varieties" means all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the U.S. Department of Agriculture.

§ ___.14 Seed potatoes.

"Seed potatoes" or "seed" means all potatoes officially certified and tagged, marked, or otherwise appropriately identified under the supervision of the official seed potato certifying agency of the State in which the potatoes were grown or other seed certification agencies which the Secretary may recognize.

§ ___.15 Pack.

"Pack" means a quantity of potatoes in any type of container and which falls within specific weight limits or within specific grade and/or size limits or any combination thereof, recommended by the committee and approved by the Secretary.

§ ___.16 Container.

"Container" means a sack, bag, crate, box, basket, barrel, bulk load, or other receptacle used in the packaging, transportation, sale, or other handling of potatoes.

§ ___.17 Committee.

"Committee" means the Red River Valley Potato Committee, established pursuant to § ___.20.

§ ___.18 District.

"District" means each of the geographical divisions of the production area established pursuant to § ___.27.

§ ___.19 Export.

"Export" means shipment of potatoes beyond the boundaries of the continental United States.

COMMITTEE

§ ___.20 Establishment and membership.

(a) The Red River Valley Potato Committee consisting of 14 members, all of whom shall be producers, is hereby established.

(b) Each person selected as a committee member or alternate shall be a producer or an officer or employee of a producer in the district for which selected and each such person shall be a resident of the production area.

(c) For each member of the committee there shall be an alternate who shall have the same qualifications as the member. An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member his alter-

nate shall act for him until a successor for such member is selected and has qualified.

§ ___.21 Selection.

(a) Committee members and alternates shall be selected by the Secretary on the basis of districts as established pursuant to § ___.27. Selection of committee members for districts shall be as follows: Two members for each of Districts 1, 2, 3, 4, and 7; and one member for each of Districts 5, 6, 8, and 9.

(b) Any person selected by the Secretary as a committee member or as an alternate shall qualify by filing a written acceptance with the Secretary within the time he specifies.

§ ___.22 Term of office.

(a) The term of office of committee members and alternates shall be 2 years beginning August 1 and ending July 31, or such other date as the Secretary may approve upon recommendation of the committee, except that of the initial 14 members selected, seven shall serve for a term ending on the second July 31 following their selection and seven shall serve for a term ending on the first July 31 following their selection. Each of the initial 14 alternate members shall be selected to serve for the same term of office as the respective member from each district. No member shall serve for more than three consecutive terms.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the current term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ ___.23 Procedure.

(a) Ten members of the committee shall be necessary to constitute a quorum and 10 concurring votes shall be required to pass any motion or approve any committee action or such other numbers as may be approved by the Secretary pursuant to recommendation of the committee. In assembled meetings, all votes shall be cast in person.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication. Any vote cast at such meeting shall be confirmed promptly in writing.

§ ___.24 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ ___.25 Duties.

It shall be the duty of the committee:

(a) At the beginning of each fiscal period, to meet and organize, to select from among its members a chairman, and such other officers and subcommittees as may be necessary, and to adopt such rules, regulations and bylaws for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the compensation and define the duties of each such person, and to protect the handling of committee funds through fidelity bonds;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes, and to engage in such research and service activities which relate to the handling or marketing of potatoes as may be approved by the Secretary.

(f) To keep minutes, books, and records which clearly reflect all the acts and transactions of the committee; and to furnish the Secretary promptly two copies of the minutes of each committee meeting and two copies of the annual report of the committee's operations.

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) At the beginning of each fiscal period, to submit to the Secretary a budget of its expenses for such fiscal period, together with a report thereon;

(i) To prepare periodic statements of the financial operations of the committee and to cause the books of the committee to be audited by a competent public accountant at least once each fiscal period, and at such other times as the committee may deem necessary or as the Secretary may request. These reports shall show the receipt and expenditure of funds collected pursuant to this subpart; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(j) To consult, cooperate, and exchange information with other potato marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

§ ___.26 Expenses and compensation.

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

§ ___.27 Districts.

(a) For the purpose of determining the basis for selecting committee members, the following districts of the production area are hereby initially established:

District No.		Number of members
	NORTH DAKOTA COUNTIES	
1	Pembina, Cavalier, Towner, and Ramsey	2
2	Walsh, east of Highway 18	2
3	Walsh, west of Highway 18	2
4	Grand Forks	2
5	Traill, Steele, Richland, Cass, and Nelson	1
	MINNESOTA COUNTIES	
6	Kittson, Marshall, and Pennington	1
7	Red Lake and West Polk	2
8	East Polk, Norman, and Mahnomen	1
9	Clay, Otter Tail, Wilkin, and Becker	1

(b) *Redistricting.* The Secretary, upon recommendation of the committee, may reestablish districts within the production area and may reapportion committee membership among the various districts. In recommending any such changes in districts, the committee shall give consideration to (1) the relative importance of new areas of production, (2) changes in the relative positions of existing districts with respect to production, (3) the geographic location of areas of production as they would affect the efficiency of administering this part, (4) the equitable relationship between the committee membership and districts and (5) other relevant factors: Provided, That there shall be no change in the total number of committee members or in the total number of districts. No change in districting may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting may be made within less than 6 months prior to such date.

§ ___.28 Nominations.

The Secretary may select the members of the Red River Valley Potato Committee and their respective alternates from nominations which may be made in the following manner, or from other eligible persons:

(a) Nominations for members and alternates of the committee may be submitted by producers, or groups thereof, on an elective basis or otherwise.

(b) In order to provide nominations for committee members and alternates:

(1) The committee shall hold, or cause to be held, nominations by mail or at assembled meetings of producers to fill expiring terms in each district. Such nominations shall be held prior to July 1 of each year, or by such other date as may be approved by the Secretary;

(2) In arranging for such nominations, the committee may, if it deems desirable, utilize the services and facilities of existing organizations and agencies;

(3) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee which is vacant, or which is to become vacant the following July 31;

(4) Nominations for committee members and alternate members shall be supplied to the Secretary, in such manner and form as he may prescribe, not later than July 1 of each year, or such other date as may be approved;

(5) Only producers who reside within the production area may participate in designating nominees for committee members and their alternates;

(6) Regardless of the number of districts in which a person produces potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives, in designating nominees for committee members and alternates. In the event a person is engaged in producing potatoes in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees. An eligible voter's privilege of casting only one vote, as aforesaid, shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

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

§ ___.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § ___.28, or from previously unselected nominees on the current nominee list from the district involved or from other eligible persons. If the names of nominees to fill any vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § ___.27.

EXPENSES AND ASSESSMENTS

§ ___.30 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Each handler's pro rata share of such expenses shall be proportionate to the ratio between the total quantity of assessable potatoes handled by him as the first handler thereof during a fiscal period and the total quantity of assessable potatoes so handled by all handlers as first handlers thereof during such fiscal period.

§ ___.31 Budget.

As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ ___.32 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided for in this subpart. Each handler who first handles assessable potatoes shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied during each fiscal period upon handlers at a rate per unit established by the Secretary. Such rate may be established upon the basis of the committee's recommendations and other available information.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all assessable potatoes which were handled by each first handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required irrespective of whether particular provisions of this part are suspended or become inoperative.

§ ___.33 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents, and all other persons to account for all receipts and disbursements, funds, property, and records for which they are responsible. Whenever any person ceases to be a member of the committee or alternate, he shall account to his successor, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds, and property (including but not being limited to books and other records) pertaining to the committee's activities for which he is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in his successor, the committee, or person designated by the Secretary, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations under this part are not in effect, and, if the Secretary determines such action appropriate, he may direct that such person or persons may act as such trustee or trustees.

§ ___.33 Excess funds.

At the end of each fiscal period funds arising from the excess of assessments collected over expenses shall be accounted for as follows:

(a) The committee, with the approval of the Secretary, may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided,* That funds in the reserve shall not exceed approximately one fiscal period's budgeted expenses. Such reserve funds may be used to defray any expenses authorized under this part and to cover necessary expenses of liquidation in the event of termination of this part. If upon such termination any funds not required to defray the necessary expenses of liquidation, and after reasonable effort by the committee it is found impracticable to return such remaining funds to handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

(b) If such excess is not retained in a reserve or used to defray necessary expenses of liquidation, it shall be credited or refunded proportionately to the handlers from whom collected.

REGULATION

§ ___.34 Marketing policy.

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

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

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

(3) The trend and level of consumer income;

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

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

(6) Other relevant factors.

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

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

§ ___.35 Recommendation for regulation.

The committee shall recommend to the Secretary regulations, or amendments, modifications, suspension, or termination thereof, whenever it finds that such regulations as provided in this subpart in accordance with the marketing policy established pursuant to § ___.34 and that such regulations will tend to effectuate the declared policy of the act.

§ ___.36 Issuance of regulations.

(a) The Secretary shall limit the handling of potatoes whenever he finds from the recommendations and information submitted by the committee that it would tend to effectuate the declared policy of the act. Such limitation may:

(1) Regulate in any or all portions of the production area the handling of particular grades, sizes, qualities, or maturities, or any combination thereof, of any or all varieties of potatoes during any period;

(2) Regulate the handling at specified locations outside the production area of particular grades, sizes, qualities, or maturities of production area potatoes which have been shipped from the production area to such specified locations for grading or storage pursuant to § ___.38;

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

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

(5) Require that containers for potatoes handled shall be labeled to show the grade, or size or both, thereon.

(b) No regulation applicable to seed shall modify or impair the official seed certification specification and requirements established by the official seed certification agency of the State in which the potatoes were grown.

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

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

§ ___.37 Minimum quantities.

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

§ ___.38 Shipments for special purposes.

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

(1) Livestock feed;
(2) Charity;
(3) Export;
(4) Seed;
(5) Prepeeling;
(6) Canning, freezing, and other processing;
(7) The shipment of fieldrun, unwashed, uninspected potatoes from the production area to specified locations outside the production area for grading, packing, storage, or other handling, provided the receiver of such potatoes agrees to, and complies with, the safeguard provisions of § ___.39; or
(8) Such other purposes as may be specified by the committee with the approval of the Secretary.

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

§ ___.39 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent shipments pursuant to §___.38 from entering channels of trade other than the specific purposes authorized therefor.

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

(1) Shall obtain the inspection required by §___.40, or pay the assessment provided by §___.32, or both, in connection with the potato shipments affected in accordance with §___.38, and

(2) Shall, prior to handling, apply for and obtain a special purpose certificate from the committee for shipments of potatoes affected or to be affected under provisions of §___.38.

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

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

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

INSPECTION

§ ___.40 Inspection and certification.

(a) During any period in which the handling of potatoes is regulated pursuant to § ___.36 no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal or Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to § ___.37 or § ___.38, or both.

(b) Regrading, resorting, or repacking any lot of potatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall handle potatoes after they have been regraded, resorted, repacked, or in any way further prepared for market, unless such potatoes are inspected by an authorized representative of the Federal, or Federal-State Inspection Service. Such inspection requirements on regraded, resorted, or repacked potatoes may be modified, suspended, or terminated upon recommendation by the committee, and approval by the Secretary.

(c) Upon recommendation of the committee, and approval of the Secretary, all potatoes so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of the Federal, or Federal-State, inspector or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of potatoes by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, which certificate shall be surrendered to such authority as may be designated.

REPORTS

§ ___.41 Reports and records.

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

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

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

(d) All such reports shall be held under appropriate protective classification and custody by the committee or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed to any person other than the Secretary, or his authorized agents. Compilations of general reports from data and information submitted by handlers is authorized subject to the prohibition of disclosure of individual handlers identities or operations.

§ ___.42 Compliance.

Except as provided in this subpart, no handler shall handle potatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall handle potatoes except in conformity to the provisions of this subpart.

EFFECTIVE TIME AND TERMINATION

§ ___.43 Effective time.

The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways specified in this subpart.

§ ___.44 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving a least 1 day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal year whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production for market of potatoes: *Provided*, That such majority has, during such period, produced for market more than 50 percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced at least 50 days prior to the end of the then current fiscal period.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ ___.45 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon said trustees.

§ ___.46 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

MISCELLANEOUS PROVISIONS

§ ___.47 Right of the Secretary.

The members of the commitee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ ___.48 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except, with respect to acts done under and during the existence of this subpart.

§ ___.49 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government or name any agency or division in the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ ___.50 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ ___.51 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ ___.52 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remander of this subpart, or the applicability thereof, to any other person, circumstance, or thing, shall not be affected thereby.

§ ___.53 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

§ ___.54 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original. * * *

§ ___.55 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Sec-

retary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.[1]

§ ___.56 Order with marketing agreement.

Each signatory handler requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of potatoes in the same manner as is provided for in this agreement.[2]

Copies of this notice may be obtained from the Vegetable Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, or from Robert B. Case, Denver Marketing Field Office, Fruit and Vegetable Division, U.S. Customhouse, Room 365, 721 19th Street, Denver, CO 80202.

Dated: October 19, 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc. 72-18210; Filed 10-25-72; 8:52 a.m.]

Commodity Credit Corporation

[7 CFR Part 1464]

FIRE-CURED, DARK AIR-CURED, AND VIRGINIA SUN-CURED TOBACCO

Notice of Advanced Grade Rates for Price Support on 1972 Crop

Correction

In F.R. Doc. 72-17535, appearing on page 21956, in the issue of Tuesday, October 17, 1972, in the second table of § 1464.19, the second from the last figure, reading "N2G_____33", should be deleted.

DEPARTMENT OF THE INTERIOR

Bureau of Mines

[30 CFR Part 75]

MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

Self-Propelled Electric Face Equipment; Notice of Public Hearing

In accordance with the provisions of section 305(r) of the Federal Coal Mine Health and Safety Act of 1969, as amended (83 Stat. 779; 30 U.S.C. 865(r)), and pursuant to the authority vested in the Secretary of the Interior under section 101(a) of the Act (83 Stat. 475; 30 U.S.C. 811(a)), there was published, as proposed rule making, in the FEDERAL REGISTER for June 23, 1972 (37 F.R. 12395), §§ 75.523-1 through 75.523-3 of Part 75, Subchapter O, Chapter I, Title 30, Code of Federal Regulations, setting forth proposed mandatory standards which would: (1) Establish installation and performance requirements for devices that would deenergize self-propelled electric face equipment in the event of an emergency; and, (2) establish installation and performance requirements for automatic emergency brakes on rubber-tired, self-propelled electric face equipment.

Interested persons were afforded a period of 45 days following publication within which to submit to the Director, Bureau of Mines, written comments, suggestions, or objections to these proposed mandatory safety standards, stating the grounds therefor, and to request a public hearing on such objections.

Written objections were timely filed with the Director, Bureau of Mines, stating the grounds for objections and requesting a public hearing on proposed §§ 75.523-1 through 75.523-3 of Part 75. In accordance with section 101(f) of the Act, a notice of objections filed and hearing requested was published in the FEDERAL REGISTER for October 13, 1972 (37 F.R. 21641).

Pursuant to section 101(g) of the Act, notice is hereby given that a public hearing will be held on November 15, 1972, beginning at 9 a.m., e.s.t., in the House of Delegates Chambers, Main Unit, Building 1, State Capitol Building, 1900 Washington Street East, Charleston, W. Va., for the purpose of receiving relevant evidence on the following issues:

(1) That all self-propelled electric face equipment acquired for use in a coal mine (except for self-propelled electric face equipment that is equipped with a substantially constructed cab which meets the requirements of 30 CFR Part 75) be provided with a device that will quickly deenergize the tramming motors of the equipment in the event of an emergency in accordance with the schedule of time specified in proposed 30 CFR 75.523-1;

(2) That all rubber-tired, self-propelled electric face equipment acquired for use in a coal mine (except for rubber-tired self-propelled electric face equipment that is equipped with a driving mechanism, in accordance with 30 CFR 18.20(f), that precludes movement of the equipment when parked) be provided with an automatic emergency brake in accordance with the schedule of time specified in proposed 30 CFR 75.523-3;

(3) That proposed 30 CFR 75.523-1 through 75.523-3 should not be mandatory safety standards, but rather criteria to be utilized in the discretion of an authorized representative of the Secretary of the Interior;

(4) That deenergization of tramming motors of self-propelled electric face equipment be permitted by means other than interruption of the electrical power source;

(5) That rubber-tired, self-propelled electric face equipment be permitted to have parking brakes separate from the automatic emergency brake; and,

(6) That rubber-tired, self-propelled electric face equipment that is equipped with a substantially constructed cab which meets the requirements of 30 CFR Part 75 need not be required to have the automatic emergency brake specified in proposed 30 CFR 75.523-3.

Donald P. Schlick, Deputy Director—Health and Safety, is designated Chairman of the hearing.

The hearing shall be conducted in an informal, orderly manner and a verbatim transcript will be maintained. All written statements, charts, tabulations, and other data will be received in the record. Within 60 days after completion of the hearing, findings of fact concerning the issues presented at the hearing shall be made public.

Persons who desire to testify at the hearing should notify the Director, Bureau of Mines, Department of the Interior, Washington, D.C. 20240, not later than November 10, 1972.

JOHN B. RIGG,
Deputy Assistant Secretary
of the Interior.

OCTOBER 20, 1972.

[FR Doc.72-18156 Filed 10-25-72;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 26]

NUTRITIVE SWEETENERS

Request for Comments on Recommended International Standards and a Petition

Correction

In F.R. Doc. 72-16643, appearing at page 21103, in the issue of Thursday, October 5, 1972, the following changes should be made:

1. In the second column on page 21104, delete the fifth and sixth lines under 7.5 *Determination of arsenic.*

2. On page 21104, in the third column, under 6. *Labeling,* after the third line, insert "CAC/RS 1-1969), the following specific provisions apply:".

3. In the first column on page 21105, in the third line of No. 1 under "Selected Bibliography", the word "Parish", should read "Paris".

4. In the second column of page 21105, in the third line of 7.2 *Determination of reducing sugar content,* the reference in the parenthesis "ICUMBA" should read "ICUMSA".

5. In the first column on page 21106, in the last paragraph 1., delete the second line.

CIVIL AERONAUTICS BOARD

[14 CFR Part 378]

[Docket No. 23940; SPDR-26C]

AIR/SEA CRUISE INCLUSIVE TOURS

Supplemental Notice of Proposed Rule Making

Notice is hereby given that the Civil Aeronautics Board has under consideration modification of Part 378 of the

[1] Applicable only to the proposed marketing agreement.

[2] Applicable only to the proposed marketing agreement.

Board's Special Regulations so as to provide for air/sea cruise inclusive tours. The principal features of the proposed rule are set forth in the attached explanatory statement and proposed rule. The amendment is proposed under the authority of sections 101(3), 101(33), 204(a), 401, 402, 407, and 416(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 737 (as amended by 75 Stat. 467, 76 Stat. 143, 82 Stat. 867, 84 Stat. 921), 743, 754, 757, 766, 771; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386.

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material in communications received on or before November 25, 1972, will be considered before taking final action on the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, upon receipt thereof.

Dated: October 10, 1972.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

EXPLANATORY STATEMENT

By SPDR-26, dated October 26, 1971 (Docket 23940), the Board proposed, inter alia, amendments to Part 378 to provide a blanket exemption for air/sea cruise tours. Section 378.2(b)(2) presently establishes a three-stop requirement for inclusive tour charters (ITC's).[1] The rules also contain delegated authority to the staff to grant waivers to permit, on air/sea inclusive tours, daytime stops by a cruise ship in lieu of overnight stops.[2] In view of the recent surge of activity in this type of tour, it was proposed to grant blanket authority for air/sea cruise ITC's under the following conditions: (1) Where a cruise ship remains in port during the 10 p.m. to 6 a.m. period with tour participants on board, the ship's accommodations should be construed as "overnight" hotel accommodations; (2) a daytime air/sea cruise tour stop should be construed as one of the required three stops: *Provided*, That each such stop is preceded or followed by a night (10 p.m. to 6 a.m.) at sea, and: *Provided further*, That each daytime stop is of at least 12 hours' duration; and (3) the other requirements for the usual air/land ITC also should be complied with—e.g., a minimum of 7 days' duration, and a minimum of three stops no less than 50 air (not sea) miles apart.

The NACA carriers[3] and Royal Caribbean Tours object to the Board's proposal. They maintained, inter alia, that nights aboard ship should invariably be counted as overnight hotel accommodations within the meaning of the rule. They also assert that the rule should relate more closely to the actual operation of the air/sea cruises; that the purpose of the three-stop requirement in the rule is to prevent ITC's from being used as a cloak for point-to-point individually ticketed transportation; and that air/sea ITC's by their very nature are not point-to-point transportation.

Upon review of the whole matter of air/sea ITC's, the Board has decided to withdraw the original proposal (SPDR-26) and substitute therefor a simpler and more liberal rule. Thus, we propose to provide that the requirement for overnight hotel accommodations at a minimum of three places may be satisfied if shipboard accommodations in port or at sea are provided for at least three nights and the ship stops at a minimum of three ports no less than 50 air miles apart.

This proposal would eliminate substantial staff workload[4] and at the same time leave unharmed the ITC concept for air/sea tours. It should give greater freedom to tour operators in selling air/sea ITC's and would not appear to have any material adverse impact on the scheduled air carriers.

It is proposed to amend Part 378 of the Board's Special Regulations (14 CFR Part 378) as follows:

Amend § 378.2(b)(2) to read as follows:

§ 378.2 Definitions.

As used in this part, unless the context otherwise requires—

* * * * *

(b) "Inclusive tour" means * * *

(2) The land portion of the tour must provide overnight hotel accommodations at a minimum of three places other than the point of origin, such places to be no less than 50 air miles from each other: *Provided*, That right accommodations aboard ship, for three or more nights, in or out of port shall satisfy the requirements of this subparagraph, if the ship stops at a minimum of three ports no less than 50 air miles apart.

* * * * *

[FR Doc.72-18266 Filed 10-25-72; 8:55 am]

[1] "The land portion of the tour must provide overnight hotel accommodations at a minimum of three places other than the point of origin * * *."

[2] The staff may grant waivers of § 378.2(b)(2) to permit, on air/sea inclusive tours, daytime stops by a cruise ship in lieu of overnight stops where both of the following conditions prevail: (1) The daytime stop is of at least 12 hours' duration; and (2) the daytime stop is preceded or followed by a night at sea. § 385.13(v)(1).

[3] Capitol International Airways, Inc.; Overseas National Airways, Inc.; Saturn Airways, Inc.; Trans International Airlines, Inc.; Universal Airlines, Inc.; and World Airways, Inc.

[4] 37 requests for waivers to operate air/sea tours with daytime tour stops have been filed with the Board since 1969.

FEDERAL POWER COMMISSION

[18 CFR Part 260]

[Docket No. R-455]

STATEMENTS AND REPORTS (SCHEDULES)

Imputed Rate of Return on Jurisdictional Rate Base; Notice of Extension of Time

OCTOBER 18, 1972.

Revisions to FPC Annual Report Form No. 2 to obtain allocation of costs between jurisdictional and nonjurisdictional pipeline operations to determine the imputed rate of return on jurisdictional rate base, Docket No. R-455.

On October 10, 1972, and October 13, 1972, the American Gas Association and the Independent Natural Gas Association of America, respectively, filed requests for an extension of time within which to file comments concerning the notice of proposed rule making issued on September 21, 1972, in the above-designated matter.[1]

Upon consideration, notice is hereby given that the time is extended to and including January 5, 1973, within which any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, data, views, comments, or suggestions in writing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-18163 Filed 10-25-72; 8:46 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Ch. X]

[Ex Parte No. 289]

REMITTANCE OF DEMURRAGE CHARGES BY COMMON CARRIERS OF PROPERTY BY RAIL

Detained Foreign Cars

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 12th day of October 1972.

This proceeding is being initiated to examine and consider the need for requiring all common carriers of property by railroad subject to the jurisdiction of this Commission to remit to the railroad freight car owner all demurrage charges over and above $10 per car per day collected and retained by a rail-

[1] Published at 37 F.R. 20260, September 28, 1972, and corrected at 37 F.R. 21544, October 12, 1972.

road on foreign cars being detained on its lines.

Demurrage is a charge imposed on shippers and receivers for the detention of freight cars beyond the allotted free time period for loading and unloading the freight cars. While its primary purpose is to expedite the release of the freight car, it is also a source of revenue to offset the per diem charges paid by the nonowner railroad to the owner of the car.

To discourage the unnecessary detention of freight cars by shippers and receivers, the Commission has recently authorized a substantial increase in the demurrage charges, in Demurrage Rules and Charges, Nationwide, 340 I.C.C. 83 (1971). After the expiration of the free time period, the presently applicable demurrage charges generally apply in increments of $10, $20, and $30 per car per day depending on the extent of the detention period. The first increment, $10, appears to be more than adequate to compensate the railroad on whose lines the foreign freight car is being detained in that it provides sufficient revenues to cover the payment of per diem, to compensate the railroad for the use of the track space on which the car is being detained and to provide an incentive for the prompt loading and unloading of freight cars by shippers and receivers.

However, detention of the foreign car on the lines of the nonowner offers no incentive for the railroad car owner to acquire additional cars in order to earn freight revenues, which is the primary purpose of the acquisition of cars. Therefore, remittance by the nonowner railroad of all demurrage charges in excess of $10 per car per day will accomplish two important purposes. It will create an added incentive for the railroad car owner to acquire additional cars and it will remove any inducement on the part of the nonowner railroad to encourage detention of foreign cars in order to benefit from collection of demurrage charges.

It is for these purposes that the instant rulemaking proceeding is instituted.

It appearing, that the collection and retention of demurrage charges by the nonowning carrier on whose lines the car is being detained in an amount over and above $10 per car per day does not comport with the purposes, goals, and objectives of the Interstate Commerce Act, the rules and regulations promulgated by the Commission thereunder, and the National Transportation Policy in that the railroad owner of the car receives only a small portion of the demurrage charge through the per diem rate; that the nonowning railroad has little incentive to expedite return of the car when it retains demurrage collections exceeding its own per diem expenses on the car; that the owner is deprived of the use of the car to earn revenue, which revenue potential exceeds the per diem rate paid by the nonowning railroad for use of the car; and that, as a result, the owner is discouraged from acquiring additional cars for revenue purposes;

And it further appearing, that this proceeding is not anticipated to have any adverse effects upon the quality of the human environment; and good cause appearing therefor:

It is ordered, That a proceeding be, and it is hereby, instituted under the provisions of Part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.), including 1(4), 1(5), 1(6), 1(10), 1(11), 1(13), 1(14), 1(15), 1(17), 1(21), 6(7), 13(4), and 15(1), thereof, the National Transportation Policy (49 U.S.C. preceding section 1), and the Administrative Procedure Act, 5 U.S.C. sections 553 and 559, to determine whether the facts and circumstances require or warrant the adoption of the proposed regulation set forth below, or other regulations of similar purport applicable to common carriers of property by railroad subject to the Interstate Commerce Act, and for the purpose of taking such other and further action as the facts and circumstances may justify and require.

It is further ordered, That all common carriers of property by railroad operating in interstate or foreign commerce within the United States and subject to the Interstate Commerce Act, be, and they are hereby, made respondents in this proceeding.

It is further ordered, That no oral hearing be scheduled for receiving of testimony in this proceeding unless a need should later appear, but that respondents or any other interested persons may participate in this proceeding by submitting for consideration written statements of facts, views, and arguments on the subject mentioned above, or any other subjects pertaining to this proceeding.

It is further ordered, That any person intending to participate in this proceeding by submitting initial or reply statements, or otherwise, shall notify this Commission, by filing with the Secretary, Interstate Commerce Commission, within 30 days of the service date of this order, the original and one copy of a statement of his intention to participate. Inasmuch as the Commission desires wherever possible (a) to conserve time, (b) to avoid unnecessary expense to the public, and (c) the service of pleadings by parties in proceedings of this type only upon those who intend to take active part in the proceeding, the statement of intention to participate shall include a detailed specification of the extent of such person's interest including (1) whether such interest extends merely to receiving Commission releases in this proceeding, (2) whether he genuinely wishes to participate by receiving or filing initial and/or reply statements, (3) if he so desires to participate as described in (2), whether he will consolidate or is capable of consolidating his interests with those of other interested parties by filing joint statements in order to limit the number of copies of pleadings that need be served, such consolidation of interests being strongly urged by the Commission, and (4) any other pertinent information which will aid in limiting the service list to be issued in this proceeding; that this Commission shall then prepare and make available to all such persons a list containing the names and addresses of all parties desiring to participate in this proceeding and upon whom copies of all statements must be filed; and that at the time of service list the Commission will fix the time within which initial statements and replies must be filed.

And it is further ordered, That statutory notice of the institution of this proceeding be given to the general public by mailing a copy of this order to the Governor of every State and to the Public Utilities Commission or Board of each State having jurisdiction over transportation, by depositing a copy of this order in the office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy thereof to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER as notice to all interested persons.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[SEAL]

The nonowning railroad, on whose lines a car is being detained under demurrage, shall remit to the railroad car owner all demurrage charges collected in excess of $10 per car per day.

[FR Doc.72-18259 Filed 10-25-72;8:55 am]

Notices

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 371]

DOME PIPELINE CORP.

Request for Modification of Presidential Permit; Notice of Public Hearing on Draft Environmental Impact Statements

Notice is hereby given that a public hearing will be conducted by the Department of State on November 6, 1972, at 1:30 p.m. in the River Room of the Veterans Memorial Building, 151 West Jefferson Avenue, Detroit, MI. The purpose of the hearing will be to afford any interested members of the public with the opportunity to offer comments on a draft Environmental Impact Statement relating to a request that the Dome Pipeline Corp. has addressed to the Department for an amendment to a Presidential permit which was issued on March 13, 1969. The draft Environmental Impact Statement was issued by the State Department on October 3, 1972, and notice as to its availability to the public appeared in the FEDERAL REGISTER on October 11, 1972 (see 37 F.R. 21450). Persons desiring to obtain copies of the statement are able to do so on payment of $11, by check or money order, to the National Technical Information Service of the Department of Commerce, Springfield, Va. 22151. The statement's identifying NTIS number is EIS–NI–72–5398 D. Copies are also available for reading in the Office of the District Engineer, Corps of Engineers, 150 Michigan Avenue, Detroit, MI 48226 (Attention: Urban Boresch, Telephone 313—226–6800).

The proposed amendment to the Presidential permit would permit the Dome Corp. to transmit hydrocarbons through an existing pipeline segment under the Detroit River between Detroit, Mich. and Windsor, Ontario, Canada. The pipeline segment under the Detroit River will be part of a pipeline that will deliver hydrocarbon liquids from underground storage facilities in Windsor, Ontario, approximately 110 miles to the Columbia natural gas reforming plant now being built at Green Springs, Ohio. The draft Environmental Impact Statement, which was prepared pursuant to section 102(2)(c) of the National Environmental Policy Act, evaluates the environmental impact of the proposed Windsor-Green Springs line including those aspects related to the Detroit area.

Persons desiring to submit any comments on the draft statement are encouraged to do so in writing and are requested to notify either the Office of Environmental Affairs (SCI/EN), Department of State (telephone 202—632–9169) or the Office of the Detroit District Engineer, of their plans to attend the meeting.

Dated: October 19, 1972.

For the Secretary of State.

[SEAL] CHRISTIAN R. HERTER, Jr.,
Special Assistant to the Secretary for Environmental Affairs.

[FR Doc.72–18174 Filed 10–25–72;8:53 am]

DEPARTMENT OF DEFENSE

Department of the Army

U.S. ARMY RESEARCH OFFICE—DURHAM, N.C.

Notice of Meeting

In accordance with Executive Order No. 11671, dated June 5, 1972, 37 F.R. 11307, as amended by Executive Order No. 11686, dated October 7, 1972, 37 F.R. 21421, announcement is made of the following Committee meeting:

Name of committee: Junior Science and Humanities Symposia Advisory Committee.

Date, time, and place: October 27, 1972, 0900 hours, Room 100, U.S. Army Research Office, 3045 Columbia Pike, Arlington, VA.

Proposed agenda: Introductory remarks.

Introduction of new members: Action on summary of 23d meeting held April 26, 1972, U.S. Army Research Office-Durham, Durham, N.C. JSHS–231.

Material for file: Status of Regional Program and Funding, fiscal year 1973. Mr. Donald C. Rollins, Director, Duke JSHS Office.

Other Army Support of JSHSP, fiscal year 1973.

1973 National JSHS. Mr. Donald C. Rollins, Director, Duke JSHS Office.

Evaluation of JSHS Program. Mr. Franklin Kizer, State Department of Public Instruction, Richmond, Va.

Fiscal year 1974 JSHS Program. Mr. Donald C. Rollins, Director, Duke JSHS Office.

A. Proposed budget fiscal year 1974 JSHS Program.

Other items of business.

Date and place of next meeting.

E. W. GANNON,
Lieutenant Colonel, U.S. Army,
Chief, Plans Office, TAGO.

[FR Doc.72–18175 Filed 10–25–72;8:54 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 5812, 6137]

OREGON

Opening of Public Lands

OCTOBER 17, 1972.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1272), as amended June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315g), the following lands have been reconveyed to the United States.

[OR 5812]

WILLAMETTE MERIDIAN

T. 18 S., R. 17 E., Crook County,
Sec. 4, SW¼NW¼ and W½SW¼;
Sec. 9, W½NW¼, NW¼SW¼, and E½SW¼;
Sec. 16, SE¼NW¼ and E½SW¼;
Sec. 27, NW¼SW¼;
Sec. 28, SE¼NE¼ and N½SE¼.
T. 21 S., R. 17 E., Deschutes County,
Sec. 16, S½.
T. 3 S., R. 18 E., Sherman County,
Sec. 16, all.
T. 7 S., R. 18 E., Wasco County,
Sec. 36, N½NE¼, NW¼, and S½SE¼, except Shaniko-Fossil Highway right-of-way conveyed to the State Highway Commission on October 18, 1951, State Record of Deeds, Book 53, page 111, said right-of-way containing 26.2 acres.
T. 18 S., R. 22 E., Crook County,
Sec. 16, all;
Sec. 36, N½.

[OR 6137]

T. 14 S., R. 12 E., Deschutes County,
Sec. 29, SE¼SW¼, and that portion of the SW¼SE¼ lying west of the center line of Buckhorn Road;
Sec. 31, lots 1, 2, and 3, NE¼NE¼, S½NE¼, E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 32, NW¼SW¼, and that portion of the NE¼SW¼ lying west of the center line of Buckhorn Road.
T. 15 S., R. 11 E., Deschutes County,
Sec. 1, lots 2, 3, and 4, SW¼NW¼, SW¼SW¼, excepting therefrom parcels conveyed to the State of Oregon, by and through its State Highway Commission in deed recorded January 16, 1956, in Volume 112 page 330 deed records.
Sec. 2, lots 1 and 2, SE¼NE¼, S½NW¼, S½S½, excepting therefrom parcels conveyed to the State of Oregon, by and through its State Highway Commission in deed recorded January 16, 1956, in Volume 112 page 330 deed records.
Sec. 3, SW¼NE¼, W½SE¼, S½SE¼SE¼, excepting therefrom parcels conveyed to the State of Oregon, by and through its State Highway Commission in deed recorded January 16 1956, in Volume 112 page 330 deed records.
Sec. 9, E½SE¼;
Sec. 10, E½NE¼, W½E½, NW¼SW¼;
Sec. 11, SE¼NE¼, N½N½, N½SE¼, SW¼SE¼;
Sec. 12, NW¼, N½SW¼, SE¼SW¼;
Sec. 13, N½NE¼, SE¼NE¼, NE¼NW¼, SW¼NW¼, NW¼SW¼;
Sec. 14, SE¼NE¼, W½NE¼, NE¼SE¼;
Sec. 15, S½NW¼, N½SW¼;
Sec. 16, E½, E½SW¼;
Sec. 21, W½, SE¼;
Sec. 25, SW¼SW¼;
Sec. 26, SE¼NE¼, E½SE¼;
Sec. 36, E½, E½NW¼, SW¼NW¼, SW¼.
T. 15 S., R. 12 E., Deschutes County,
Sec. 31, lots 3 and 4, E½SW¼, SE¼;
Sec. 32, NW¼.
T. 16 S., R. 11 E., Deschutes County,
Sec. 1, N½SW¼;
Sec. 2, lots 1, 2, 3, and 4, N½SW¼;
Sec. 3, lot 1, SW¼SE¼, E½SE¼;
Sec. 10, N½NE¼.

T. 17 S., R. 14 E., Deschutes County,
Sec. 4, S½;
Sec. 6, lots 1 and 2, S½NE¼, SE¼;
Sec. 7, E½;
Sec. 9, N½, SE¼;
Sec. 10, W½E½, W½;
Sec. 12, NW¼SW¼;
Sec. 18, E½, E½W½.
T. 19 S., R. 15 E., Deschutes County,
Sec. 18, SE¼NE¼;
Sec. 29, S½S½, excepting therefrom parcels conveyed to the State of Oregon, by and through its State Highway Commission, in deed recorded December 17, 1938 in Volume 57, page 158 deed records;
Sec. 31, E½, E½W½;
Sec. 32, all, excepting therefrom parcels conveyed to the State of Oregon, by and through its State Highway Commission, in deed recorded December 17, 1938 in Volume 57 page 158 deed records;
Sec. 33, N½NW¼, SW¼NW¼, excepting therefrom parcels conveyed to the State of Oregon by and through its State Highway Commission, in deed recorded December 17, 1938 in Volume 57 page 158 deed records;
Sec. 34, S½NE¼;
Sec. 36, SW¼, NE¼SE¼, W½SE¼, excepting therefrom parcels conveyed to the State of Oregon, by and through its State Highway Commission, in deed recorded December 17, 1938 in Volume 57 page 158 deed records.
T. 19 S., R. 16 E., Deschutes County,
Sec. 24, W½NE¼, NW¼, N½SW¼, W½SE¼;
Sec. 25, W½NE¼, NW¼SE¼;
Sec. 36, S½NE¼, NE¼SW¼, S½SW¼, SE¼.
T. 20 S., R. 14 E., Deschutes County,
Sec. 13, NE¼, NE¼SW¼, S½SW¼;
Sec. 24, N½NW¼, SW¼NW¼, SW¼, W½SE¼, NE¼SE¼.
T. 20 S., R. 15 E., Deschutes County,
Sec. 5, all (lots 1, 2, 3, and 4, S½N½, S½);
Sec. 6, lots 1, 2, 3, 4, and 5, S½NE¼, SE¼NW¼;
Sec. 7, E½;
Sec. 8, W½, SE¼;
Sec. 13, E½;
Sec. 17, N½;
Sec. 18, all (lots 1, 2, 3, and 4, E½, E½W½);
Sec. 30, lots 1, 2, 3, and 4.
T. 20 S., R. 16 E., Deschutes County,
Sec. 1, N½SW¼SW¼;
Sec. 2, NW¼SW¼SE¼, S½S½SE¼, excepting therefrom parcels conveyed to the State of Oregon, by and through its State Highway Commission, in deed recorded December 17, 1938 in Volume 57 page 158 deed records.
Sec. 3, NW¼NE¼SW¼, S½NE¼SW¼, E½NW¼SE¼, SW¼NW¼SE¼;
Sec. 4, lots 1, 2, 3, and 4, S½NW¼, SW¼, excepting therefrom parcels conveyed to the State of Oregon in deed recorded June 3, 1933 in Volume 52 page 130 deed records, and to the State of Oregon, by and through its State Highway Commission, in deed recorded December 17, 1938 in Volume 57 page 158 deed records;
Sec. 5, lots 1 and 2, S½SE¼, excepting therefrom parcels conveyed to the State of Oregon, by and through its State Highway Commission, in deed recorded December 17, 1938 in Volume 57 page 158 deed records;
Sec. 7, lots 1 and 2, NE¼, E½NW¼;
Sec. 8, NE¼, W½;
Sec. 9, NW¼;
Sec. 12, NW¼NW¼NW¼, S½NW¼NW¼;
Sec. 17, NW¼, NE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 18, all (lots 1, 2, 3, and 4, E½, E½W½);
Sec. 19, lots 1 and 2, NE¼, E½NW¼;
Sec. 20, NW¼;
Sec. 36, N½, SE¼.
T. 20 S., R. 17 E., Deschutes County,
Sec. 4, lot 1, SE¼NE¼, E½SE¼;
Sec. 9, E½E½;
Sec. 10, SW¼NE¼, W½;
Sec. 22, S½;
Sec. 24, NE¼, excepting therefrom parcel conveyed to the State of Oregon, by and through its State Highway Commission, in deed recorded December 17, 1938 in Volume 57 page 158 deed records;
Sec. 25, N½;
Sec. 26, SW¼, W½SE¼;
Sec. 29, W½;
Sec. 35, SE¼NE¼, W½NE¼, NW¼, N½SW¼, NW¼SE¼.
T. 20 S., R. 19 E., Deschutes County,
Sec. 1, lots 1, 2, 3, and 4;
Sec. 2, all (lots 1, 2, 3, and 4, S½N½, S½);
Sec. 11, all.
T. 21 S., R. 18 E., Deschutes County,
Sec. 27, W½;
Sec. 31, lots 2, 3, and 4, SE¼NW¼, E½SW¼, S½SE¼;
Sec. 33, N½;
Sec. 34, W½;
Sec. 35, E½;
Sec. 36, all.
T. 21 S., R. 19 E., Deschutes County,
Sec. 20, all;
Sec. 29, E½;
Sec. 31, S½SE¼;
Sec. 32, W½;
Sec. 33, W½, SW¼SE¼.
T. 21 S., R. 20 E., Deschutes County,
Sec. 4, N½SW¼;
Sec. 7, lots 3 and 4, E½SW¼, SE¼;
Sec. 9, W½W½;
Sec. 16, NE¼, NE¼NW¼;
Sec. 17, S½;
Sec. 19, lots 1 and 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼, excepting therefrom parcels conveyed to the State of Oregon, by and through its State Highway Commission in deed recorded October 22, 1938 in Volume 57 page 60 deed records;
Sec. 20, N½, SW¼, N½SE¼, SW¼SE¼, W½SE¼SE¼, excepting therefrom parcel conveyed to the State of Oregon, by and through its Highway Commission, in deed recorded February 19, 1945 in Volume 66 page 254 deed records;
Sec. 22, W½, SW¼SE¼;
Sec. 29, E½NE¼, NW¼NE¼, NE¼NW¼, excepting therefrom parcels conveyed to the State of Oregon, by and through its State Highway Commission, in deed recorded October 22, 1938 in Volume 57 page 60 deed records.
T. 22 S., R. 19 E.,
Sec. 3, all (lots 1, 2, 3, and 4, S½N½, S½);
Sec. 4, lots 1, 2, 3, and 4, S½N½, SW¼, S½SE¼;
Sec. 5, all (lots 1, 2, 3, and 4, S½N½, S½);
Sec. 6, all (lots 1, 2, 3, 4, 5, 6, and 7, S½NE¼, SE¼NW¼, E½SW¼, SW¼).

The areas described above aggregate 33,241.35 acres.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands are hereby open to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.), and the mineral leasing laws. All valid applications received at or prior to 10 a.m., November 22, 1972, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Post Office Box 2965, Portland, OR 97208.

VIRGIL O. SEISER,
Acting Chief, Branch of Lands and Mineral Operations.

[FR Doc.72-18171 Filed 10-25-72;8:54 am]

National Park Service

OLYMPIC NATIONAL PARK

Notice of Intention To Issue a Concession Permit

Pursuant to the provisions of section 5, of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Superintendent, Olympic National Park, proposes to extend the concession permit issued to Henry A. Brown authorizing him to provide concession facilities and services for the public at Olympic National Park for a period of one (1) year from December 1, 1972 through November 30, 1973. The foregoing concessioner has performed his obligations under a prior permit to the satisfaction of the National Park Service and, therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. However, under the Act cited above, the National Park Service is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Superintendent, Olympic National Park, 600 East Park Avenue, Port Angeles, WA, for information as to the requirements of the proposed permit.

Dated: September 22, 1972.

R. W. ALLIN,
Superintendent, Olympic National Park.

[FR Doc.72-18167 Filed 10-25-72;8:46 am]

Office of the Secretary

[INT FES 72-38]

SHORTCUT PIPELINE MODIFICATION

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement on the construction of a 5.1-mile underground pipeline which is a modification of the existing Contra Costa Canal Unit, Central Valley Project, Calif.

Copies are available for inspection at the following locations:

Assistant to the Commissioner—Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, Telephone 202—343-4991.

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Denver, Colo. 80225, Telephone 303—234-3007.

Office of the Regional Director, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, Telephone 916—481-6100.

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. In addition, copies may be purchased from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151. Please refer to the statement number above.

Dated: October 16, 1972.

W. W. LYONS,
Deputy Assistant Secretary of the Interior.

[FR Doc.72-18169 Filed 10-25-72;8:47 am]

[INT DES 72-105]

TWIN LAKES DAM AND RESERVOIR ENLARGEMENT AND MOUNT ELBERT FOREBAY FRYINGPAN-ARKANSAS PROJECT, COLO.

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for construction of Twin Lakes Dam and Reservoir Enlargement and Mount Elbert Forebay, an authorized feature of the Fryingpan-Arkansas Project. The principle function of this feature is to provide an afterbay for the Mount Elbert Pumped-Storage Powerplant. Other functions will include recreation, fish and wildlife enhancement, and regulation for downstream water releases. Written comments are invited within 45 days of this notice. Written comments can be directed to the Regional Director, Denver, Colo. (see complete address below).

Copies are available for inspection at the following locations:

Office of Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, Telephone 202—343-4991.

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Denver, Colo. 80225, Telephone 303—234-3007.

Office of the Regional Director, Bureau of Reclamation, Building 20, Denver Federal Center, Denver, Colo. 80225, Telephone 303—234-4441.

Project Manager, Fryingpan-Arkansas Project Office, Post Office Box 515, Pueblo, Colo. 81002, Telephone 303—544-5277.

Single copies of the final environmental statement may be obtained on request to the Commissioner of Reclamation and the Regional Director. In addition, copies are available from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151. Please refer to the statement number above.

Dated: October 16, 1972.

W. W. LYONS,
Deputy Assistant Secretary of the Interior.

[FR Doc.72-18168 Filed 10-25-72;8:46 am]

DEPARTMENT OF AGRICULTURE

Office of Information Systems

WASHINGTON DATA PROCESSING CENTER (WDPC)

Redesignation as Washington Computer Center

The Washington Data Processing Center (WDPC), U.S. Department of Agriculture, has been redesignated as the U.S. Department of Agriculture, Washington Computer Center (WCC).

Effective date: October 17, 1972.

Dated: October 19, 1972.

MELVYN R. COPEN,
Director, Office of Information Systems.

[FR Doc.72-18275 Filed 10-25-72;8:55 am]

Soil Conservation Service

TALLULAH CREEK (LONG CREEK PORTION) WATERSHED PROJECT, N.C.

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, U.S. Department of Agriculture, has prepared a final environmental statement for the Tallulah Creek (Long Creek Portion) Watershed Project, Graham County, N.C., USDA-SCS-ES-WS-(ADM)-72-17 (F).

The environmental statement concerns a plan for watershed protection, flood prevention, and municipal water supply. The planned works of improvement include conservation land treatment, supplemented by one multiple-purpose reservoir.

The final environmental statement was transmitted to CEQ on October 16, 1972.

Copies are available for inspection during regular working hours at the following locations:

Soil Conservation Service, USDA, South Agriculture Building, Room 5227, 14th and Independence Avenue SW., Washington, DC 20250.

Soil Conservation Service, USDA, Federal Building, New Bern Avenue, Raleigh, N.C. 27611.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151. Please refer to name and number of statement when ordering. The estimated cost is $3.40.

Tallulah Creek (Long Creek Portion), Watershed Project, N.C. Notice of Availability of Final Environmental Statement.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

EUGENE C. BUIE,
Deputy Administrator for Watersheds, Soil Conservation Service.

OCTOBER 18, 1972.

[FR Doc.72-18207 Filed 10-25-72;8:54 am]

DEPARTMENT OF COMMERCE

Maritime Administration

RECONSTRUCTION TO IMPROVE CONTAINER LIFT CAPACITY

Computation of Foreign Cost; Notice of Intent

Notice is hereby given of the intent of the Maritime Subsidy Board to compute the estimated foreign cost for reconstruction to improve container lift capacity on a vessel (identified as MA Design C6-S-69c), pursuant to the provisions of section 502(b) of the Merchant Marine Act, 1936, as amended.

Any person, firm, or corporation having any interest (within the meaning of section 502(b)) in such computations may file written statements by close of business on November 1, 1972, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th and E Streets NW., Washington, DC 20235.

Dated: October 20, 1972.

By Order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.72-18362 Filed 10-25-72;8:55 am]

Office of Import Programs

STATE UNIVERSITY COLLEGE AT GENESCO, ET AL.

Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as

amended (37 F.R. 3892 et seq.). (See especially § 701.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00456-33-46040. Applicant: State University College at Genesco, Biology Department, Genesco, N.Y. 14454. Article: Electron microscope, Model HS-8-1. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article will be used primarily by students in three courses—Cell Biology (Jr.-Sr. level); microtechnic (Jr.-Sr. first year graduate); cytology (Sr. first year graduate), for training in electron microscopy techniques. Application received by Commissioner of Customs: March 21, 1972. Advice submitted by Department of Health, Education, and Welfare on: August 4, 1972.

Docket No. 72-00610-33-46040. Applicant: University of Florida, College of Medicine, Department of Ophthalmology, Gainesville, Fla. 32601. Article: Electron microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in ultrastructural studies of human cornea to resolve the corneal lamellae and viruses associated with human disease and ultrastructural studies of the Canal of Schlemm and trabecular meshwork in human eyes from both autopsy and biopsy samples to correlate ultrastructure with physiology or diseased states. The article will also be used for training purposes in the courses: Topics in Ophthalmology Research MED 600 series and Special Topics in Pathology MED 646. The students will become familiar with the operation of the instrument along with other techniques and procedures such as tissue culture, microsurgical techniques, immunological techniques, research virology, techniques in genetics, perfusion techniques and general research design. Application received by Commissioner of Customs: June 5, 1972. Advice submitted by Department of Health, Education, and Welfare on: October 6, 1972.

Docket No. 72-00616-33-46040. Applicant: Howard University, 2400 Sixth Street NW., Washington, DC 20001. Article: Electron microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in the following current and projected research projects:

Docket No. 72-00474-33-46040. Applicant: Yale University, Purchasing Department, 260 Whitney Avenue, New Haven, CT 06520. Article: Electron microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in studies of kidney tissue obtained at autopsy and by biopsy of patients with acute renal failure. The degree of cellular structural alteration will be correlated with the severity and duration of the clinical disease. Kidneys of rats where acute renal failure has been produced by renal ischemia or the administration of a nephrotoxin will be studied at various intervals after the initial injury. The findings will then be correlated with functional data obtained by psysiological experiments carried out in similar animals. The article will also be used to familiarize interns, residents and research trainees in the methods and techniques of electron microscopy as applied to the study of human disease. Application received by Commissioner of Customs: April 3, 1972. Advice submitted by Department of Health, Education, and Welfare on: October 6, 1972.

1. The fine structure of cross section of hair from several different strains of rats. This study will be correlated with surface structures seen with the scanning electron microscope.

2. The ultrastructure of skin from the ear of the newborn rat as compared with that of the footpad.

3. Ultrastructural characteristics of several different protozoa including Spirostomum, Telotrichidium and Vorticella.

4. The fine structure of brine shrimp eggs before and immediately after development begins.

5. The study of stereo electron micrographs of nuclear symbients isolated from protozoa, particularly Spirostomum. The article will also be used in a course entitled Advanced Cytology to train students in the fundaments of electron microscopy from tissue preparation through micrograph interpretation. Application received by Commissioner of Customs: June 12, 1972. Advice submitted by Department of Health, Education, and Welfare on: October 6, 1972.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for such purposes as these articles are intended to be used, is being manufactured in the United States.

Reasons: Each applicant requires an electron microscope which is suitable for instruction in the basic principles of electron microscopy. Each of the foreign articles to which the foregoing applications relate is a relatively simple, medium resolution electron microscope designed for confident use by beginning students with a minimum of detailed programing. The most closely comparable domestic instrument is the Model EMU-4C electron microscope which is a relatively complex instrument designed primarily for research, which requires a skilled electron microscopist for its operation. We are advised by the Department of Health, Education, and Welfare in its respectively cited memoranda, that the relative simplicity of design and ease of operation of the foreign articles described above are pertinent to the applicants' educational purposes. We, therefore, find that the Forgflo Model EMU-4C electron microscope is not of equivalent scientific value to any of the foreign articles described above for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

R. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.72-18205 Filed 10-25-72;8:54 am]

UNIVERSITY OF AKRON

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket Number: 72-00137-36-46040. Applicant: The University of Akron Institute of Polymer Science, 302 East Buchtel Avenue, Akron, OH 44304. Article: Electron microscope, Model JEM-120. Manufacturer: Japan Electron Optics Lab. Co., Ltd., Japan. Intended use of article: The article is intended to be used for high resolution microscopy in research to obtain information about the molecular structure, morphology, phase separation, domain formation, and crystal growth of polymers, glasses, and inorganic polymers.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a specified resolving capability of 4 Angstroms. The most closely comparable domestic instrument is the Model EMU-4C electron microscope manufactured by the Forgflo Corp. The Model EMU-4C has a specified resolving capability of 5 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolving capability.) We are advised by the National Bureau of Standards in its memorandum dated July 11, 1972, that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We, therefore, find that the Model EMU-4C is not of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.72-18202 Filed 10-25-72;8:54 am]

UNIVERSITY OF CHICAGO ET AL.

Notice of Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.). (See especially § 701.11(e).)

A copy of the record pertaining to each of the decisions is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket Number: 72-00418-00-46040. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Article: Image Intensifier for Electron Microscope. Manufacturer: Siemens AG, West Germany. Intended use of article: The article is an accessory for an existing electron microscope being used for comparison of optical size with sedimentation constants of protein macromolecules and enzymes. Application received by Commissioner of Customs: March 1, 1972. Advice submitted by Department of Health, Education, and Welfare on: October 6, 1972.

Docket No. 72-00622-00-11000. Applicant: Department of the Interior, Bureau of Sport Fisheries and Wildlife, Patuxent Wildlife Research Center, Laurel, Md. 20810. Article: LKB Leak Inlet System. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is an accessory for the LKB 9000 Gas Chromatograph—Mass Spectrometer which allows rapid introduction of liquids or solids into the mass spectrometer but bypasses the gas chromatographic system. Application received by Commissioner of Customs: June 19, 1972. Advice Submitted by Department of Health, Education, and Welfare on: October 6, 1972.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States.

Reasons: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The articles are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the Department of Health, Education, and Welfare in the respectively cited memoranda that the accessories are pertinent to the applicants' intended uses and that it knows of no comparable domestic articles.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign articles are intended to be used.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.72-18203 Filed 10-25-72;8:54 am]

UNIVERSITY OF TEXAS MEDICAL BRANCH ET AL.

Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.). (See especially § 701.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00417-33-46040. Applicant: University of Texas Medical Branch, Office of the Purchasing Agent, Administration Building, UMED, 2-16148, Galveston, Tex. 77550. Article: Electron Microscope, Model EM 300. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used by qualified investigators for research on biogenic amines and synaptic interconnections in the nervous system. Application received by Commissioner of Customs March 1, 1972. Advice submitted by Department of Health, Education, and Welfare on October 6, 1972.

Docket No. 72-00469-33-46040. Applicant: Wills Eye Hospital, 1601 Spring Garden Street, Philadelphia, PA 19130. Article: Electron microscope, Model Elmiskop 101. Manufacturer: Siemens AG, West Germany. Intended use of article: The article is intended to be used for studies utilizing biologic material of ocular origin, both human and experimented animal tissue. All parts of the eye will be studied including cornea, angle structures, iris, ciliary body, pars plana, choroid retina, and optic nerve. At various times, tissue of the central nervous system and cutaneous tissue may be studied. Application received by Commissioner of Customs March 31, 1972. Advice submitted by Department of Health, Education, and Welfare on October 6, 1972.

Docket No. 72-00492-33-46040. Applicant: Eunice Kennedy Shriver Center for Mental Retardation, Inc., 200 Trapelo Road, Waltham, MA 02154. Article: Electron microscope, Model EM 300. Manufacturer: Philips Electronic Instrument, N.V.D., the Netherlands. Intended use of article: The article is intended to be used for electron microscopic studies concerning the normal and abnormal morphogenesis of the brain with the aim of defining the morphological basis of mental retardation and related disorders. Another investigation to be carried out will involve identification of subcellular particles which have been obtained after gradient centrifugation of fragmented material, the study of specific organelles, the evaluation of the structural changes in certain human metabolic diseases. The article will also be used for training in electron microscopy in relation to neuropathology. Application received by Commissioner of Customs April 11, 1972. Advice submitted by Department of Health, Education, and Welfare on October 6, 1972.

Comments: No comments have been received in regard to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States.

Reasons: Each foreign article has a specified resolving capability of 3.5 Angstroms. The most closely comparable domestic instrument is the Model EMU-4C electron microscope which is manufactured by the Forgflo Corp. (Forgflo). The Model EMU-4C has a specified resolving capability of 5 Angstroms. (Resolving capability bears an inverse relationship to its numerical rating in Angstrom units, i.e., the lower the rating, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare in the respectively cited memoranda, that the additional resolving capability of the foreign articles is pertinent to the purposes for which each of the foreign articles to which the foregoing applications relate is intended to be used. We, therefore, find that the Forgflo Model EMU-4C is not of equivalent scientific value to any of the articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used,

which is being manufactured in the United States.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.72-18206 Filed 10-25-72;8:54 am]

UNIVERSITY OF WASHINGTON

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 73-00101-56-17500. Applicant: University of Washington, Department of Oceanography, WB-10, Seattle, Wash. 98195. Article: Two (2) Recording Current Meters. Manufacturer: Ivar Aanderaa, Norway. Intended use of article: The article is intended to be used in detailed studies of the interaction of the deep Arctic basin water with the peripheries, including that portion of the Canadian basin subtending the sector from Amundsen Gulf on the east to Wrangel Island on the west.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket No. 72-00486-81-17500 which was denied without prejudice to resubmission on July 14, 1972 for informational deficiencies. The foreign article is a self-contained instrument which provides capabilities for measuring and recording water current speed, current direction, temperature, and operating periods of 1 year. We are advised by the National Bureau of Standards (NBS) in its memorandum dated October 2, 1972 that the requirement for a self-contained instrument capable of operating for up to 1 year is pertinent to the purposes for which the article is intended to be used. NBS also advises that it knows of no domestically manufactured instrument which is scientifically equivalent to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.72-18204 Filed 10-25-72;8:54 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-516]

DOW CHEMICAL CO.

Certain Products Containing Neomycin and Other Drugs; Notice of Withdrawal of Approval of New Animal Drug Applications

In the FEDERAL REGISTER of Augst 21, 1970 (35 F.R. 13400, DESI 52NV), and September 5, 1970 (35 F.R. 14168, DESI 12-INV), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on: (1) Neo-Polycin Ophthalmic (DESI 12-INV), (2) Neo-Polycin HC Ophthalmic (DESI 12-INV), (3) Neo-Polycin HC (DESI 52NV) and (4) Neo-Polycin Ophthalmic Solution (DESI 12-INV); marketed by The Dow Chemical Co., Post Office Box 10, Zionsville, Ind. 46077.

Pitman-Moore, Inc., the firm named in said announcements, informed the Commissioner that the named products were retained by The Dow Chemical Co. when Pitman-Moore, Inc., became a subsidiary of Johnson & Johnson. The Dow Chemical Co. notified the Commissioner that these products are not being marketed as veterinary drugs. They further stated that they do not object to the withdrawal of the veterinary applications for these products.

Based on the grounds set forth in said announcements and the firms' statements, the Commissioner concludes that the new animal drug applications for the above named products should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351; 21 U.S.C. 360b) and under the authority delegated to the Commissioner (21 CFR 2.120), approval of the new animal drug applications for the above products is hereby withdrawn effective on the date of publication of this document.

Dated: October 17, 1972.

SAM D. FINE,
Associate Commissioner
for Compliance.

[FR Doc.72-18158 Filed 10-25-72;8:45 am]

[Docket No. FDC-D-454; NADA 10-877V]

BEECHAM-MASSENGILL PHARMACEUTICALS

Daribiotic Injectable; Notice of Opportunity for a Hearing

In an announcement in the FEDERAL REGISTER of August 12, 1970 (35 F.R. 12789, DESI 9928V), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Daribiotic Injectable, NADA (new animal drug application) No. 10-877V. The announcement invited the holder of said new animal drug application, Beecham-Massengill Pharmaceuticals, division of Beecham, Inc. (formerly S. E. Massengill Co.), Bristol, Tenn. 37620, and any other interested persons to submit pertinent data on the drug's effectiveness.

Data were not received in response to the announcement and available information fails to provide substantial evidence that this drug will have the effect it purports to have when administered in accordance with the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, notice is given to Beecham-Massengill Pharmaceuticals, and to any other interested persons who may be adversely affected that the Commissioner proposes to issue an order under the provisions of section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b) withdrawing approval of NADA No. 10-877V, including all amendments and supplements thereto.

In accordance with the provisions of section 512 of the act (21 U.S.C. 360b), the Commissioner hereby gives the applicant and any other interested person who would be adversely affected by an order withdrawing such approval an opportunity for a hearing at which time such persons may produce evidence and arguments to show why approval of NADA No. 10-877V should not be withdrawn. Promulgation of the order will cause any drugs similar in composition to the above-cited drug products and recommended for similar conditions for use to be a new animal drug for which an approved new animal drug application is not in effect. Any such drugs then on the market will be subject to appropriate regulatory action.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Office of the General Counsel, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or

2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner, without further notice, will enter a final order withdrawing approval of the new animal drug application.

Failure of such persons to file a written appearance of election within said 30 days will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process which the Commissioner finds is entitled to protection as a

trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for a hearing, they must file a written appearance requesting the hearing and giving the reasons why approval of the new animal drug application should not be withdrawn together with a well-organized and full-factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition to the grounds for this notice. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that no genuine and substantial issue of fact precludes the withdrawal of approval of the application, the Commissioner will enter an order stating his findings and conclusions on such data. If a hearing is requested and is justified by response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence.

Responses to this notice will be available for public inspection in the Office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–51; 21 U.S.C. 360b) and under the authority delegated to the Commissioner (21 CFR 2.120).

Dated: October 17, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-18159 Filed 10-25-72;8:45 am]

NATIONAL ADVISORY FOOD COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671, the Food and Drug Administration announces the following public advisory committee meeting and other required information in accordance with provisions set forth in section 13(a) (1) and (2) of that order:

Committee name, Date/Time/Place, Type of meeting and contact person

National Advisory Food Committee; October 30, 10 a.m., Room 6821, 200 C Street, SW., Washington, DC; open—10 a.m. to 12 m., closed—1 p.m. to 4:30 p.m., Robert A. Littleford, Ph. D., Room 7-67, 5600 Fishers Lane, Rockville, MD 20852, 301-443-4463.

Purpose. Advises the Commissioner of Food and Drugs on policy matters of national significance relating to safety of foods. Reviews and makes recommendations on applications for grants-in-aid. Serves as a forum for exchange of views and recommendations.

Agenda. Review of final order on nutritional labeling. Submission of recommendations.

The afternoon portion of this meeting shall be closed to the public in accordance with section 13(d) of Executive Order 11671 and the Secretary's notice of determination of September 27, 1972, published in the FEDERAL REGISTER of October 5, 1972 (37 F.R. 20995).

A list of committee members and summary minutes of the meeting may be obtained from the contact person for the committee.

Dated: October 25, 1972.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.72-18417 Filed 10-25-72;11:26 am]

National Institutes of Health

PUBLIC HEALTH REVIEW COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671 notice is hereby given of meeting of the following committee and the executive secretary from whom summaries of meetings may be obtained.

Committee, Date, Time, and Location of Meeting

Public Health Review Committee, William J. Holland, Executive Secretary; November 8–10, 1972; 9 a.m.; Building 31, Conference Room 7.

This meeting 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: October 18, 1972.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.72-18194 Filed 10-25-72;8:52 am]

NATIONAL ADVISORY RESEARCH RESOURCES COUNCIL

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the National Advisory Research Resources Council meeting, November 16 and 17, 1972, at 9 a.m., National Institutes of Health, Building 31, Conference Room 9. This meeting will be open to the public from 9 a.m. to 9:10 a.m. and 1:30 p.m. to 5 p.m. on November 16 to discuss previous meeting minutes, consider future meeting dates, hear reports from the Director and Assistant Director, DRR, and to discuss presentations concerning activities of the Department of Defense in the biomedical area mapping onto DRR programs; highlight data concerning DRR programs; and, an overview of Biotechnology Resources Branch programs with emphasis on resource sharing. The meeting will be closed to the public from 9:10 a.m. to 12:30 pm., November 16 and 9 a.m. to adjournment on November 17, to review, discuss, and evaluate grant applications in accordance with section 13(d) of Executive Order 11671 and the Secretary's Determination.

The Information Officer who will furnish summaries of the meetings and rosters of Council members is Mr. James Augustine, Division of Research Resources, Building 31, Room 4B03, Bethesda, Md. 20014, 496-5545.

The Executive Secretary from whom substantive information may be obtained is Dr. James F. O'Donnell, Assistant Director, Division of Research Resources, Building 31, Room 5B05, Bethesda, Md. 20014, 496-1817.

Dated: October 18, 1972.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.72-18198 Filed 10-25-72;8:53 am]

NATIONAL CANCER INSTITUTE BOARD OF SCIENTIFIC COUNSELORS

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the NCI Board of Scientific Counselors, November 13, 1972, at 9 a.m., National Institutes of Health, Building 31 "C" Wing, Conference Room 8, Bethesda, Md. The subject for discussion at the meeting will be the collaborative program of the Division of Cancer Biology and Diagnosis, NCI. This meeting will be open to the public from 9 a.m. to 5 p.m., November 13, 1972.

Name of the person from whom rosters of NCI Board of Scientific Counselors and/or summary of the meeting may be obtained:

Dr. Nathaniel I. Berlin, National Cancer Institute, Building 31, Room 4B17, Bethesda, Maryland 20014

Dated: October 17, 1972.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.72-18192 Filed 10-25-72;8:52 am]

NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES BOARD OF SCIENTIFIC COUNSELORS

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the Board of Scientific Counselors, November 20–21, 1972, at 9 a.m., National Institutes of Health, Building 31, Conference Room 2. This meeting will be open to the public from 9 a.m. to 5 p.m., November 20, 1972, to discuss administrative reports and the on-going research of scientists in the Laboratory of Microbiology, and closed to the public from 9 a.m. to 5 p.m., November 21, 1972, to review, discuss and evaluate the individual research projects of members of the Laboratory, in accordance with section 13(d) of Executive Order 11671 and the Secretary's determination.

1. Mr. Robert L. Schreiber, Information Officer, NIAID, NIH, Building 31, Room 7A32, Bethesda, MD 20014, 496–5717.
2. Dr. John R. Seal, Executive Secretary, NIAID, NIH, Building 31, Room 7A03, Bethesda, MD 20014, 496–6721.

Dated: October 18, 1972.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.72–18195 Filed 10–25–72;8:53 am]

NATIONAL ADVISORY ALLERGY AND INFECTIOUS DISEASES COUNCIL

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, November 16–17, 1972, at 9 a.m. National Institutes of Health, Building 31, Conference Room 7. This meeting will be open to the public from 9 a.m. to 10 a.m., and from 1:30 p.m. to 5 p.m., on November 16, at which time staff and Council will report on and discuss recent program developments and plans in the Institute's ongoing programs. The meeting will be closed to the public from 10 a.m. to 1:30 p.m., on November 16, and from 9 a.m. to 12 noon on November 17, 1972, to review, discuss, and evaluate and/or rank grant applications in accordance with section 13(d) of Executive Order 11671 and the Secretary's determination.

Name of the person from whom rosters of the committee members and/or summary of the meeting may be obtained: Mr. Robert L. Schreiber, Information Officer, NIAID, National Institutes of Health, Building 31, Room 7A34, Bethesda, Md. 20014, telephone 496–5717, and Dr. William I. Gay, Associate Director, Extramural Programs, NIAID, National Institutes of Health, Westwood Building, Room 703, Bethesda, MD 20014, telephone 496–7291

Dated: October 18, 1972.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.72–18196 Filed 10–25–72;8:53 am]

ARTIFICIAL KIDNEY-CHRONIC UREMIA ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671 notice is hereby given of the meeting of the Artificial Kidney-Chronic Uremia Advisory Committee and the Executive Secretary from whom a summary of the meeting may be obtained.

Study Section/Committee, date, time, and location of meeting

Artificial Kidney-Chronic Uremia Advisory Committee; November 2, 1972; 9 a.m. to 5 p.m.; National Institutes of Health.

The Executive Secretary from whom substantive information may be obtained is: Dr. Robert J. Wineman, NIAMDD, National Institutes of Health, Building 31, Room 9A05, (301) 496–4881.

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.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

OCTOBER 17, 1972.

[FR Doc. 72–18193 Filed 10–25–72;8:52 am]

NATIONAL ARTHRITIS, METABOLISM, AND DIGESTIVE DISEASES ADVISORY COUNCIL

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the National Arthritis, Metabolism, and Digestive Diseases Advisory Council from 8 p.m., November 15, 1972, through November 17, 1972, at the National Institutes of Health, Building 31, Conference Room 4. This meeting will be open to the public from 8 p.m., November 15 to 1 p.m. on November 16, during which time administrative reports will be discussed with the Council. The meeting will be closed to the public from 1:30 p.m. November 16 to 5 p.m. on November 17 in order that the Council may review, discuss and evaluate and/or rank grant applications in accordance with section 13(d) of Executive Order 11671 and the Secretary's determination.

Name of the person from whom rosters of committee members, summary of the meeting, and other information pertaining to the meeting may be obtained: Dr. R. W. Lamont-Havers, Deputy Director, NIAMDD, National Institutes of Health, Building 31, Room 9A52, Bethesda, Md. (301) 496–1504.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

OCTOBER 17, 1972.

[FR Doc.72–18191 Filed 10–25–72;8:52 am]

NATIONAL ADVISORY ENVIRONMENTAL HEALTH SCIENCES COUNCIL

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, November 16–17, 1972, at 9 a.m., National Environmental Health Sciences Center, Research Triangle Park, N.C., Building 1 Conference Room. This meeting will be open to the public from 9 a.m., November 16, 1972, to report on (1) NIEHS's participation in several international and collaborative programs; (2) progress of the National Center for Toxicological Research at Pine Bluff, Ark.; (3) OST–CEQ Committee on Environmental Health Research; (4) Veterans Administration Activities; (5) NIEHS hycanthone studies; and (6) Phthalate Esters Conference, and closed to the public 1:30 p.m., November 16, 1972, to review, discuss and evaluate and/or rank grant applications in accordance with section 13(d) of Executive Order 11671 and the Secretary's determination.

The names, addresses, room numbers, and phone numbers of:

1. The committee management officer who will furnish summaries of the open meeting and rosters of committee members:

Mrs. Leota B. Staff, NIEHS, NIH, Westwood Building, Room 404, Bethesda, Md. 20014. (301) 496–7483

2. The Executive Secretary from whom substantive information may be obtained:

Dr. Otto A. Bessey, Acting Associate Director for Extramural Programs, NIEHS, National Institutes of Health, Bethesda, Md. 20014. (301) 496–7483

Dated: October 18, 1972.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.72–18197 Filed 10–25–72;8:53 am]

Office of the Secretary

HEALTH MANPOWER TRAINING

Request for Information on Costs of Educating Various Health Professionals

Section 205(a)(1) of the Comprehensive Health Manpower Act of 1971 (85 Stat. 431) provides that "[t]he Secretary of Health, Education, and Welfare * * * shall arrange for the conduct of a study or studies to determine the national average annual per student educational cost of schools of medicine, osteopathy, dentistry, optometry, pharmacy, podiatry, veterinary medicine, and nursing in providing education programs which lead respectively to a degree of doctor of medicine, a degree of doctor of osteopathy, a degree of doctor of dentistry * * *, a degree of doctor of optometry * * *, a degree of bachelor of science in pharmacy * * *, a degree of doctor of podiatry * * *, a degree of doctor of veterinary medicine * * *, a certificate or degree or other appropriate evidence of completion of a course of training for physicians assistants or dental therapists, or a certificate or degree certifying completion of nurses training."

As authorized by section 205(b)(1) of the Act these studies are being conducted by the National Academy of Sciences at the request of the Secretary. Several areas of inquiry are being announced in this notice and interested parties are being invited to submit their views.

This notice lists procedures in Part I, general areas of inquiry in Part II and more detailed questions in Part III. The general and more detailed questions reflect preliminary formulation of the issues related to the study and do not preclude either interested parties or the study group from broader, narrower or differing formulations in response to

submissions or to developments in its own thinking.

Interested parties are invited to submit responses to the general questions in Part II. The questions in Part III are designed to elicit more specific technical information from parties with detailed knowledge of the specific questions.

PART I: PROCEDURES

1. All persons interested in this subject are invited to submit views and information, bearing on the questions listed in this notice. Submissions may be made by professional associations, educational institutions, hospitals, individuals, or other associations (which should state the character of their membership).

2. Interested persons may address themselves to any or all of the questions listed below, to the general questions only, or the general and specific questions, but no one should feel compelled to respond to every question. Many questions can be answered effectively only by organizations and individuals with special knowledge. Nevertheless, the full list is being published in order to inform the public of the issues being canvassed.

3. For ease of comprehension and comparison, all submissions should, insofar as practicable, follow the outline of the general questions listed in Part II. Any economic data and projections should also be fully identified in each instance as to source, date, and methodology of development. It is vital that all data be accompanied by an explicit statement of the methodology by which the underlying statistics were obtained and processed.

4. Persons with common interests are encouraged to make joint submissions to the maximum possible extent and to confine separate submissions to any views or facts peculiar to each. Whenever individual institutional data would disclose confidential cost or other data, such institutions are encouraged to make joint submissions through organizations that can aggregate such data in a meaningful way without disclosure of confidential figures for or to individual institutions.

5. Ten copies of each submission should be delivered to Room 5059 HEW, North Building, 330 Independence Avenue SW., Washington, DC, where they will be transmitted as delivered to the study offices. All submissions to the Study from outside the Federal Government, other than proprietary data, will be made available to the public in the library of the study, Room 328, Joseph Henry Building, located at 21st and Pennsylvania NW., Washington, D.C. Proprietary data, to avoid deposit in the library, must be submitted separately and identified as such. Any departure from this separate submission procedure—e.g., by including nonconfidential material—will be cause for deposit of the entire submission in the library.

6. Submissions should be preceded by a concise summary of not more than five (5) pages in length, followed by a text of not more than 50 pages. With reason, there is no limit on the number of accompanying appendices, charts, or graphs. All pages should be 8½" x 11", with text in black type and double-spaced and must be suitable for reproduction on normal office copying machines. One copy should be in unbound and unstapled form to facilitate copying.

7. Any interested person may read all the submissions in the study library and may, in addition, reproduce one (1) copy of any or all pages on the copying machine the study expects to have available in the library by payment in cash of an appropriate user charge.

8. The study will not accept any submissions in response to the questions listed below after December 1, 1972. This date is firm.

9. The study may, after reviewing the initial submissions, propound additional or repeated questions by publication of a similar notice in the FEDERAL REGISTER or by notice to individuals. Whether or not such additional or repeated questions are propounded, all interested parties are invited to submit additional or more refined data, comments, statements of views, and arguments by way of rebuttal, after their own review of initial submissions no later than January 1, 1973. Interested persons may thereafter read and reproduce these second-round or rebuttal submissions as before.

10. Any interested person considering himself or itself placed under hardship by these procedures should so notify the study in writing on or before November 15, 1972, specifying with particularity the nature of the hardship and the exact procedural change proposed. Any changes considered meritorious by the study will be published promptly in the FEDERAL REGISTER.

PART II. GENERAL QUESTIONS

1. What activities should be included in the "educational cost" (as contrasted with purely instructional costs) of training a health professional?

2. What are the principal causes of cost variations among schools within each of the eight fields—do they and how do they relate to differences in the health professionals which schools in each field produce?

3. What kind of continuing cost finding and cost reporting system would serve best the interests of the health professional schools, Federal Government, and other purchasers of research and patient care and be consonant with general university cost finding efforts?

4. What are the advantages and disadvantages of alternative forms of Federal financial support for health professional education?

PART III. SPECIFIC QUESTIONS

I. *Definition of "educational costs".* 1. What activities in health professional schools, while not contributing directly to instruction of health professionals, must be part of the educational environment in which instruction occurs? How should the educational "share" of the costs of these activities be determined?

2. What activities in each type of health professional school produce instructional services at the same time they produce research and patient care services? What rationale should govern allocation of the cost of these activities among research, patient care, and instruction programs?

3. What are different methods of allocating faculty salary and other costs of programs (e.g., based on absolute hours spent, percent effort, sample vs. complete enumeration, etc. and what are their respective advantages and disadvantages?

4. To what extent and on what basis should the costs of teaching services provided by interns and residents to undergraduate health professionals be included as a cost of undergraduate education?

5. What major cost differences between teaching hospitals and community hospitals (e.g., differences in utilization of dignostic tools, length of stay, patient mix, collection of accounts receivables, etc.) are attributable to the hospital's role as an educational institution, and should they be charged, therefore, to the educational program?

6. On what basis should income be allocated to different major program areas (e.g., education research, patient care, and community services), especially the following types of income?

a. Unspecified endowment or gift income.

b. Third party or other payments for patient care in teaching centers.

c. Sponsored research.

7. What are the advantages and disadvantages of defining educational costs as gross instructional costs and net (of offsetting income) patient care and research costs?

II. *Causes of Variations in Cost.* 8. What differences in career patterns among graduates of initial degree programs can explain variations among schools in the cost of producing these graduates?

9. To what extent do different educational program approaches, e.g., mix of preclinical and clinical programs, faculty/student ratio, course offerings, etc., correlate with differences in the kinds of graduates identified in II.I (above)?

10. How do the following affect patient care costs attributable to education in different schools: (a) Patient mix, (b) use of house staff, (c) faculty time devoted to patient care effort, (d) community related projects, (e) minority group recruitment, (f) faculty salaries, and (g) teaching hospital ownership by the medical school?

11. What extraordinary costs are associated principally with startup operations in new schools, and what is the probable duration of these costs?

12. What trends toward changes in education through curriculum and structural (organizational) reform are most prominent, and how might such changes affect total education costs in the future?

13. What factors account for significant differences in types of income (tuition rates, reimbursement for patient care, sponsored research, etc.) among similarly structured schools in each health professional field?

14. What other factors not mentioned above account for the principal variations in reported costs and income among schools within each field?

III. *Cost finding and reporting.* 15. How should the cost-finding and reporting system to be developed for health professions education be integrated with systems already in use or projected for use by schools and purchasers of research and patient care services?

16. What cost finding systems already exist which produce program oriented costs and which could be expanded to provide data on a national basis?

17. What measures and methods could be used to verify data used to allocate faculty salaries among programs, both on a one-time basis and on a continuing basis?

18. What regular and periodic public reports should a cost finding and reporting system produce, while still protecting the confidentiality of individual schools' data?

IV. *Federal financing and support strategies.* 19. What should be the objectives of Federal financial support for health professional education (e.g., expanded health manpower supply, provide incentives for efficiency in training of health professionals, encourage high quality programs, enhance access to lower income students, stimulate specialization, etc.)?

20. How would Federal capitation grants to schools, or Federal grants or loans directly to students help to meet the objectives listed in IV.19 above? What changes might occur in school program offerings, costs, and enrollment levels under these alternatives?

21. What forms might Federal financial support to health professional schools take either in lieu of, or in consort with, capitation grants, either to students or institutions? (Consider relationships of other Federal financing programs, such as biomedical research, training grants, construction grants, medical library assistance, Medicare and Medicaid third party financing, etc.)

22. What current trends are likely to have a major impact on future educational costs (e.g., price changes, availability of endowment income, availability of volunteers, third party reimbursement policies, changes in educational technology and methodology, changes in health manpower requirements, Federal research expenditures, student attitudes, etc.)? To what extent and in what ways are these trends sensitive to policies for Federal financial support of health professional education?

23. Assuming capitation grants are continued, what criteria should govern setting of capitation rates; e.g., a single rate for each field variable rates, rates covering instruction costs, rates covering instruction costs plus net research and patient care costs, etc.

24. Should Federal funding of health professional education include the imputed full costs of volunteer and part-paid services? What are the long-term resource allocation implications of this decision?

25. Should Federal funding of health professional education include the difference between the costs of patient care service in teaching centers and the average cost of comparable services (e.g., lab tests, patient-bed-day, etc.) in non-teaching centers? What other assumptions might be useful to isolate the educational portion of patient care costs?

26. What would be the advantages and disadvantages of setting Federal education support rates based on net costs (total costs less applicable patient care and research revenue)? Which kinds of schools most likely would be helped and which hurt?

Dated: October 19, 1972.

MERLIN K. DUVAL,
Assistant Secretary for Health and Scientific Affairs.

[FR Doc.72-18199 Filed 10-25-72;8:51 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIR CARRIER DISTRICT OFFICE AT KANSAS CITY, MO.

Notice of Relocation

Notice is hereby given that on, or about 6 November 1972, the Air Carrier District Office at the Terminal Building, Kansas City Municipal Airport, Kansas City, Mo. will relocate to 525 Mexico City Avenue, Kansas City International Airport, Kansas City, MO 64153.

CHESTER W. WELLS,
Acting Director, Central Region.

[FR Doc.72-18177 Filed 10-25-72;8:46 am]

REGIONAL DIRECTORS

Delegation of Authority

Authority to approve and require modifications in security programs submitted by certificate holders, and to amend approved screening systems and security programs, under § 121.538 of the Federal Aviation Regulations (37 F.R. 2500, February 2, 1972; 37 F.R. 4904, March 7, 1972; 37 F.R. 5254, March 11, 1972), is delegated to the FAA Regional Directors respectively charged with the overall inspection of the certificate holders.

The "general provisions" governing delegations, of section 1(b) of Part IV of the FAA Organization Statement (30 F.R. 3395, 3400), as amended (30 F.R. 8728 and 31 F.R. 838), apply to this delegation.

(Sec. 303(d), Federal Aviation Act of 1958; 49 U.S.C. 1344(d); sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c); § 1.47 (a) of the Regulations, Office of the Secretary of Transportation; 49 CFR 1.47(a))

Issued in Washington, D.C., on October 19, 1972.

J. H. SHAFFER,
Administrator.

[FR Doc.72-18178 Filed 10-25-72;8:46 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-382]

LOUISIANA POWER & LIGHT CO.

Establishment of Atomic Safety and Licensing Board

On August 16, 1972, the Commission published in the FEDERAL REGISTER, 37 F.R. 16562, a notice of hearing to consider the application filed by the Louisiana Power & Light Co. for a construction permit for the Waterford Steam Electric Station, Unit 3. The notice indicated that the Safety and Licensing Board for this proceeding would be designated at a later date, and that notice of its membership would be published in the FEDERAL REGISTER.

Pursuant to the Atomic Energy Act of 1954, as amended, the regulations of Title 10, Code of Federal Regulations, Part 2 (Rules of Practice) and the notice of hearing referred to above, notice is hereby given that the Safety and Licensing Board in this proceeding will consist of Dr. Emmeth A. Luebke, Dr. Gerald A. Rohlich, and Mr. Sidney G. Kingsley, Esq., Chairman. Dr. J. V. Leeds, Jr., has been designated as a technically qualified alternate and Mr. Thomas W. Reilly, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

the Board members are as follows:

1. Mr. Sidney G. Kingsley, Chairman, an attorney with the U.S. Atomic Energy Commission detailed to the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

2. Dr. Emmeth A. Luebke, a physicist and member, Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

3. Dr. Gerard A. Rohlich, Department of Civil Engineering, University of Texas, Austin, Tex. 78712.

4. Mr. Thomas W. Reilly, Alternate Chairman, an attorney member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

5. Dr. J. V. Leeds, Jr., Technical Alternate, associate professor, Environmental and Electrical Engineering, Rice University, mailing address—Post Office Box 941, Houston, TX 77001.

As provided in the notice of hearing, the date and place of a prehearing conference and of a hearing will be scheduled by the Board and will be published in the FEDERAL REGISTER.

Dated at Washington, D.C. this 24th day of October 1972.

JAMES R. YORE,
Executive Secretary, Atomic, Safety and Licensing Board Panel.

[FR Doc.72-18363 Filed 10-25-72;8:55 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19609; FCC 72-912]

AMERICAN TELEVISION RELAY, INC. (ATR)

Memorandum Opinion and Order Instituting Investigation and Hearing

In the matter of American Television Relay, Inc. (ATR), revised rates for Microwave Service; Tariff F.C.C. No. 8, Transmittal No. 50, Docket No. 19609.

1. The Commission has before it (a) Transmittal Letter No. 50 of American Television Relay, Inc. (ATR) and the accompanying revised tariffs filed August 15, 1972, to become effective October 15, 1972; (b) Petitions by Cable Information Services, Inc., Cruces Cable Co., Inc., Cablecom-General, Inc., Columbia Cable Systems, Inc., LVO Cable, Inc., and Teleprompter Corp., customers of ATR, for rejection or suspension of the revised tariffs; and (c) ATR's opposition to the petitions.

2. These revised tariffs constitute a major revision in the carrier's rate structure applicable to the delivery of the signals of four Los Angeles, Calif. independent television stations to CATV customers in the States of California, Arizona, New Mexico, and Texas. Although there are some reductions in charges to three of the geographical points served by ATR (Gallup, N. Mex.; Prescott, Ariz.; and Flagstaff, Ariz.), the revisions increase the charges to 16 of the remaining points served. These increases vary in amounts ranging up to about 80 percent in the case of service to Roswell, N. Mex. where the increase is from $2,800 to $5,145 a month. The overall effect of the tariff submission is to increase total charges from $49,923 to $63,443 a month or about 27 percent.

3. ATR has submitted cost and other supporting data in response to the requirements of § 61.38 of our rules, including a statement describing ATR's decision to make a reevaluation of its services and pricing policies in the light of current and future expected market conditions. Among other things, ATR has decided to divide its service points into two geographical zones and to vary the charges not only according to distance but also, in part, by the "basic population" of the areas being served. The revised tariffs reflect the results of ATR's new pricing policies. According to ATR's data, its net income for calendar year 1971 from the service in question was a negative figure of $53,857 and its projected net income for 1972 of $120,702 on a net investment of $2.5 million will yield a return of 4.748 percent for this service assuming that the rate increases go into effect on October 15, 1972. ATR further projects its return on this service at 9 percent for 1973, 13.7 percent for 1974, and 17.7 percent for 1975.

4. Petitioners raise a number of objections to the revised rate structure and to the supporting data and information. They claim, inter alia, that ATR's material falls short in that it fails to provide any discussion as to the carrier's cost of capital and fair rate of return; its explanation of the basis of rate making employed is unsatisfactory; and it improperly computes the rates and revenues applicable under its own rate making theory. In its reply, ATR states, among other things, that: The increased rates "are not predicated upon a reasonable rate of return at this time"; that petitioners have misunderstood ATR's explanations of the supporting material; and that any errors in rate calculation which were made will be corrected by appropriate tariff revisions.

5. We are of the opinion that substantial questions are raised concerning the lawfulness of the revised tariffs and that we should designate the revisions for hearing. The increases involved are substantial both collectively and individually; they will contribute to projected returns in the future that, according to ATR will range from 9 percent in 1973 to 17.7 percent in 1975; and they are based in part upon novel ratemaking theories that appear to depart from cost of service including the imposition of charges based upon "potential market penetration" but without regard to the "actual market development by any particular cable system." We believe that these questions and those raised by petitioners should be resolved on the basis of an evidentiary hearing record and that we should suspend the effectiveness of the tariff revision for the maximum period specified by section 204 of the Act and provide for accounting and possible refund to customers affected by the increased charges. Insofar as petitioners request summary rejection of the tariff revisions without hearing, we shall deny that request. Although ATR's supporting data may not supply fully all of the information contemplated by § 61.38, we believe that the carrier's submission is in substantial compliance with § 61.38 and that a sufficient showing has been made to warrant our exercising our discretion not to reject but to suspend and order a hearing. ATR will have the burden of proof on the hearing record to justify the increases and petitioners will have reasonable opportunity at hearing to pursue in an appropriate manner their objections to the carriers proposed rate increases.

6. Accordingly, in view of the foregoing considerations: *It is ordered*, That, pursuant to the provisions of sections 4(i), 4(j), 201, 202, 203, 204, 205, and 403 of the Communications Act of 1934, as amended, an investigation is instituted into the lawfulness of rates contained in American Television Relay, Inc.'s Tariff F.C.C. No. 8, 20th revised page 14, including cancellations, amendments, or reissues thereof;

7. *It is further ordered*, That, pursuant to the provisions of section 204 of the Communications Act, said 20th revised page 14 is hereby suspended until January 11, 1973, and American Television Relay, Inc. shall, in the case of all increased charges and until further order of the Commission, keep accurate account of all amounts received by reason of such increase specifying by whom and in whose behalf such amounts were paid; and shall make no changes in said schedules of charges during the pendency of this investigation without prior approval by the Commission;

8. *It is further ordered*, That, without in any way limiting the scope of the investigation, it shall include consideration of the following:

(1) Whether the charges, classifications, practices, and regulations published in the aforesaid tariffs are or will be unjust and unreasonable within the meaning of section 201(b) of the act;

(2) Whether such charges, classifications, practices, and regulations will, or could be applied to, subject any person or class of persons to unjust or unreasonable discrimination or give any undue or unreasonable preference or prejudice to any person, class of persons, or locality, within the meaning of section 202(a) of the act;

(3) If any of such charges, classifications, practices, and regulations are found to be unlawful, whether the Commission should prescribe charges, classifications, practices, and regulations for the service governed by the tariffs, and if so, what should be prescribed.

9. *It is further ordered*, That, a hearing be held in this proceeding at the Commission's offices in Washington, D.C., at a time to be specified; and that the Administrative Law Judge to be designated to preside at the hearing shall certify the record, without preparation of an initial or recommended decision, and the Chief of the Common Carrier Bureau shall thereafter issue a recommended decision which shall be subject to the submittal of exceptions and requests for oral argument as provided in 47 CFR 1.276 and 1.277, after which the Commission shall issue its decision as provided in 47 CFR 1.282; and

10. *It is further ordered*, That, American Television Relay, Inc. is made a party respondent and Cablecom-General Inc., Cable Information Services, Inc., Cruces Cable Co., Inc., Columbia Cable Systems, Inc., LVO Cable, Inc., and Teleprompter Corp. are granted leave to intervene upon filing a notice of intention to appear and participate within 20 days of the release date of this order.

11. *It is further ordered*, That, the aforementioned petitions are granted to

the extent indicated above and are otherwise denied.

Adopted: October 12, 1972.

Released: October 18, 1972.

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

[FR Doc.72-18236 Filed 10-25-72;8:51 am]

[Docket Nos. 19614-19615; FCC 72-928]

EASTERN BROADCASTING CO., AND RADIO HARLAN, INC.

Memorandum Opinion and Order Designating Application for Hearing on Stated Issues

In regard applications of Eastern Broadcasting Co., Harlan, Ky., Requests: 1470 kHz, 1 kw., Day, Docket No. 19614, File No. BP-17817, for construction permit; Radio Harlan, Inc. (WHLN), Harlan, Ky., Has: 1410 kHz, 5 kw., Day, Docket No. 19615, File No. BR-1129, for renewal of license.

1. The Commission has before it for consideration (i) the application of Eastern Broadcasting Co., for a construction permit; (ii) the application of Radio Harlan, Inc., for renewal of license; (iii) a petition to deny the application of Eastern Broadcasting Co. filed by Radio Harlan, Inc., licensee of station WHLN, Harlan, Ky.; (iv) pleadings in opposition, reply, and supplement thereto; (v) a petition to deny the renewal of Radio Harlan, Inc., and other further relief filed by Eastern Broadcasting Co.; and (vi) pleadings in opposition and reply thereto.

2. Radio Harlan, licensee of station WHLN, Harlan, Ky., has filed a petition to deny the application of Eastern Broadcasting Corp. raising a "Carroll" [1] issue, questioning the applicant's character, and alleging deficiencies in the applicant's financial plan and community survey. The petitioner claims standing as a party in interest on the grounds that as a licensee of Harlan's only existing station, it would suffer substantial economic injury should the applicant's proposal be granted. The Commission finds the petitioner does have standing within the meaning of section 309(d)(1) of the Communications Act of 1934, as amended, and § 1.580(i) of the Commission's rules. "FCC v. Sanders Brothers Radio Station," 309 U.S. 470, 9 RR 2008 (1940).

3. In its petition to deny, WHLN contends that a grant of Eastern's application would result in a substantial loss of revenue which would necessitate severe curtailment in its public affairs programing and reductions in its staff. In seeking to raise a "Carroll" issue, WHLN provides a substantial amount of information and economic data in its attempt to meet the pleading requirements set out in "Folkways Broadcasting Company, Inc. v. FCC," 126 U.S. App. D.C. 123, 275 F. 2d 299 (1967), and "WLVA, Incorporated v. FCC," —— U.S. App. D.C. ——, 23 RR 2d 2081 (January 4, 1972).

4. WHLN characterizes the Harlan area as a "thin market" with a declining population and a faltering economy. It attributes much of this decline to the continual ebb of Harlan County's chief employer, the coal industry.[2] The 1970 census tabulation shows that since 1960, the populations of Harlan County and Harlan have decreased from 51,107 to 37,510 persons (26.9 percent drop) and 4,177 to 3,318 persons (20.6 percent drop), respectively. WHLN also points out that unemployment is high (9.4 percent), and the average family income low.[3] Moreover, the Harlan area has an "unusually" high number of families substantially dependent upon financial assistance from governmental agencies. For example, as of December 31, 1971, there were 9,082 social security beneficiaries, and during March 1972, there were 11,318 recipients of food stamps living in Harlan County. WHLN also predicts further decline in the coal industry which will result in further population and economic decline.[4]

5. WHLN also proffers a substantial amount of information in support of its allegation that a grant of the Eastern application would cause economic injury and a net decrease in the amount of public service broadcasting. It estimates the area's total theoretical advertising revenue for all communication media to be $845,000 (2 percent of the total retail sales in Harlan County), which is actively solicited by the "Harlan Daily Enterprise," station WCPM, Cumberland (Harlan County), Ky., the weekly paper in Cumberland, other radio stations [5] located outside the county, and itself.[6] Moreover, the petitioner estimates there are 157 businesses in Harlan County that can reasonably be considered potential advertisers for a radio station. Of these businesses, 56 are regular advertisers on WHLN, 61 are part-time advertisers, and 40 do not advertise despite the station's efforts to solicit their business. It also points out that since 1967, 16 regular and seasonal or parttime advertisers have gone out of business. During the same period only five new accounts have been established with new area businesses. In order to gage the effect a second station would have on its annual revenues, it surveyed 49 of the station's accounts. It reports that 42 advertisers indicated they would divide their advertising budgets between WHLN and a new station. This splitting, concludes the petitioner, would reduce its annual revenues by $50,000. Moreover, it estimates a "substantial portion" of its regional and national accounts ($20,000 per year) would be lost.

6. This substantial reduction in revenue, argues WHLN, would necessitate severe curtailments in its public affairs programing and its staff's involvement in community affairs. Specifically, WHLN claims it would be required to dismiss one part-time and three full-time employees.[7] Those remaining staff members would then be required to devote most of their time to selling and announcing, thus affording less time for the production of local public affairs programing. Accordingly, WHLN projects that public service announcements would be cut in half,[8] editorials would be reduced in frequency,[9] public affairs programs would be either eliminated or reduced in scope,[10] telephone lines to five local churches for live Sunday broadcasts would be discontinued, and its five remote pickup units would not be fully utilized. Moreover, it asserts that the decrease in public service broadcasting now provided by WHLN will not be matched by the proposed station. It points out that WHLN is presently delivering 7.83 percent of weekly air time for public affairs, 9.40 percent of news programing, and 50 public service announcements per day. On the other hand, Eastern proposes only 2 percent public service broadcasting and 125 public service announcements per week.

[1] Carroll Broadcasting Company v. FCC, 103 U.S. App. D.C. 346, 258 F. 2d 440, 17 RR 2086 (1958).

[2] In September 1971, there were 2,554 workers in mining and quarrying out of 5,606 industrial workers covered by the Kentucky Unemployment Insurance Law.

[3] The average family income for Harlan County in 1969 was only $4,682, as compared with $7,441 per family for the entire State of Kentucky.

[4] It proffers a letter from Cloyd D. McDowell, President of the Harlan County Coal Operators' Association, that concludes, * * * unless there is a drastic change in some of the above mentioned adverse conditions that coal mining in this area will be reduced both in manpower and production by as much as 50 per cent (sic) within the next 2 years."

[5] WANO, Pineville, Ky.; WSWV, Pennington Gap, Va.; WMIK, Middlesboro, Ky.

[6] WHLN submitted its broadcast revenues for the years 1968 to 1971. It notes, however, the increase in revenues for 1971 was due largely to $4,000 in political advertising:

	1968	1969
Broadcast revenues	$133,999.75	$135,814
Broadcast expenses	$128,537.64	$129,595
Broadcast income	$5,462.71	$6,219
Employees fulltime	8	9
Employees parttime	2	1

	1970	1971
Broadcast revenues	$140,120	$150,501
Broadcast expenses	$133,191	$140,744
Broadcast income	$6,929	$9,757
Employees fulltime	8	8
Employees parttime	2	2

[7] The positions eliminated would be one full-time engineer ($8,400 per year), one salesman-announcer-news gatherer ($7,200 per year), one clerical assistant ($5,000 per year), and one part-time announcer.

[8] During April 1972, WHLN broadcast a daily average of 55.3 public service announcements.

[9] The petitioner broadcast 81 editorials in April 1972.

[10] The petitioner specifically cites two programs, "Pulse" and "Point of View." In both cases, the petitioner argues it is doubtful the remaining staff would have enough time to produce these shows.

Thus, it concludes, the reduction in revenue will cause a net degradation in public service broadcasting.

7. Eastern opposes WHLN's petition to deny raising a "Carroll" issue, and generally argues that the petitioner's description of Harlan's economic condition is outdated and overly dismal in outlook. It reports that current economic indicators show an improved Harlan economy, and, as a result, concludes Harlan is capable of supporting a second radio station. This is documented by three newspaper articles,[11] statements of the condition of the Harlan National Bank,[12] a coal industry analysis,[13] and an affidavit by Harold P. Parsons, Eastern's president. Eastern also points out that WHLN's survey inquiring into the effect of a second radio station in Harlan does not take into consideration the possibility that advertisers may increase their budgets in order to obtain adequate coverage on both stations. Finally, the applicant emphasizes the admission made by WHLN that the station has operated at a profit for the past 4 years and its advertising revenues have increased annually. In addition, it argues, the Commission should take note that Mary Fox (owner) and James T. Morgan (president and general manager) draw $23,928 and $15,744 per year, respectively, and that other "expenses" exist such as paid up term life insurance and maximum hospitalization coverage for all employees, and expenses for civic clubs. If WHLN were to provide the principals with "a little less from the operation" and the employees with fewer benefits, concludes Eastern, there would be no need for WHLN to discontinue any of its public service programing. In any event, Eastern feels its proposed operation would more than compensate for any decrease in WHLN's public broadcasting, if it should occur.

8. In its reply, WHLN takes issue with several allegations made by the applicant. It requests the Commission to take note that The Harlan Daily Enterprise articles dated April 30, 1972, were part of a special "Progress" edition published as a public relations vehicle for the various businesses and civic organizations located in the Harlan County area;[14] that the President of the Harlan County Coal Operators' Association has stated opinions directly contrary to that submitted by the applicant concerning the status and prospects of Harlan County's coal industry; that James T. Morgan and WHLN's two salesmen personally interviewed the 49 advertisers selected to ascertain the effect a second station would have on the station's revenues; and that although the governmental financial assistance is increasing, the population is decreasing. Finally, WHLN defends the annual salary paid James T. Morgan, and the "reasonable fringe benefits" provided for all its employees.

9. It is apparent from the various statistics and information before us, the two stations would be competing in a thin market. The populations in Harlan and Harlan County have steadily decreased since 1950,[15] and there appears considerable doubt whether this trend will be reversed. Moreover, WHLN has submitted specific factual data and information indicating it would lose a substantial amount of revenue in the event the Eastern application were granted. Although Eastern questions the extent of the potential losses in revenue and the necessity of some program curtailments indicated by petitioner, we note that the court in "Folkways Broadcasting Company," 375 F.2d 299 (1967), decreed that:

> * * * At times there might be a knowledge of specific financial loss and its detrimental consequence on programming, but we think a Carroll hearing may not be limited to a case in which preknowledge of the exact economics of the situation is necessarily available. Requiring such precision would eliminate the doctrine as a practical matter.

On the basis of the foregoing, we conclude the petitioner has pleaded sufficient data to raise substantial and material questions of fact concerning the ability of the Harlan area to support another broadcast station without a net degradation of public service broadcasting. "WLVA, Incorporated v. FCC,"— U.S. App. D.C.—, 23 RR 2d 2081 (January 4, 1972). Accordingly, we will include a "Carroll" issue in the hearing hereinafter ordered.

10. WHLN also questions Eastern's financial qualifications. In response to the deficiencies raised, Eastern amended its financial section several times. In its most recent showing, Eastern estimates $64,845, will be required to construct and operate for one year without revenue, itemized as follows: Downpayment on equipment, $4,775; first-year payments on equipment with interest, $5,600; land and building; $4,000; miscellaneous, $1,650; loan repayment with interest, $8,820; and first-year's working capital, $40,000. It proposes to meet these expenses with cash on hand of $20,700, a loan apparently from the Bank of Harlan for $50,000, and deferred credit from the equipment supplier. The balance sheets and bank loan are more than a year old, however, and thus a financial issue will be included to determine whether these funds are still available.

11. Finally, WHLN questions the applicant's ascertainment of community needs and problems. In this regard, it also requests the addition of a misrepresentation issue based upon what it considers Eastern's failure to contact the leaders of some of the organizations listed in its initial community survey. Eastern responded to this allegation by pointing out it did not state that any particular individual was contacted, and submitted affidavits attesting to the fact that some members of the listed organizations were interviewed. After examining all the available information, we conclude the explanation provided by Eastern obviates any question of misrepresentation. However, our examination of Eastern's community survey in light of the "Primer"[16] reveals that several deficiencies exist and, thus, a "Suburban"[17] issue will be included. Specifically, the applicant has not described the methods it employed in contacting the community leaders and members of the general public. It also has not described with sufficient clarity the position and organization of those individuals interviewed as community leaders. As a result of these two deficiencies, we cannot make a final determination that Eastern has sought out and established a dialogue with the leaders of all significant groups and organizations existing within the Harlan area.

12. In its petition to deny, Eastern requests the Commission to deny the WHLN application for renewal of its license, or, in the alternative, hold it in abeyance until the applications can be designated for hearing in a consolidated proceeding, citing "K-Six Television, Inc.," 2 F.C.C. 2d 1021, 7 RR 2d 128 (1966). WHLN opposes the request and asks the Commission to modify its procedure whereby a "Carroll" petitioner's renewal application is consolidated in hearing with the new proposal. It has not, however, put forth sufficient reasons, if true, for changing Commission procedure. As a result, we affirm the procedure adopted in "K-Six." In "K-Six," we held, where an existing licensee raises a "Carroll" issue while an application for renewal of the existing station's license is pending, the public interest requires

[11] Eastern included two articles published on Apr. 30, 1972, pages 16–b and 16–c, and an article published on July 12, 1972, in The Harlan Daily Enterprise supporting its claim that the coal mining industry is viable and growing.

[12] It submitted the bank's statements of condition for 1967, 1969, and 1971, which show its total assets increased from $8,617,822.86 to $15,266,139.69.

[13] Bulletin No. 9530, File 155, Mar. 27, 1972, Harlan County Coal Operators' Association.

[14] It submitted a form letter sent by Clyde C. Lemar, Jr., President and Publisher of The Harlan Daily Enterprise, to the businesses of Harlan County, requesting the letter's recipient to "consider your advertising and news message" (emphasis added) for this edition.

[15] See the following table.

HARLAN

Year	Population	Percent change
1940	5,122	18.4
1950	4,786	−6.6
1960	4,177	−12.7
1970	3,318	−20.6

HARLAN COUNTY

Year	Population	Percent change
1940	75,275	16.6
1950	71,751	−4.7
1960	51,107	−28.8
1970	37,510	−26.9

[16] Primer on Ascertainment of Community Problems by Broadcast Applicants, 36 F.R. 4092, 27 FCC 2d 650 (1970).

[17] Suburban Broadcasters, 20 RR 951 (1961).

that the renewal application be designated for hearing in a consolidated proceeding. This procedure is necessary because if it should be found the area cannot support another broadcast station without a net loss of service to the public, the Commission must determine that the limited broadcasting facilities will be operated by the party who will better serve the public interest. If it develops that a comparison is necessary between the renewal application and the new proposal, consolidation of the two applications for hearing at the outset makes possible an earlier determination of which applicant would better serve the public interest. Accordingly, the applications will be consolidated and a contingent comparative issue included.

13. In view of the foregoing, the Commission is unable to make the statutory finding that a grant of either or both of the above-captioned applications would serve the public interest, convenience, and necessity, and is of the opinion that the applications must be designated for hearing in a consolidated proceeding, on the issues set forth below.

14. *Accordingly, it is ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the application of Eastern Broadcasting Co., for a construction permit and the application of Radio Harlan, Inc., for renewal of its license for station WHLN, are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine with respect to the application of Eastern Broadcasting Co.:

(a) Whether the commitment by the Bank of Harlan for a $50,000 loan is still available to the applicant;

(b) Whether the applicant corporation and its shareholders, Donald G. Parsons and Harold Parsons, possess adequate current assets to finance the proposed station; and

(c) Whether in light of the evidence adduced pursuant to (a) and (b), above, the applicant is financially qualified.

2. To determine the efforts made by Eastern Broadcasting Co. to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

3. To determine whether there are adequate revenues available to support an additional standard broadcast station in the area proposed to be served by Eastern Broadcasting Co. without a net loss or degradation of broadcast service to such area.

4. To determine in the event that issue 3, above, is resolved in the negative, whether a grant of the above-captioned application of Eastern Broadcasting Co., or a grant of the above-captioned application of Radio Harlan, Inc., would, on a comparative basis, better serve the public interest.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues which of the applications should be granted.

15. *It is further ordered,* That, the burden of proceeding with the introduction of evidence and the burden of proof with respect to issue 3, above, are hereby placed upon Radio Harlan, Inc.

16. *It is further ordered,* That, the petition of Radio Harlan, Inc., is granted to the extent indicated above, and is denied in all other respects.

17. *It is further ordered,* That, the petition of Eastern Broadcasting Co. is granted to the extent indicated above, and is denied in all other respects.

18. *It is further ordered,* That, to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.221(c) of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

19. *It is further ordered,* That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: October 12, 1972.

Released: October 18, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

[FR Doc.72-18232 Filed 10-25-72;8:51 am]

[Docket Nos. 19601-19604; FCC 72-879]

GUY S. ERWAY ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of: Guy S. Erway, West Palm Beach, Florida, Requests: 92.1 MHz, #221; 3 kW; 300 feet, Docket No. 19601, File No. BPH-7137; Sandpiper Broadcasting Co., Inc., West Palm Beach, Florida, Requests: 92.1 MHz, #221; 3 kW(H & V); 300 feet, Docket No. 19602, File No. BPH-7533; Sun Sand and Sea, Inc., West Palm Beach, Florida, Requests: 92.1 MHz, #221; 3 kW(H & V); 300 feet, Docket No. 19603, File No. BPH-7809; Marshall W. Rowland, West Palm Beach, Florida, Requests: 92.1 MHz, #221; 3 kW(H & V); 300 feet, Docket No. 19604, File No. BPH-7843; for construction permits.

1. The Commission has before it: (a) The captioned applications, which are mutually exclusive and thus must be designated for a comparative hearing; (b) a petition to deny the application of Guy S. Erway filed on July 6, 1970, by Daytona Broadcasting, Inc., licensee of standard broadcast station WJNO, West Palm Beach, Fla.; and (c) related pleadings in opposition and reply.

2. In its petition to deny, Daytona Broadcasting, Inc. (Daytona) alleged that Mr. Erway's application was realistically a proposal for Riviera Beach rather than for West Palm Beach, since Mr. Erway proposed to locate his main studio and transmitter in Riviera Beach, and since the proposed 3.16 mV/m contour of his station would not completely encompass the West Palm Beach community, as required by § 73.315 of our rules. Daytona asserted that, in light of these facts, Mr. Erway should not be granted a waiver of § 73.315 of our rules, and that he should apply for the available class A FM broadcast channel in Riviera Beach. Daytona also emphasized the fact that Mr. Erway could not use the West Palm Beach channel for a Riviera Beach station because § 73.203 (b) of our rules provides that an FM channel allocated to one community cannot be used in another community which has an FM channel allocated to it. Mr. Erway subsequently amended his application to specify that both the studio and transmitter sites of his proposed station will be in West Palm Beach, and supplied additional data to show that his proposed 3.16 mV/m contour will completely encompass that community. Thus, Mr. Erway's application, as amended, fulfills our engineering and studio site requirements and is clearly a proposal for West Palm Beach rather than for Riviera Beach.

3. Daytona also questioned Mr. Erway's financial qualifications, the adequacy of his proposed staff, the availability of studio space, the completeness of his ascertainment of community problems and the sufficiency of the programming proposed as being responsive to those problems. All of these questions have been answered in a satisfactory manner by the applicant and are now moot. Thus, no substantial or material questions of fact remain which would warrant the specification of issues with respect to these matters. In regard to Mr. Erway's financial qualifications, Daytona maintained that the estimated costs of operating his station were clearly inadequate and that the letter expressing the willingness of the Atlantic National Bank of West Palm Beach to loan Mr. Erway $30,000 was too vague and did not fulfill the requirements of paragraph 4(e), section III, FCC Form 301. In a subsequent amendment to his application, Mr. Erway filed a bank letter which complies with our standards and which shows the willingness of the Lauderdale Beach Bank, Fort Lauderdale, Florida, to loan him $31,000. In addition, Mr. Erway has submitted a detailed breakdown of his first-year costs which appear to be reasonable and to include all of the usual expenses incurred by a radio broadcast station during the first year of operation. Moreover, Mr. Erway has shown the availability of $60,170 to meet first-year

costs of $48,045.[1] Thus, it is clear that he will have more than $12,000 in excess of his estimated expenses which can be used to meet any unforeseen contingencies.

4. Daytona's contention concerning the adequacy of Mr. Erway's staffing proposal is conclusory and lacks the specificity which would require further exploration in the hearing process. The applicant has explained that his station will be operated by four full-time staffers, including himself and his wife. Mr. Erway indicates that he is a licensed first-class radio operator and that his wife is a licensed third-class operator with past broadcast experience. Two additional full-time employees will be hired. Thus, it would appear that the applicant has proposed a sufficient staff for the operation of the proposed station. In the event that additional employees should be needed, Mr. Erway has established the availability of $12,000 in excess of his first-year expenses, which can be used to defray such unforeseen costs. As to the availability of studio space, Daytona has not alleged any facts which show that studio space will not be available, while Mr. Erway has amended his application to indicate that he has an agreement to lease studio facilities at a particular site and has allocated funds to pay the anticipated rent. If additional rent should be required, Mr. Erway can draw on the excess $12,000 previously mentioned.

5. Finally, Daytona claimed that Mr. Erway had not undertaken an adequate ascertainment of community problems and that the programming proposed did not relate to those problems. Mr. Erway has amended his ascertainment of community problems several times and his total effort fully complies with the standards set forth in our "Primer on Ascertainment of Community Problems by Broadcast Applicants," 27 FCC 2d 650, 21 RR 2d 1509 (1971). Accordingly, we find that Mr. Erway has undertaken an adequate ascertainment of the problems and needs of West Palm Beach, and has proposed programming which appears to be responsive to those problems and needs. Thus, no programming issue is required.

6. Sandpiper Broadcasting Co., Inc. (Sandpiper), Sun Sand and Sea, Inc. (Sun Sand and Sea), and Marshall W. Rowland, will not provide a 3.16 mV/m signal over the entire city of West Palm Beach, as required by § 73.315(a) of our rules. Sandpiper and Mr. Rowland will cover all of West Palm Beach, except for some 790 feet at the southeast corner, with their 3.16 mV/m contour, while Sun Sand and Sea's 3.16 mV/m contour will fall about 1,600 feet short of covering the southern end of the community. Sun Sand and Sea states that 97 percent of the city is included within its 3.16 mV/m contour. In view of the facts that spacing requirements with co-channel station WHMS place limitations on the choice of transmitter sites, that each of the above applicants is in substantial compliance with § 73.315(a) of our rules, and that the general coverage of the city in each instance will be satisfactory, we find that a waiver of this provision of our rules would be appropriate in each instance. Accordingly, if the application of Sandpiper, Sun Sand and Sea, or Marshall W. Rowland is granted, § 73.315(a) of our rules will be waived.

7. Both Sandpiper and Mr. Rowland propose to locate their transmitter and studio sites at 301 Broadway, Riviera Beach, Fla. By letter of May 17, 1972, Sandpiper stated that Oceanography Properties, Inc., (Oceanography) had agreed to lease property at that address to Sandpiper, but subsequently reneged and refused to rent it the property. Sandpiper has instituted legal proceedings against Oceanography for specific performance of the alleged contract. Sandpiper has not submitted any convincing documentary evidence to support its contention that it has reason to believe that it has an enforceable agreement with Oceanography. In these circumstances, Sandpiper has not offered sufficient evidence to show that it has reasonable assurance that its transmitter-studio site will be available, as required by well established Commission policy. "Lorenzo W. Milam and Jeremy D. Lansman," 4 FCC 2d 610, 7 RR 2d 765 (1966). Moreover, in light of these circumstances, it cannot be assumed that Mr. Rowland has reasonable assurance that a transmitter-studio site at 301 Broadway, Riviera Beach, will be available for his use in the event his application is granted. Therefore, issues in this regard will be specified against both the applications of Sandpiper and Mr. Rowland.

8. Section 73.210 of our rules requires that the main studio of a commercial FM broadcast station either be located in the city of license or that good cause be shown for locating the main studio outside the community. Although Mr. Rowland and Sandpiper have proposed studios which will be located outside West Palm Beach, no showing of good cause has been submitted by either applicant. Thus, in the event that their proposed site at 301 Broadway, Riviera Beach, Fla., is shown to be available for their use, or if any other site outside of West Palm Beach should be proposed, they will be required to show good cause for placing their main studio at such location.

9. Based on cost estimates contained in his application, Marshall W. Rowland will have first-year expenses of $78,500.[2] To meet these expenses, he relies on a $75,000 loan from the St. Johns River Bank, Jacksonville, Fla., and $5,050 in cash. However, Mr. Rowland has not submitted a balance sheet which shows sufficient current and liquid assets in excess of current liabilities to provide any funds for his proposed FM station. Moreover, when a lender conditions a loan upon the receipt of special endorsements or guarantees, entities requested to make such endorsements or guarantees are required to submit statements which express their willingness to meet those conditions. Although the bank loan in this instance is conditioned upon the receipt of a promissory note from the Rowland Broadcasting Co., Inc.,[3] and the endorsement of that note by Mr. and Mrs. Rowland, such parties have not stated their willingness to comply with the loan conditions. In view of the foregoing, appropriate financial issues will be specified against Mr. Rowland.

10. An examination of Mr. Rowland's ascertainment of community problems, needs, and interests reveals that he has not complied with the standards set forth in our Primer on that subject (27 FCC 2d 650, 21 RR 2d 1509 (1971)). Specifically, he has not provided a description of the composition of the community of West Palm Beach so as to apprise himself of all of the significant groups in the community. As questions and answers 9 and 10 of the Primer state, an applicant must determine not only the minority, racial, or ethnic breakdown of the community, but also the economic and governmental activities, public service organizations, and any other factors or activities that make the particular community distinctive. Moreover, it is unclear whether all of the interviews with community leaders were conducted by Mr. Rowland or prospective management-level employees (question and answer 11(a) of the Primer). In addition, it is noted that Mr. Rowland did not specify the time segments for the programs which he has proposed as being responsive to the problems of his proposed community of license (question and answer 29 of the Primer). It would also appear that Mr. Rowland neglected to consult a random selection of members of the general public, as required by question and answer 13(b) of the Primer. Thus, a programing issue will be specified against him.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

12. *Accordingly, it is ordered,* That the applications are designated for hearing in a consolidated proceeding, pursuant to section 309(e) of the Communications Act of 1934, as amended, at a time and place to be specified in a

[1] Mr. Erway's first-year costs consist of: 15 months' payments on equipment, $10,350; lease payments on land and buildings, $3,340; payments on loan, including interest, $9,855; miscellaneous expenses, $4,500; and working capital, $20,000. To meet these expenses, he has shown the availability of a $31,000 bank loan and $29,170 in cash and liquid assets in excess of current liabilities.

[2] Mr. Rowland's first-year expenses are itemized as follows: lease payments on equipment, $1,500; land and building expenses, $5,000; miscellaneous expenses, $2,500; loan payments, including interest, $15,000; and working capital, $54,500.

[3] Mr. and Mrs. Rowland own the Rowland Broadcasting Co., Inc., which is the licensee of stations WQIK and WQIK-FM, Jacksonville, Fla.

subsequent order, on the following issues:

1. To determine with respect to the application of Marshall W. Rowland:

(a) Whether Marshall W. Rowland has net liquid assets of $5,050 available for his proposed FM station;

(b) Whether the Rowland Broadcasting Co., Inc., is willing to execute a promissory note on a $75,000 loan from St. Johns River Bank, Jacksonville, Fla., to Marshall W. Rowland, for the purpose of building and operating the proposed FM broadcast station, and whether Mr. and Mrs. Marshall W. Rowland are willing to endorse this promissory note; and

(c) Whether, in light of the evidence adduced under the above issues, the applicant is financially qualified.

2. To determine the efforts made by Marshall W. Rowland to ascertain the community problems of the area to be served and the means by which the applicant proposes to meet those problems.

3. To determine whether Marshall W. Rowland has reasonable assurance that his proposed transmitter-studio site is available.

4. To determine, in the event that Marshall W. Rowland has available a studio site outside the city of West Palm Beach, whether good cause exists for locating the main studio outside the city of West Palm Beach, and, if so, whether the main studio location would be consistent with the operation of the station in the public interest.

5. To determine whether Sandpiper Broadcasting Co., Inc., has reasonable assurance that its proposed transmitter-studio site is available.

6. To determine, in the event that Sandpiper Broadcasting Co., Inc., has available a studio site outside the city of West Palm Beach, whether good cause exists for locating its main studio site outside the city of West Palm Beach, and, if so, whether the main studio location would be consistent with the operation of the station in the public interest.

7. To determine which of the proposals would, on a comparative basis, best serve the public interest.

8. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications for construction permits should be granted.

13. *It is further ordered,* That the petition to deny the application of Guy S. Erway, filed by Daytona Broadcasting, Inc., licensee of station WJNO, West Palm Beach, Fla., is denied.

14. *It is further ordered,* That if the application of Sandpiper Broadcasting Co., Inc., or the application of Sun Sand and Sea, Inc., or the application of Marshall W. Rowland is granted, the construction permit shall specify that the provisions of § 73.315(a) of our rules are waived to permit a signal level of less than 3.16 mV/m over the entire city of West Palm Beach, Florida.

15. *It is further ordered,* That each of the applicants shall file a written appearance stating an intention to appear and present evidence on the specified issues, within the time and in the manner required by § 1.221(c) of our rules.

16. *It is further ordered,* That the applicants shall give notice of the hearing, within the time and in the manner specified in § 1.594 of our rules, and shall seasonably file the statement required by § 1.594(g).

Adopted: October 5, 1972.

Released: October 13, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[4]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-18234 Filed 10-25-72;8:51 am]

[Docket No. 19313; FCC 72-917]

NORTHWESTERN COLLEGE (KFNW)

Memorandum Opinion and Order Designating Application for Hearing on Stated Issues

In regard application of Northwestern College (KFNW), Fargo N. Dak., Has: 900 kHz, 1 kw., Day, Requests: 1170 kHz, 1 kw., Day, Docket No. 19313, File No. BP-18271, for construction permit.

1. The Commission has before it for consideration the above-captioned application requesting a change in frequency.

2. On September 8, 1971, this application was designated for hearing because the proposed service area would encompass 8,235 less square miles and 59,316 fewer persons than KFNW's present operation. While in hearing, KFNW petitioned for leave to amend its application to demonstrate that the loss in service was not as great as originally indicated in the application. The applicant's request was granted, the amendment accepted, and the application returned to the processing line.

3. Examination of the engineering data, as amended, indicates that a grant would eliminate interference with station KTIS, Minneapolis, Minn. (under common ownership with KFNW), in an area containing an estimated population of 17,818 people. On the other hand, however, the applicant's data also indicate that the proposed service area encompasses 3,061 less square miles and 25,922 fewer persons than the station's present operation. Inasmuch as station KFNW is the only specialized religious broadcast service in the Fargo area, a grant of the application would deprive a significant portion of the present service area of KFNW of its only specialized religious broadcast service. On the other hand, there are several specialized religious broadcast services in the Minneapolis area, including station KTIS, and elimination of the interference with KTIS would enable KTIS to provide simply another such service to the area and population it will gain in that area. Since there already appears to be a multiplicity of radio services in both the Minneapolis and Fargo areas, a substantial question obtains, due to the loss of specialized religious broadcast service in the Fargo area, as indicated above, as to whether the public interest would be served by a grant of this application.

4. Except as indicated by the issues specified below, the applicant is qualified to construct and operate as proposed. In view of the foregoing, however, the Commission is unable to make the statutory finding that a grant of the subject application would serve the public interest, convenience, and necessity, and is of the opinion that the application must be designated for hearing on the issues set forth below.

5. *Accordingly, it is ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the application is designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station KFNW and the availability of other primary aural (1 mV/m or greater in the case of FM) service to such areas and populations.

2. To determine whether the loss of religious broadcast service to the Fargo, N. Dak., area and the gain of such service to the Minneapolis, Minn., area are in the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity.

6. *It is further ordered,* That, to avail itself of the opportunity to be heard, the applicant, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

7. *It is further ordered,* That the applicant shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: October 12, 1972.

Released: October 19, 1972.

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

[FR Doc.72-18235 Filed 10-25-72;8:51 am]

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[4] Commissioners Robert E. Lee and Reid absent; Commissioner Johnson concurring in part and dissenting in part.

FEDERAL MARITIME COMMISSION

ASSOCIATION OF WEST COAST STEAMSHIP COMPANIES

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violaton of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

E. Adema, Secretary, The Association of West Coast Steamship Companies, Post Office Box 5097, Cristobal, CZ.

Agreement No. 3302–10, among the member lines of The Association of West Coast Steamship Companies, is a complete restatement of the basic agreement of that Association, which also (1) amends the Preamble to limit the jurisdiction of the member lines to the establishment and maintenance of rates in the trade from Pacific ports of Colombia or Ecuador to (a) ports on the Atlantic, Pacific, and gulf coasts of the United States, its island territories or possessions, by direct call or transshipment at Cristobal or Balboa, and (b) any port of destination on the North American Continent; (2) substitutes the words "governmental agency charged with the administration of the Shipping Act, 1916", for the words "U.S. Maritime Commission" in the last sentence of the second paragraph of Article 7; (3) clarifies Article 7 by deleting the last paragraph thereof which is in conflict with the third paragraph of said article with respect to notice of expulsion; and (4) for the purpose of continuity, changes the designation of Articles 28, 29, 30, and 31 to Articles 26, 27, 28, and 29, respectively.

Dated: October 19, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72–18063 Filed 10–25–72;8:48 am]

CITY OF LONG BEACH AND NATIONAL MOLASSES CO.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimiation or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Leonard Putnam, City Attorney, City of Long Beach, Suite 600 City Hall, Long Beach, CA 90802.

Agreement No. T–2153–3, between the City of Long Beach (City) and National Molasses Company (NMC), modifies the basic agreement which grants NMC the right to use certain premises as a bulk liquid terminal, including the preferential assignment of wharf space. The purpose of the modification is to decrease the area of Parcel III of the premises and decrease NMC's monthly compensation to the City by $46.76.

Dated: October 20, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72–18262 Filed 10–25–72;8:48 am]

CRESCENT WHARF AND WAREHOUSE CO. AND HOWARD TERMINAL

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. Harmon K. Howard, Vice President, Howard Terminal, 95 Market Street, Oakland, CA 94604.

Agreement No. T–2705, between Crescent Wharf and Warehouse Company (Crescent) and Howard Terminal (Howard), is a management agreement whereby Crescent will assume the management, operation, and control of the Outer Harbor facilities leased to Howard by the Port of Oakland pursuant to Federal Maritime Commission Agreement No. T–1909. As compensation, Crescent shall receive all revenue from the terminal and stevedoring business conducted on the premises plus 17.5 percent of all revenue collected by Howard from dockage, wharfage, wharf demurrage, storage, and freight transfer charges earned upon the premises excepting military cargo for which Crescent shall receive 5 percent. The agreement further provides that Howard shall pay the City of Oakland 65 percent of the total above charges which is to be applied to its minimum rental provisions under Federal Maritime Commission Agreement No. T–1909.

Dated: October 20, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72–18261 Filed 10–25–72;8:47 am]

MATSON NAVIGATION CO. AND McCABE, HAMILTON, AND RENNY CO., LTD.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Peter P. Wilson, Counsel, Matson Navigation Co., 100 Mission Street, San Francisco, CA 94105.

Agreement No. T-2701, between Matson Navigation Co. (Matson) and McCabe, Hamilton & Renny Co., Ltd. (McCabe), is a cargo services agreement whereby McCabe will furnish Matson comprehensive terminal stevedore and container freight station services as required by Matson at the ports of Hilo, Kahului, Nawiliwili, and Port Allen, Hawaii. As compensation, McCabe is to receive rates as agreed upon by the parties and filed with the Commission.

Dated: October 20, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-18260 Filed 10-25-72;8:47 am]

[Docket No. 72-48]

PACIFIC MARITIME ASSOCIATION

First Supplemental Order Severing Jurisdictional Issues Regarding Cooperative Working Arrangements

This proceeding was instituted by Order of Investigation served September 6, 1972, to determine whether a master collective bargaining contract and a Supplemental Memorandum of Understanding No. 4 (Contracts) entered into by the Pacific Maritime Association (PMA) and the International Longshoremen's and Warehousemen's Union (ILWU) embody any agreements between and among the members of PMA, which agreements are subject to the requirements of section 15 of the Shipping Act, 1916; whether the implementation of these Contracts by PMA and the ILWU will result in any practices which are violative of sections 16 and 17 of that Act and, finally, whether there are any labor policy considerations which would operate to exempt such agreements or practices from any provision of the aforementioned sections of the Shipping Act, 1916.

The Commission's investigation was initiated at the request of several Northwest ports [1] who maintain that the Contracts, providing for the employment of longshore labor, are "agreements" within the meaning of section 15 of the Act which should have been filed for Commission approval pursuant to that section.

PMA has now submitted the PMA–ILWU Supplemental Memorandum of Understanding No. 4 for a determination of its subjectivity to section 15 and, should it be found subject to that section, for its approval. By virtue of the aforementioned filing of the agreement and in view of "the identity of issues in this investigation and in any consideration of approvability", PMA has concurrently filed therewith a petition requesting that the Commission amend its Order of Investigation in this proceeding to include as an issue for determination the approvability of the PMA–ILWU Supplemental Memorandum and any underlying agreements embodied therein.

In reply to this petition, Hearing Counsel have suggested that the question of Commission jurisdiction over the subject agreements be severed from this investigative proceeding for an expeditious determination. This petition is well taken. The issues relating to possible prejudicial, discriminatory, or detrimental effects resulting from implementation of the subject agreements by their nature require resolution on the basis of a fully developed evidentiary record. However, the purely legal question regarding jurisdiction of the Commission over such agreements pursuant to section 15 may not involve genuine issues of material fact and, consequently, may be determinable on the basis of affidavits of fact and memoranda of law. Should it appear from the affidavits and memoranda that genuine issues of material fact do exist, these can be resolved by an administrative law judge together with the other factual issues set forth in the Commission's order of September 6, 1972. However, an expeditious decision on the purely legal issue of jurisdiction might result in avoidance of needless litigation. Accordingly, the Commission desires to afford the parties the opportunity of obtaining expeditious determination of the critical threshold issue. In addition, the Commission wishes to consider the question of the subjectivity of the master collective bargaining contract itself, as well as the Supplemental Memorandum and the underlying agreements embodied in both.

Therefore, it is ordered, That the first ordering paragraph of the Commission's order of September 6, 1972, be amended as follows:

1. Whether the master collective bargaining contract and the Supplemental Memorandum of Understanding No. 4 entered into by PMA and the ILWU embody any agreements between and among the members of PMA, which agreements are subject to the requirements of section 15 of the Shipping Act, 1916 (46 U.S.C. 814) and should be filed for approval under that section, or whether such agreements otherwise exist; and whether the master collective bargaining contract and the Supplemental Memorandum of Understanding No. 4 are themselves agreements subject to the requirements of section 15 and should be filed for approval;

* * * * *

4. Whether any labor policy considerations would operate to exempt these agreements from the provisions of section 15 of the Shipping Act, 1916;

5. Whether any labor policy considerations would operate to exempt the practices resulting from these agreements from the provisions of sections 16 and 17 of the Shipping Act, 1916;

6. Whether the master collective bargaining contract and Supplemental Memorandum of Understanding No. 4 entered into by PMA and the ILWU and any agreements between and among the members of PMA embodied therein should, if found subject to the requirements of section 15 of the Shipping Act, 1916, and found not within any labor exemptions, be approved, disapproved, or modified pursuant to that section; and

It is further ordered, That pursuant to section 22 of the Shipping Act, 1916, 46 U.S.C. 821, the first and fourth issues set forth in the first ordering paragraph of the amended order of September 6, 1972, relating to application of section 15 to the subject agreements and operation of labor policy exemptions, be severed from the proceeding for expeditious determination by the Commission; and

It is further ordered, That there appearing to be no material issues of fact in dispute with regard to the purely jurisdictional issues arising under section 15, this phase of the proceeding shall be limited to the submission of affidavits and memoranda of law, replies, and oral argument. Should any party feel that an evidentiary hearing be required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this phase of the proceeding, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed on or before November 3, 1972. Simultaneous affidavits of fact and memoranda of law shall be filed by all parties no later than the close of business November 3, 1972. Reply affidavits and memoranda shall be

[1] The Ports of Anacortes, Bellingham, Everett, Grays Harbor, Olympia, Port Angeles, Portland, and Tacoma.

filed by all parties no later than the close of business November 13, 1972. An original and 15 copies of affidavits of fact, memoranda, and replies are required to be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Copies of any papers filed with the Secretary should also be served upon all parties hereto. Time and date of oral argument if requested and/or deemed necessary by the Commission will be announced at a later date; and

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served upon Petitioners and both the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union, individually, and on behalf of their respective members; and

It is further ordered, That notice of this order and notice of hearing be mailed directly to the Department of Justice, the Department of Labor and the National Labor Relations Board; and

It is further ordered, That all future notices issued by or on behalf of the Commission with regard to this phase of the proceeding shall be mailed to Petitioners, the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union, individually, and on behalf of their members, and any other person made a party of record to this proceeding; and

It is further ordered, That any person other than those who are parties to Docket No. 72–48 who desires to become a party to this proceeding and participate herein, shall file a petition to intervene in accordance with Rule 5(1), 46 CFR 502.72, of the Commission's rules of practice and procedure; and

It is further ordered, That the proceedings before the presiding administrative law judge be stayed pending determination of the severed issues by the Commission.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.72–18264 Filed 10–25–72;8:48 am]

FEDERAL POWER COMMISSION

[Docket No. CI73–230]

ATLANTIC RICHFIELD CO.

Notice of Application

OCTOBER 18, 1972.

Take notice that on September 28, 1972, Atlantic Richfield Co. (applicant), Post Office Box 2819, Dallas, TX 75221, filed in Docket No. CI73–230 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Texas Gas Transmission Corp., from the Walker Creek Field, Columbia County, Ark., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to sell gas until such time that the gas will be required for a cycling project in the Walker Creek Field and requests that the certificate be limited to such term. The contract for the subject sale provides for a rate an initial rate of 26 cents per Mcf at 15.025 p.s.i.a.; however, in its certificate application applicant expresses its willingness to accept a certificate conditioned to an initial rate of 23.08 cents per Mcf at 15.025 p.s.i.a., subject to quality adjustment as provided by Commission Opinion No. 607.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 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.

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.72–18166 Filed 10–25–72;8:46 am]

[Project 1185]

BAHOVEC POWER PROJECT

Notice of Issuance of Annual License

OCTOBER 19, 1972.

The Licensee for Project No. 1185, the Bahovec Power Project located on the Baranof River at Warm Springs Bay on Baranof Island, Alaska, is Fred Bahovec.

The license for Project No. 1185 was issued effective August 23, 1962, for a period ending August 22, 1972. In order to authorize the continued operation of the project pursuant to Section 15 of the Federal Power Act, pending completion of Licensee's application and Commission's action thereon, it is appropriate and in the public interest to issue an annual license to Fred Bahovec for the continued operation and maintenance of Project No. 1185.

Take notice that an annual license is issued to Fred Bahovec (Licensee) of Sitka, Alaska, under section 15 of the Federal Power Act for the period August 23, 1972, to August 22, 1973, or until the issuance of a new license for the project, for the continued operation and maintenance of Project No. 1185, subject to the terms and conditions of its license.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72–18239 Filed 10–25–72;8:50 am]

[Project 2232]

DUKE POWER CO.

Notice of Application for Approval of Revised Exhibits K and L and Permission To Withdraw Reservoir Water

OCTOBER 19, 1972.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by the Duke Power Co. (correspondence to: Mr. W. H. Owen, vice president—Design Engineering, Duke Power Co., Power Building, Box 2178, Charlotte, NC 28201), for Commission approval of revised exhibits K and L showing construction of the upper level intake structure and cooling water discharge facilities, raising of a portion of the existing earth embankment of the Cowans Ford Dam 5 feet, and modification of project boundary. The application also seeks permission for the use of 4,500 c.f.s. of water from the Cowans Ford Reservoir (Lake Norman). Applicant states that these changes in Project No. 2232 are necessary to allow construction of the proposed McGuire Nuclear Station having an installed capacity of 2,300. The nuclear plant would be located adjacent to Lake Norman near the Cowans Ford Dam.

The Commission in an order issued October 2, 1961, authorized Duke Power Co., to construct a lower level cooling water intake structure in the Cowans Ford Dam and permitted the use of 2,200 c.f.s. of water from Lake Norman for condenser cooling purposes for a future steam electric plant. In the subject application the applicant requests approval to use an additional 2,300 c.f.s. of water from Lake Norman for condenser purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 4, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-18240 Filed 10-25-72;8:49 am]

[Docket No. CP73-89]

EASTERN SHORE NATURAL GAS CO.

Notice of Application

OCTOBER 19, 1972.

Take notice that on September 29, 1972, Eastern Shore Natural Gas Co. (applicant), 114 East Main Street, Salisbury, MD 21801, filed in Docket No. CP73-89 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and sale of additional volumes of natural gas to certain of its existing customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, applicant proposes to render additional long-term storage service under its GSS-1 Rate Schedule in accordance with the following table:

Customer:	*Additional contract demand-Mcf Long-term service*
Cambridge Gas Co	35
Chesapeake Utilities Corp.:	
Citizens Gas Division	80
Dover Gas Light Division	165
Sussex Gas Division	25
Total	305

Applicant states that this additional service will supplement the GSS-1 service presently supplied to these customers, and that no new facilities will be required. Applicant further states that this application is dependent upon the grant of certificate authorization as requested by Transcontinental Gas Pipe Line Corp., in Docket No. CP72-44.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene of 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.72-18241 Filed 10-25-72;8:50 am]

[Project No. 1196]

ESTES BROTHERS INC.

Notice of Issuance of Annual License

OCTOBER 19, 1972.

The Licensees for minor Project No. 1196, located on an unnamed creek, which is a tributary of Upper Trail Lake, Seward Recording District, Third Judicial Division, Alaska, are Robert R. Estes and Edward R. Estes, operating the project as Estes Brothers, Inc.

The license for Project No. 1196 was issued effective October 13, 1932, for a period ending October 12, 1972. In order to authorize the continued operation of the project pursuant to section 15 of the Federal Power Act, pending completion of Commission action thereon, it is appropriate and in the public interest to issue an annual license to Estes Brothers, Inc. for the continued operation and maintenance of Project No. 1196.

Take notice that an annual license is issued to Estes Brothers, Inc. for the period October 13, 1972, to October 12, 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. 1196, subject to the terms and conditions of its present license.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-18242 Filed 10-25-72;8:50 am]

[Docket No. CP73-97]

NORTHERN NATURAL GAS CO.

Notice of Application

OCTOBER 18, 1972.

Take notice that on October 10, 1972, Northern Natural Gas Co. (Applicant), 2223 Dodge Street, Omaha, NE 68102, filed in Docket No. CP73-97 a budget-type application pursuant to sectons 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon during the calendar year 1973, certain small compressor gathering facilities and for a certificate of public convenience and necessity authorizing the relocation of these small compressor gathering facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this application is to augment its ability to take into its pipeline system natural gas purchased from producers by use of small field compressor gathering facilities in order to meet changing pressure conditions in the producing fields attached to its system. The instant application is filed within the contemplation of proposed § 157.7(f) of the regulations under the Natural Gas Act (18 CFR 157.7 (f)).

The total cost of the proposed facilities will not exceed $1 million, which applicant plans to finance from cash on hand and from funds generated through operations.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 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 and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-18161 Filed 10-25-72;8:45 am]

[Project No. 719]

JESSIE I. SMITH

Notice of Issuance of Annual License

OCTOBER 19, 1972.

On June 30, 1972, Jessie I. Smith, Licensee for Trinity Power Project No. 719, located in Wenatchee National Forest, Chelan County, on the James and Phelps Creeks, tributaries of the Chiwawa River in Washington, filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder (§§ 16.1–16.6).

The license for Project No. 719 was issued effective November 1, 1952, for a period ending October 31, 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 Jessie I. Smith for the continued operation and maintenance of Project No. 719.

Take notice that an annual license is issued to Jessie I. Smith (Licensee) under section 15 of the Federal Power Act for the period November 1, 1972, to October 31, 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. 719, subject to the terms and conditions of its present license.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-18243 Filed 10-25-72;8:50 am]

[Dockets Nos. CP68-247, CP70-308]

SOUTH GEORGIA NATURAL GAS CO. AND CITY OF FITZGERALD, GA., WATER, LIGHT & BOND COMMISSION

Notice of Petition To Vacate Orders

OCTOBER 18, 1972.

Take notice on September 5, 1972, South Georgia Natural Gas Co., (petitioner), Post Office Box 1279, Thomasville, GA 31792, filed a petition to vacate in part the order of the Commission issued in Docket No. CP68-247 on July 12, 1968 (40 FPC 73), pursuant to section 7(c) of the Natural Gas Act and to vacate in toto the order of the Commission issued in Docket No. CP70-308 on August 31, 1970 (44 FPC 667), pursuant to section 7(a) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

By Commission order in Docket No. CP68-247 a certificate of public convenience and necessity was issued authorizing Petitioner to construct and operate certain natural gas facilities and to provide natural gas service to eight proposed municipal customers in Georgia, all within 3 years from the date of the order. Ordering paragraph (E) of said order provided that before commencement of construction Petitioner should submit to the Commission evidence that each municipality had been authorized to issue revenue bonds, that it had a firm commitment covering the sale of such bonds, and that its project was economically feasible. Petitioner states that only one of the eight municipalities, Doerun, Ga., which it presently is serving, has actually performed the acts specified in paragraph (E) of such order and that the remaining seven municipalities have not requested it to obtain an extension of time in which to render service. Petitioner requests that the order in Docket No. CP68-247 be vacated except with respect to service to Doerun, Ga.

By Commission order in Docket No. CP70-308, petitioner was directed to construct and operate a second physical connection of its transportation system with the proposed facilities of the city of Fitzgerald, Ga., Water, Light, and Bond Commission (Fitzgerald). Applicant states that service has not commenced and that it has been advised by Fitzgerald in letter dated April 3, 1972, that Fitzgerald no longer requires the authorized facilities in Docket No. CP70-308. Accordingly, petitioner requests that the order issuing a certificate in Docket No. CP70-308 be vacated.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 7, 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 service 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 herein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-18164 Filed 10-25-72;8:46 am]

[Docket No. RP72-64]

TEXAS GAS TRANSMISSION CORP.

Notice of Motion for Approval of Second Stipulation and Interim Agreement

OCTOBER 18, 1972.

Take notice that Texas Gas Transmission Corp. (Texas Gas), on October 5, 1972, filed a motion for approval of a Second Stipulation and Interim Agreement, together with certain implementing tariff sheets attached as exhibit A which Texas Gas proposes to file to be effective May 1, 1973.

The essential terms and conditions of the Second Stipulation and Interim Agreement are identical to those contained in the Stipulation and Interim Agreement approved by the Commission's order issued herein on June 26, 1972, except that the expiration dates are extended for 1 additional year. Thus under the proposed Second Stipulation and Interim Agreement, the presently effective seasonal volumetric limitations (Quantity Entitlements) set forth in Texas Gas' FPC Gas Tariff, Third Revised Volume No. 1, would remain in effect until April 30, 1975, and the method of curtailment would continue in effect until April 30, 1974. The small volume distributors (SG customers) would remain bound by the Quantity Entitlements though exempt from curtailment below those levels.

Texas Gas states in its filing that unless there is an unusual change in its gas supply, it does not now contemplate any seasonal curtailment below currently effective Quantity Entitlements during the year ending April 30, 1974. Texas Gas further states that in its view approval of the Second Stipulation and Interim Agreement will be in the public interest because it will settle Texas Gas' curtailment program on an interim basis, thereby providing more time in which the parties can proceed in an orderly fashion toward the objective of settling the terms and conditions of a permanent curtailment program.

Any person desiring to be heard or to make any protest with reference to said filing should on or before November 2, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.18 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 protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The filing which was made with the Commission is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-18165 Filed 10-25-72;8:46 am]

[Docket No. CP72-145]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Petition To Amend

OCTOBER 18, 1972.

Take notice that on October 10, 1972, Transcontinental Gas Pipe Line Corp. (Petitioner), Post Office Box 1396, Houston, TX 77001, filed in Docket No. CP72-145 a petition to amend the order issuing a certificate of public convenience and necessity in said docket pursuant to section 7(c) of the Natural Gas Act by deleting therefrom the limitation on the volume of natural gas which may be stored in the authorized facilities during the initial storage cycle, all as more fully set forth in the petition to amend which

is on file with the Commission and open to public inspection.

By order issued in the subject docket on April 7, 1972 (47 FPC ——). Petitioner is authorized to construct and operate facilities to enlarge its eminence storage field in Covington County, Miss., by developing two additional bottle-shaped underground storage caverns in the same salt dome formation comprising the existing eminence storage field. Said order limits the volume of natural gas which may be stored in each of the caverns to 2,698,000 Mcf at 3,500 p.s.i.g.

Petitioner states that it anticipates that the ultimate capacity of the caverns authorized in the subject docket will be less than the limitation imposed by the subject order; however, during the initial storage cycle each of the two new caverns will be capable of storing up to approximately 3,340,000 Mcf at 3,500 p.s.i.g. The reasons that initial capacity will exceed ultimate capacity are attributed by Petitioner to—

(1) Cavern closure, which is experienced primarily during the first year after development and results in a decrease of storage space, making it necessary to develop the initial capacity of a cavern in excess of the ultimate design capacity in order to offset the anticipated loss of space; and

(2) The leaching process employed in the development of the cavern, which involves the injection of cold water and causes the gas temperature during the initial storage cycle to be lower than that ultimately experienced and thereby increases the effective storage capacity.

Petitioner states that the combined effect of the aforementioned circumstances will make available approximately 1,280,000 Mcf of capacity in the new caverns during the 1972–73 winter season in excess of the limitation imposed in the certificate.

Petitioner indicates that the temporarily increased capacity will be able to offset for the coming winter season the decrease in experienced capacity of the previously authorized caverns resulting from cavern closure and thus will provide Petitioner and its customers with greater reliability of service than would otherwise be available. Petitioner indicates further that such system flexibility is critically needed during the coming winter season to minimize curtailments and to protect the firm markets of Petitioner's customers. Petitioner states that no additional facilities need be constructed or expenditures made in order to utilize the additional storage capacity.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 7, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-18162 Filed 10-25-72;8:46 am]

[Docket No. G-4904, etc]

AMOCO PRODUCTION CO. ET AL.

Findings and Order After Statutory Hearing

OCTOBER 17, 1972.

Findings and order after Statutory Hearing issuing certificates of Public Convenience and Necessity, amending orders issuing certificates, permitting and approving abandonment of service, terminating certificates, canceling FPC gas rate schedules, accepting rate schedules and rate schedule supplements for filing, making successor respondent and redesignating proceedings.

Each applicant herein has filed an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce or for permission and approval to abandon service or a petition to amend an order issuing a certificate, all as more fully set forth in the applications and petitions to amend.

Applicants have filed FPC gas rate schedules or supplements to rate schedules on file with the Commission and propose to initiate, abandon, add, or discontinue in part natural gas service in interstate commerce as indicated in the tabulation herein.

The Commission's staff has reviewed each application and recommends each action ordered as consistent with all substantive Commission policies and required by the public convenience and necessity.

After due notice by publication in the FEDERAL REGISTER, no petition to intervene, notice of intervention, or protest to the granting of the applications has been filed.

At a hearing held on October 12, 1972, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and petitions, as supplemented and amended, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Each applicant herein is a "natural gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural gas company" within the meaning of the Natural Gas Act upon the commencement of service under the authorizations hereinafter granted.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission; and such sales by applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7, of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sales of natural gas by applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity; and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders issuing certificates of public convenience and necessity in various dockets involved herein should be amended as hereinafter ordered.

(6) The sales of natural gas proposed to be abandoned, as hereinbefore described and as more fully described in the applications and in the tabulation herein, are subject to the requirements of subsection (b) of section 7 of the Natural Gas Act.

(7) The abandonments proposed by applicants herein are permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(8) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificates heretofore issued to applicants relating to the abandonments hereinafter permitted and approved should be terminated or that the orders issuing said certificates should be amended by deleting therefrom authorization to sell natural gas from the subject acreage.

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that applicant in Docket No. CI71-300 should be substituted as respondent in the proceeding pending in Docket No. RI71-621 insofar as it pertains to sales under Amoco Production Co. (Operator) et al., FPC Gas Rate Schedule No. 553, and that said proceeding should be redesignated accordingly.

(10) It is necessary and appropriate in carrying out the provision of the Natural tural Gas Act that the FPC gas rate schedules and supplements related to the authorizations hereinafter granted should be accepted for filing or redesignated as hereinafter ordered.

The Commission orders:

(A) Certificates of public convenience and necessity are issued upon the terms and conditions of this order authorizing sales by applicants of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction

of the Commission necessary therefor, all as hereinbefore described and as more fully described in the applications and in the tabulation herein.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of section 7 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's regulations thereunder and is without prejudice to any findings or orders which have been or which may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against applicants. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. The grant of the certificates aforesaid for service to the particular customers involved does not imply approval of all of the terms of the contracts, particularly as to the cessation of service upon termination of said contracts as provided by section 7(b) of the Natural Gas Act. The grant of the certificates aforesaid shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The orders issuing certificates of public convenience and necessity in various dockets are amended by deleting therefrom authorization to sell natural gas or by substituting successors in interest as certificate holders, as more fully described in the applications and in the tabulation herein. In all other respects said orders shall remain in full force and effect.

(E) Applicants in the dockets indicated shall charge and collect the following rates, subject to B.t.u. adjustment where applicable:

Docket No.	Rate (cents per Mcf)	Pressure Base (p.s.i.a.)
CI72-575	26.0	15.025
CI72-692	26.0	15.025
CI72-693	26.0	15.025
CI72-694	26.0	15.025
CI72-733	21.5	14.65
CI72-734	21.315	14.65
CI72-735	21.5	14.65

(F) The certificates and certificate authorizations granted in Dockets Nos. G-4904, CI68-462, CI68-1247, CI68-1269, CI72-575, CI72-692, CI72-693, CI72-694, CI72-733, CI72-734, and CI72-735 are subject to the Commission's findings and orders accompanying Opinions Nos. 468, 468-A, 586, 598, and 598-A, as applicable.

(G) Within 90 days from the date of initial delivery, applicants in Dockets Nos. CI72-575, CI72-692, CI72-693, and CI72-694 shall each file three copies of a rate schedule-quality statement in the form prescribed in Opinion No. 598. Within 90 days from the date of this order, applicant in Docket No. G-4904 shall file three copies of a rate schedule-quality statement in the form prescribed in Opinion No. 586.

(H) The orders issuing certificates of public convenience and necessity in Dockets Nos. G-4904 and G-11832 are amended by adding thereto authorization to sell natural gas which was originally covered under another's authorization, as more fully described in the applications and in the tabulation herein. In all other respects said orders shall remain in full force and effect.

(I) The certificates issued in Dockets Nos. CI67-1624 and CI69-780 are terminated and the related rate schedules are canceled.

(J) Applicant in Docket No. CI71-300 is substituted as respondent in the proceeding pending in Docket No. RI71-621 only insofar as it pertains to sales under Amoco Production Co. (Operator) et al., FPC Gas Rate Schedule No. 553, and said proceeding is redesignated accordingly. Applicant shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(K) The certificates issued herein in Dockets Nos. CI72-692, CI72-693, CI72-694, CI72-733, and CI72-734 determine the rates which the respective buyers may legally pay their affiliates, the respective sellers, under the subject authorizations, and are without prejudice to any action which the Commission may take in any rate proceeding involving said buyers and sellers.

(L) Permission for and approval of the abandonments of service by applicants, as hereinbefore described and as more fully described in the application and tabulations, are granted.

(M) The rate schedule and rate schedule supplements related to the authorizations granted herein are accepted for filing or are redesignated, all as set forth in the tabulation herein.

By the Commission.

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

Docket No. and date filed	Applicant	Purchaser and location	FPC Gas Rate Schedule [1] Description and date of document	No.	Supp.
G-4904 5-17-72 [2]	Amoco Production Co. (Operator), et al.	Cities Service Gas Co., Hugoton Field, Kans.	Assignment 2-9-65 [6]	84	133
5-17-72 [3]	do	do	Assignment 4-28-64 [7]	84	134
5-17-72 [3]	do	do	Assignment 4-6-64 [8]	84	135
5-17-72 [3]	do	do	Assignment 12-28-67 [8]	84	136
6-16-72 [4]	do	do	Assignment 3-10-69 [9]	84	138
6-16-72 [4]	do	do	Assignment 12-6-65 [10]	84	139
6-19-72 [4]	do	do	Assignment 12-6-65 [11]	84	140
G-11832 5-25-72 [12]	do	Northern Natural Gas Co., South Bernstein Field, Hansford County, Tex.	Assignment 6-16-61	192	22
G-14637 E 6-7-72	Kansas Gas Purchasing [13]	Northern Natural Gas Co., Hockett Field, Meade County, Kans.	Northern Natural Gas Producing Co., FPC Gas Rate Schedule No. 14 and Supplements Nos. 1-3 thereto	1 1	---- 1-3
			Notice of Succession 6-6-72		
			Assignment 5-9-72 (Effective date: 5-1-72)	1	4
G-15387 D [14]	Amoco Production Co.	El Paso Natural Gas Co., East La Barge Field, Lincoln and Sublette Counties, Wyo.	Assignment 12-31-69	236	6
CI61-419 D [14]	do	El Paso Natural Gas Co., Chimney Butte Unit, Sublette County, Wyo.	do	289	8
CI61-1428 D [14]	do	El Paso Natural Gas Co., Big Piney Field, Sublette County, Wyo.	do	307	35
CI64-964 D [14]	do	El Paso Natural Gas Co., Bita Peak Field Apache County, Ariz.	do	389	2
CI64-1506 D [14]	do	El Paso Natural Gas Co., Gallup Field, San Juan and Rio Arriba Counties, N. Mex.	do	397	7
CI66-884 D [14]	Austral Oil Co., Inc. (Operator) et al.	Trunkline Gas Co., East Bancroft Field Area, Beauregard Parish, La.	Assignment 1-16-70 [15]	29	5
CI66-1259 D [14]	Atlantic Richfield Co.	do	do. [15]	302	7
CI66-1292 D [14]	do	do	do. [15]	572	6
CI68-642 E 5-11-72	Clinton Oil Co. [16]	Dorchester Gas Producing Co., Big Lake Field, Reagan County, Tex.	Amoco Producing Co. FPC Gas Rate Schedule No. 506 and Supplements Nos. 1-2 thereto	85 85	---- 1-2
			Notice of succession 5-5-72		
			Assignment 12-31-69 [17]	85	3
			Effective date: 12-31-69		

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.
See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	FPC Gas Rate Schedule [1] Description and date of document	No.	Supp.
CI68-1247 E 5-30-72	Harold D. Courson [15]	Diamond Shamrock Corp., Crest Field, Ochiltree County, Tex.	Sun Oil Co. FPC Gas Rate Schedule No. 230 and Supplement No. 1 thereto.	5 5	1
			Notice of succession 5-18-72		
			Assignment 11-10-71	5	2
			Effective date: 11-1-71		
CI68-1269 E 5-12-72	Clinton Oil Co. [16]	Cities Service Gas Co., Northeast Waynoka Field, Woodward County, Okla.	Amoco Production Co. FPC Gas Rate Schedule No. 510 and Supplements Nos. 1-2 thereto.	86 86	1-2
			Notice of succession 5-9-72		
			Assignment 12-31-69 [17]	86	3
			Effective date: 12-31-69		
CI71-300 E 5-12-72	Clinton Oil Co. (Operator), et al. [16]	Southern Union Gathering Co., Fulcher-Kutz Pictured Cliffs Field, San Juan County, N. Mex.	Amoco Production Co. [19] FPC Gas Rate Schedule No. 553 and Supplement. Nos. 1-2 thereto.	87 87	1-2
			Notice of succession 5-9-72		
			Assignment 12-31-69 [17]	87	3
			Effective date: 12-31-69		
CI72-575 A 3-13-72	Southwest Gas Producing Co., Inc.	Transcontinental Gas Pipeline Corp., Leleux Field, Vermilion Parish, La.	Contract 2-1-72 [20]	26	
CI72-692 A 4-25-72	Pennzoil Offshore Gas Operators, Inc.	Sea Robin Pipeline Co., Block 330, Eugene Island Area, offshore Louisiana.	Contract 4-20-72 [20]	1	
CI72-693 A 4-25-72	do	Sea Robin Pipeline Co., Block 295, Eugene Island Area, offshore Louisiana.	do [20]	2	
CI72-694 A 4-25-72	do	Sea Robin Pipeline Co., Block 270, East Cameron Area, offshore Louisiana.	do [20]	3	
CI72-733 A 5-15-72	American Natural Gas Production Co.	Michigan Wisconsin Pipe Line Co., Cree Flowers Field, Roberts County, Tex.	Compliance 6-13-72 [26]	4	1
CI72-734 A 5-15-72	do	Michigan Wisconsin Pipe Line Co., Southwest Oakdale Field, Woods and Mahor Counties, Okla.	do [26]	5	1
CI72-735 A 5-15-72	Texaco, Inc	Panhandle Eastern Pipe Line Co., Farwell Creek (Morrow) Field, Hansford County, Tex.	Compliance 6-21-72 [26]	473	1
CI72-804 B 8-10-72 [21]	Mobile Oil Corp	Columbia Gas Transmission Corp., East Cameron Meadows Field, Cameron Parish, La.	Notice of cancellation 8-10-71.[22]	403	2
CI72-863 B 6-19-72 [23]	Inexco Oil Co	Transcontinental Gas Pipe Line Corp., Van Meter Field, Hardin County, Tex.	([24])		
CI72-866 B 6-27-72 [24]	Warren B. Pinney, Jr	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Kohler Field, Duval County, Tex.	Notice of cancellation 6-9-72.[24]	1	3

[1] Unless otherwise stated, effective date is date of this order.
[2] Applicant proposes to cover its own interest in a sale of natural gas heretofore covered by W. E. Bakke, now holder of a small producer certificate.
[3] Applicant proposes to cover its own interest in a sale of natural gas heretofore covered by Northern Pump Co., now holder of a small producer certificate.
[4] Applicant proposes to cover its own interest in a sale of natural gas heretofore covered by Graham-Michaelis Drilling Co., now holder of a small producer certificate.
[5] Drussell Unit; effective date: May 2, 1971.
[6] Murphy Unit; effective date: Mar. 18, 1971.
[7] Reeve Unit; effective date: Mar. 18, 1971.
[8] Grossman Unit; effective date: May 2, 1971.
[9] Weber Unit A; effective date: May 2, 1971.
[10] Wheatley and Dennis Gas Units; effective date: May 2, 1971.
[11] Weber A & B and Steen Units; effective date: May 2, 1971.
[12] Applicant proposes to cover its own interest in a sale of natural gas heretofore covered by Allied Minerals Corp., now holder of a small producer certificate.
[13] Successor to Northern Natural Gas Producing Co.
[14] No certificate filing necessary (18 CFR 2.64).
[15] Assigns acreage from Applicant to Gulf Minerals Inc., a small producer certificate holder.
[16] Successor to Amoco Production Co.
[17] Assigns acreage to Applicant from Amoco Production Co.
[18] Successor to Sun Oil Co.
[19] (Operator) et al.
[20] Rate schedule filing has heretofore been accepted.
[21] Application to amend certificate to delete the name of Mobil Oil Corp. is being construed as an application to abandon service. Sale was authorized in Docket No. CI67-1624.
[22] Contains assignment dated July 1, 1971, whereby acreage is assigned from Applicant to Curt Weaver. Assignee states that the acquired acreage does not include any wells capable of producing gas into an interstate gas transmission line.
[23] Small producer abandonment.
[24] Source of gas is depleted.
[25] Applicant proposes to abandon a sale of natural gas heretofore authorized in Docket No. CI69-780.
[26] Effective Date: Date of initial delivery.

[FR Doc.72-18028 Filed 10-25-72;8:45 am]

[Docket No. RI73-72, etc.]

WARREN PETROLEUM CO. ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

OCTOBER 13, 1972.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto [18 CFR, Chapter I], and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the respondent or by the Commission. Each respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

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

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf* Rate in effect	Cents per Mcf* Proposed increased rate	Rate in effect subject to refund in docket No.
RI73-72	Warren Petroleum Co., a division of Gulf Oil Corp.	61	2	El Paso Natural Gas Co. (Tatum Gas Processing Plant, Lea County, N. Mex., Permian Basin).	$328	9-15-72		3-16-73	[1] [2] 27.3240	[4] 30.3600	
	do	62	1	El Paso Natural Gas Co. (Caliche Gas Processing Plant, Lea County, N. Mex., Permian Basin).	(3)	9-15-72		3-16-73	[1] [2] 29.9430	[4] 33.2700	
	do	63	1	El Paso Natural Gas Co. (Monument Gas Processing Plant, Lea County, N. Mex., Permian Basin).	(3)	9-15-72		3-16-73	[1] [2] 27.4590	[4] 30.5100	
	do	64	2	El Paso Natural Gas Co. (Saunders Gas Processing Plant, Lea County, N. Mex., Permian Basin).	3,789	9-15-72		3-16-73	[1] [2] 28.0260	[4] 31.1400	
	do	65	2	El Paso Natural Gas Co. (Eunice Gas Processing Plant, Lea County, N. Mex., Permian Basin).	2,571	9-15-72		3-16-73	[1] [2] 28.5660	[4] 31.7400	
	do	66	2	El Paso Natural Gas Co. (Waddell Gas Processing Plant, Crane co, Tex., Permian Basin).	25,827	9-15-72		3-16-73	[1] [2] 28.9710	[4] 32.5285	
RI73-73	Aztec Oil & Gas Co	25	9	Southern Union Gathering Co. (Mesa Verde Formation, San Juan County, N. Mex., San Juan Basin).	7,083	9-15-72		3-16-73	[4] 15.0636	[4] 29.23	RI69-378.
	do	27	9	do	9,916	9-15-72		3-16-73	[4] 15.0636	[4] 29.23	RI69-378.
RI73-74	Phillips Petroleum Co	479	[1] 7	Panhandle Eastern Pipeline Co., (Powder River Basin Area, Converse and Campbell Counties, Wyo).	113,150	9-13-72		12- 2-72	[1] 17.00	[1] 18.00	
RI73-75	Pennzoil Co	13	[7] 9	Northern Natural Gas Co. (Coyanesa Field, Pecos County, Tex.) (Permian Basin).		9-15-72	10-16-72	[8] Accepted			
	do		10	do	60,362	9-15-72		3-16-73	17.0638	23.10	RI71-819.

* Unless otherwise stated, the pressure base is 14.65 p.s.i.a.
[1] Initial rate prescribed by temporary certificate issued July 10, 1972.
[2] 27-cent base rate plus B.t.u. adjustment.
[3] No residue available for sale at the present time.
[4] 30-cent base rate plus B.t.u. adjustment.
[5] The pressure base is 15.025 p.s.i.a.
[6] Applicable only to that portion of residue gas delivered from Douglas Plant that is attributable to raw gas purchased by Phillips under contracts dated prior to June 17, 1970.
[7] Contract amendment.
[8] Accepted, for filing to be effective on the date shown in the "Effective Date" column.

The proposed increase of Phillips Petroleum Co. under Supp. No. 7 to its FPC Gas Rate Schedule No. 479, does not exceed the corresponding rate filing limitation imposed in southern Louisiana and therefore is suspended for 1 day from the expiration of the 60-day notice period.

The other proposed increases exceed the rate limit for a 1-day suspension and therefore are suspended for 5 months.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56).

CERTIFICATION OF ABBREVIATED SUSPENSION

Pursuant to § 300.16(i)(3) of the Price Commission rules and regulations, 6 CFR Part 300 (1972), the Federal Power Commission certifies as to the abbreviated suspension period in this order as follows:

(1) This proceeding involves producer rates which are established on an area rather than company basis. This practice was established by Area Rate Proceeding, Docket No. AR61-1, et al., Opinion No. 468, 34 FPC 159 (1965), and affirmed by the Supreme Court in Permian Basin Area Rate Case, 390 U.S. 747 (1968). In such cases as this, producer rates are approved by this Commission if such rates are contractually authorized and are at or below the area ceiling.

(2) In the instant case, the requested increases do not exceed the ceiling rate for a 1-day suspension.

(3) By Order No. 423 (36 F.R. 3464) issued February 18, 1971, this Commission determined as a matter of general policy that it would suspend for only 1 day a change in rate filed by an independent producer under section 4(d) of the Natural Gas Act [15 U.S.C. 717c(d)] in a situation where the proposed rate exceeds the increased rate ceiling, but does not exceed the ceiling for a 1-day suspension.

(4) In the discharge of our responsibilities under the Natural Gas Act, this Commission has been confronted with conclusive evidence demonstrating a natural gas shortage. (See Opinions Nos. 595, 598, and 607, and Order No. 435.) In these circumstances and for the reasons set forth in Order No. 423 the Commission is of the opinion in this case that the abbreviated suspension authorized herein will be consistent with the letter and intent of the Economic Stabilization Act of 1970, as amended, as well as the rules and regulations of the Price Commission, 6 CFR Part 300 (1972). Specifically, this Commission is of the opinion that the authorized suspension is required to assure continued, adequate and safe service and will assist in providing for necessary expansion to meet present and future requirements of natural gas.

[FR Doc.72-18021 Filed 10-25-72;8:45 am]

FEDERAL RESERVE SYSTEM

FIDELITY AMERICAN BANKSHARES, INC.

Order Approving Acquisition of Bank

Fidelity American Bankshares, Inc., Lynchburg, Va., 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 Peoples Corp., Virginia Beach, Va., a one-bank holding company which owns 100 percent of the voting shares (less directors' qualifying shares) of People's Bank of Virginia Beach, Virginia Beach, Va. (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 controls 10 banks with deposits of $403.8 million representing approximately 4.4 percent of total deposits of commercial banks in Virginia, and is the eighth largest banking organization in the State.[1] Acquisition of Bank (deposits of $19.2 million) would increase Applicant's share of deposits in the State by 0.2 percentage points and would not alter its State ranking nor result in a significant increase in the concentration of banking resources in Virginia.

[1] Banking data are as of Dec. 31, 1971, unless otherwise noted, and reflect holding company formations and acquisitions approved by the Board through Aug. 31, 1972. Data also reflect the Board's approval of this date of Applicant's application to acquire Citizens Bank of Herndon, Herndon, Va., and Fairfield National Bank of Highland Springs, Highland Springs, Va.

Bank operates its main office and four branch offices in the 312-square-mile community of Virginia Beach. Bank is one of seven banking organizations serving Virginia Beach and as of June 30, 1970, ranked as the 10th largest of 11 banking organizations in the Norfolk SMSA (which approximates the relevant banking market with 1.4 percent of commercial bank deposits in the market. Based on its ownership of a bank in Portsmouth, Applicant held 5.6 percent of market deposits as of June 30, 1970, and ranked as sixth largest banking organization in the market. The closest offices of Applicant's Portsmouth subsidiary and Bank are 12 miles apart, and consummation of the proposal would not eliminate any significant existing competition between them since their respective service areas are separated by the city of Norfolk and parts of the city of Chesapeake. There does not appear to be any significant competition between Bank and any of Applicant's banking subsidiaries. Further, it appears unlikely that significant future competition between Bank and any of Applicant's subsidiaries would develop because of Virginia's restrictive banking laws and other facts of record. Affiliation with Applicant may stimulate competition by making it easier for Bank to expand the range of its services. Thus, competitive considerations appear to be consistent with approval of the application.

The financial and managerial resources of Applicant, its subsidiary banks and Bank are regarded as generally satisfactory.[2] Although new services would not be introduced into the relevant areas, Applicant's assistance to Bank in making available services the Bank does not presently offer, such as mortgage loans and trust services, would provide an alternative source of such services to area residents. Accordingly, considerations related to the convenience and needs of the communities to be served are consistent with and lend some support to 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 Richmond pursuant to delegated authority.

[2] See order of this date approving applications to acquire Citizens National Bank of Herndon, and Fairfield National Bank of Highland Springs, Highland Springs, both in Virginia.

By order of the Board of Governors,[3] effective October 18, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-18221 Filed 10-25-72;8:49 am]

FIDELITY AMERICAN BANKSHARES, INC.

Order Approving Acquisition of Banks

Fidelity American Bankshares, Inc., Lynchburg, Va., a bank holding company within the meaning of the Bank Holding Company Act, has separately applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent or more of the voting shares of (1) Citizens National Bank of Herndon, Herndon, Va. (Citizens Bank), and (2) Fairfield National Bank of Highland Springs, Highland Springs, Va. (Fairfield Bank).

Notice of the applications affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the eighth largest banking organization in Virginia, controls eight banks with aggregate deposits of $383.1 million, representing 4.2 percent of deposits of commercial banks in the State. (Banking data are as of December 31, 1971, unless otherwise noted, and reflect holding company formations and acquisitions approved through August 31, 1972). Consummation of the proposals herein would increase Applicant's share of deposits by 0.2 percentage points and would not change its statewide ranking nor result in a significant increase in the concentration of banking resources in Virginia.

The service area of Citizens Bank is located in the western part of Fairfax County which is a small segment of the Washington, D.C., banking market. Citizens Bank (deposits of $13.7 million) is the 13th largest of 21 banking organizations in the Virginia portion of the banking market and the fifth largest of the 13 banks not affiliated with holding companies, three of which have opened since 1970, in the Virginia portion of the market. Applicant's closest banking subsidiary to the area served by Citizens Bank is approximately 50 miles southwest. It appears that no significant competition exists between Citizens Bank and any of Applicant's subsidiaries. Further, it appears unlikely that significant future competition between Bank and Applicant's present subsidiaries would be eliminated by consummation of the proposal in light of the distances separating Applicant's subsidiaries and Bank, and Virginia's restrictive branching law. While Applicant could enter the market by the establishment of a de novo bank or the acquisition of a smaller bank, Citizens Bank's size, and the relatively large number of remaining "foothold" entries as well as the large number of alternative sources of banking services make it unlikely that the acquisition would have any significant anticompetitive effects. Moreover, affiliation with Applicant, with its greater financial resources, may enhance Citizens Bank's ability to be a full service competitor.

Fairfield Bank (deposits of $7 million) is the 12th largest of 13 banks operating in the Richmond banking market and had less than 0.5 percent of market deposits as of June 30, 1970. Applicant's subsidiary banking office located nearest to Fairfield Bank is approximately 40 miles southeast of Fairfield Bank. It appears that no meaningful competition exists between Fairfield Bank and any of Applicant's subsidiary banks. Further, it seems unlikely that consummation of the proposed acquisition would foreclose any significant future competition between Fairfield Bank and Applicant's subsidiary banks in the light of the facts presented, including the distances separating these banks, Virginia's restrictive branching law, and the relatively small size of Fairfield Bank. Moreover, because of Applicant's greater resources, affiliation of Fairfield Bank with Applicant may enhance Fairfield Bank's ability to compete with the much larger banks in the market. Thus, competitive considerations appear to be consistent with approval of both applications.

The capital positions of three of Applicant's banking subsidiaries are deemed to be somewhat low; however, Applicant has made a commitment to increase the equity capital of the subsidiaries before or during 1973, and after the proposed increases, each of the banks involved would appear to have an adequate capital base. Accordingly, the financial and managerial resources of Applicant and its subsidiary banks are regarded as generally satisfactory. The financial and managerial resources of Citizens Bank are also regarded as generally satisfactory. Applicant has indicated that it will provide additional capital to Citizens Bank to increase the bank's lending limit and to support anticipated growth. Affiliation with Applicant would provide needed strength to Fairfield Bank's capital and management. The banking factors strongly support approval of the acquisition of Fairfield Bank and lend

[3] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

some support to approval of the acquisition of Citizens Bank.

Although neither of the proposed affiliations would introduce new services into the relevant markets, affiliation with Applicant would better enable each bank to provide additional banking services to the communities they serve. Applicant states its proposed affiliation would enable Fairfield Bank to begin offering residential mortgage loans and facilitate the offering of trust and investment advice as well as other services not currently provided by Fairfield Bank. Applicant also states that its proposed affiliation would enable Citizens Bank to offer trust services by drawing upon Applicant's expertise; Applicant would also assist Citizens Bank in such areas as system and management training. Accordingly, considerations related to the convenience and needs of the communities to be served are consistent with and lend some support to approval of the applications. It is the Board's judgment that the proposed transactions would be in the public interest and that the applications should be approved.

On the basis of the record, the applications are approved for the reasons summarized above. The transactions shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Richmond pursuant to delegated authority.

By order of the Board of Governors,[1] effective October 18, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-18220 Filed 10-25-72;8:49 am]

FIRST ALABAMA BANCSHARES, INC.

Order Approving Acquisition of Bank

First Alabama Bancshares, Inc., Birmingham, Ala., 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 not less than 80 percent of the voting shares of Dothan Bank and Trust Company, Dothan, Alabama ("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 controls three banks with aggregate deposits of about $494 million, representing about 8.6 percent of total commercial bank deposits in the State, and is the third largest banking organization and bank holding company in Alabama. (All banking data are as of December 31, 1971, and reflect bank holding company formations and acquisitions approved by the Board through September 30, 1972.) Acquisition of Bank would increase Applicant's share of Statewide deposits by only 0.7 percent and Applicant would become the second largest banking organization and bank holding company in Alabama.

Bank ($38.3 million in deposits), the second largest bank in the Dothan banking market (approximated by the city of Dothan) controls 32.8 percent of market deposits. Due to Alabama's branching laws and the distance between Applicant's nearest subsidiary and Bank (over 100 miles), there is no substantial existing competition between Applicant and Bank.

The Department of Justice filed comments with regard to the subject application. In the Department's view, there are only a small number of banking organizations in Alabama, including Applicant, that are significant potential entrants into all the important markets in the State in which they are not now represented. The Department of Justice found the Dothan market to be highly concentrated and felt that approval of this application, along with approval of an earlier application of The Alabama Financial Group, Inc., to acquire The First National Bank of Dothan (1972 Federal Reserve Bulletin 822) would "significantly lessen the possibility of de novo or foothold entry into Dothan and tend to entrench the existing concentrated market structure." For these reasons, the Department concluded that the acquisition of Bank would have a significantly adverse effect on competition.

Applicant replied to the Department's comments by stating that the Dothan market was not attractive for de novo entry from either an economic or regulatory standpoint (and seriously doubts the permissibility of de novo entry by an existing holding company pursuant to Alabama law). Furthermore, since the only possible "foothold" bank is already a member of a one-bank holding company and is affiliated with several other Alabama banks through common stock ownership, there was no other means available for Applicant to enter this market. In Applicant's view, approval of this application would have a procompetitive effect, enabling Bank to compete more effectively with its much larger local competitor, The First National Bank of Dothan.

The record indicates that the Dothan market is not attractive or de novo entry. Population per banking office is considerably less than the State average, while deposits per banking office are also less than the State figure. Moreover, the Dothan market had only moderate population growth during the 1960's. The Board, therefore, concludes that Applicant is not a likely de novo entrant into this market. It further appears that there is no likelihood that Applicant could enter the city of Dothan other than through the acquisition of Bank.

The financial and managerial resources and future prospects of Applicant and its subsidiary banks are regarded as satisfactory. Applicant has committed itself to inject into Bank an additional $750,000 in equity capital and will provide Bank needed management depth; accordingly, banking factors lend weight for approval. Applicant would assist Bank in accommodating larger credit requests, expanding its trust services and data processing services. Considerations relating to the convenience and needs of the communities are consistent with approval. It is the Board's judgment that the proposed transaction is 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.[1] The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this order or (b) later than three 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,[2]

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-18215 Filed 10-25-72;8:48 am]

FIRST FINANCIAL CORP.

Order Approving Acquisition of Bank

First Financial Corp., Tampa, Fla., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire not less than 80 percent of the voting shares of Lake Region Bank of Commerce, Winter Haven, Fla. ("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 controls 10 banks with aggregate deposits of about $555 million, representing 3.4 percent of the total commercial bank deposits in Florida, and is effective October 18, 1972.

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

[1] Dissenting Statement of Governors Robertson and Brimmer filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Atlanta.

[2] Voting for this action: Governors Daane, Sheehan and Bucher. Voting against this action: Vice Chairman Robertson and Governor Brimmer. Absent and not voting: Chairman Burns and Governor Mitchell.

the sixth largest banking organization and bank holding company in the State. (All banking data are as of December 31, 1971, and reflect bank holding company formations and acquisitions approved by the Board through September 30, 1972.) Acquisition of Bank ($15.3 million in deposits) would increase Applicant's share of deposits in the State by only 0.1 percentage point and would not alter its ranking.

Bank is the 12th largest of 22 banks in the Polk County banking market and is the third largest of the eight banks operating in the city of Winter Haven. This proposal represents Applicant's initial entry into the city of Winter Haven and, inasmuch as Applicant's subsidiary located closest to Bank is about 18 miles west, would not result in the elimination of any significant existing competition. Nor is it likely that consummation of the proposal would have any significant effects on potential competition between Applicant's present subsidiaries and Bank due, among other factors of record, to the large number of banks in the area and the restrictive branching law of Florida. On the other hand, Bank's competitive position in relation to the larger banking organizations already represented in Winter Haven should be enhanced as six of the banks in Winter Haven control 80.5 percent of area deposits and are members of multibank holding companies. 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 prospects of Applicant and its subsidiary banks are regarded as satisfactory and consistent with approval. Applicant proposes to strengthen Bank's management and render it more aggressive in line with Bank's favorable future prospects. The banking needs of the area are being met; however, Applicant proposes that affiliation would enable Bank to become a full service bank able to offer such additional services as larger credit lines, trust services, and a full line of data processing services. Furthermore, Applicant proposes to increase Bank's loan-to-deposit ratio which is the market's lowest. Considerations relating to the convenience and needs of the communities to be served lend weight for approval. 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,[2] effective October 18, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-18216 Filed 10-25-72;8:49 am]

RIDGE BANCORPORATION OF WISCONSIN

Order Approving Formation of Bank Holding Company

Ridge Bancorporation of Wisconsin, Greendale, Wis. (Applicant), 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 Northridge Bank, Milwaukee, Wis. (Northridge Bank), and 100 percent of the voting shares (less directors' qualifying shares) of Southridge Bank of Greendale, Greendale, Wis. (Southridge Bank), a proposed new bank organized solely for the purpose of acquiring the assets and assuming the liabilities of Southridge National Bank of Greendale, Greendale, Wis. (Southridge National).

The bank which will acquire the assets and assume the liabilities of Southridge National has no significance except as a means of acquiring the voting shares of Southridge National. Accordingly, the proposed acquisition of the successor organization is treated as the proposed acquisition of the shares of Southridge National.

Notice of the subject 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 formed for the purpose of becoming a bank holding company and it has no present operations or subsidiaries. Upon approval of the transaction herein, Applicant would control approximately 0.2 percent of the total commercial bank deposits in the Milwaukee area.[1]

Northridge Bank, a new bank, commenced business in May 1972 and is located approximately 12 miles northwest of downtown Milwaukee. Northridge Bank projects that based upon the end of first year operations, it will have $2.7 million in deposits or 14.6 percent of the total commercial bank deposits in its immediate service area, defined as that area within a 3.25-mile radius of Northridge Bank. It competes with two other banks, one which controls 72.9 percent of deposits, and the other which is affiliated with the largest banking organization in Wisconsin.

Southridge National ($8.9 million in deposits) began operation in September 1970 and is located on the southwest corner of the city of Milwaukee. Southridge National ranks fifth among six banks in its immediate service area (3-mile radius of Southridge National) and controls approximately 0.4 percent of total commercial bank deposits in that area. It competes with five other banks, two of which are branches of organizations which rank as the first and second largest banking organizations in Wisconsin, respectively, and two of which are banks with deposits of over $20 million.

The record indicates that Northridge Bank and Southridge National do not compete with each other. Southridge National is approximately 15 miles directly south of Northridge Bank, the intervening area being the city of Milwaukee. In light of this distance and the high degree of common ownership between Northridge Bank and Southridge National, there appears to be little prospect for the development of such competition in the future. Further, it appears that affiliation of the two banks with Applicant would not have any adverse effects on any other bank but rather should enable Northridge Bank and Southridge National to compete more effectively with the larger banks in their respective areas. On the basis of the record before it, the Board concludes that consummation of the proposal would not result in any significant increase in concentration of banking resources in Wisconsin, nor have any adverse effect on competition in any relevant area.

The financial and managerial resources and future prospects of Applicant, which are largely dependent upon those of its proposed subsidiary banks, appear generally satisfactory. It appears, then, that Applicant would begin operations in generally satisfactory condition and with competent management.

Upon consummation, the successor organization to Southridge National will have increased aggregate capital stock and surplus accounts and greater lending power. 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 that date, and (c) Southridge Bank of Greendale, Greendale, Wis., shall be opened for business not later than 6 months after the effective date of this order. Each of the periods described in (b) and (c) may be extended for good

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

[1] Unless otherwise indicated, all banking data are as of December 31, 1971.

cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[1] effective October 18, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-18217 Filed 10-25-72;8:49 am]

SOUTHRIDGE BANK OF GREENDALE

Order Approving Acquisition of Assets and Assumption of Liabilities Under Bank Merger Act

Southridge Bank of Greendale, Greendale, Wis. (Applicant), a proposed State member bank of the Federal Reserve System, has applied pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) for the Board's prior approval to acquire the assets and assume the liabilities of Southridge National Bank of Greendale, Greendale, Wis., under the name and charter of Applicant.

As required by the Act, notice of the proposed merger, in form approved by the Board, has been published and the Board has requested reports on competitive factors from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered all relevant material contained in the record in the light of the factors set forth in the Act.

On the basis of the record, the application is approved for the reasons summarized in the Board's order of this date relating to the application of Ridge Bancorporation of Wisconsin, Greendale, Wis., and Southridge Bank of Greendale, through acquisition of 100 percent of the voting shares (less directors' qualifying Wis., to become a bank holding company shares) of Northridge Bank, Milwaukee, Greendale, Wis., a proposed new bank. The transaction shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, and (c) Southridge Bank of Greendale, Greendale, Wis., shall be opened for business not later than 6 months after the effective date of this order. Each of the periods described in (b) and (c) may be extended for good cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[2] effective October 18, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-18218 Filed 10-25-72;8:49 am]

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

UNITED VIRGINIA BANKSHARES INC.

Order Approving Acquisition of Crompton-Richmond Co., Inc., Factors

United Virginia Bankshares Inc., Richmond, Va., 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 certain of the assets subject to certain of the liabilities of Crompton-Richmond Co., Inc., Factors, New York, N.Y. (Company), a company that engages in the activities of full notification and nonnotification factoring of accounts receivable and in extending secured and unsecured commercial financing without restriction as to the nature of security taken including, but not limited to providing guarantees of letters of credit and issuing letters of guaranty of any kind. Applicant has also applied to engage de novo in commercial financing activities in New York, N.Y. Such activities have been determined by the Board to be closely related to the business of banking (12 CFR 225.4(a)(1)).

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. 16700). The time for filing comments and views has expired, and none has been timely received.

Applicant, the largest banking organization in Virginia, controls 12 banks with aggregate deposits of approximately $1.3 billion, representing 14.2 percent of the total deposits in commercial banks in Virginia.[1] Applicant's nonbanking subsidiaries include a service corporation, an insurance agency, a leasing company, and United Virginia Mortgage Corp.

Applicant proposes to acquire certain of the assets, subject to certain of the liabilities, of Company and transfer the assets to a corporation to be formed. In addition, Applicant proposes to engage de novo in commercial financing activities.

Company is engaged in both notification and nonnotification commercial factoring, as well as commercial financing.[2] Company conducts all business from its main office in New York, N.Y., and has service offices in Los Angeles, Calif., and Atlanta, Ga. Company engages in nationwide commercial factoring and during 1970 had annual factored volume of $463 million, representing approximately 4 percent of total commercial factored accounts outstanding.

Neither Applicant nor any of its subsidiaries are presently engaged in factoring. Accordingly, no existing competition would be eliminated upon consummation of the proposed transaction. Furthermore, because of the specialized skills required and the barriers to entry, it is unlikely that Applicant or any of its subsidiaries would engage in commercial factoring de novo. Accordingly, no potential competition would be foreclosed upon approval of this application.

There is no evidence in the record to indicate that the proposed retention would lead to an undue concentration of resources, conflicts of interests, or unsound banking practices. Applicant's acquisition of Company should result in benefits to the public by providing another source of factoring services in Virginia, where Company does not presently have any accounts. Applicant's de novo commercial financing operations will also introduce an alternative source of such services in its market areas.

Based upon the foregoing and other considerations reflected in the record, 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 section 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,[3] effective October 18, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-18214 Filed 10-25-72;8:48 am]

[1] Banking data are as of December 31, 1971.

[2] Company is in the process of terminating its commercial financing operations and Applicant would not acquire any of Company's commercial financing business.

VALLEY AGENCY CO.

Order Denying Formation of Bank Holding Company and Continuation of Insurance Agency Activities

Valley Agency Co., Valley, Nebr., 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 79 percent of the voting shares of Bank of Valley, Valley, Nebr. (Valley Bank).

At the same time, applicant has applied for the Board's approval under section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y to continue to engage in insurance agency activities in a community with a population of less than 5,000 persons.

[3] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

Notice of these applications was published in the FEDERAL REGISTER on August 15, 1972 (37 F.R. 16521) and the time for filing comments and views has expired. The Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act, and the considerations specified in section 4(c)(8) of the Act.

Valley Bank (deposits of $4.3 million as of December 31, 1971) is the only bank in Valley, a community of 1,600 persons located in east central Nebraska, 18 miles west of Omaha. Agency conducts a general insurance business from the premises of Valley Bank. Approval of these proposals, which essentially involve a reorganization of the principal shareholder's ownership interest, would have no effect upon either existing or potential competition. Factors relating to the convenience and needs of the communities involved are consistent with, but do not provide support for approval of the applications.

As it has indicated on previous occasions, the Board believes that a holding company should be a source of financial and managerial strength for the bank or banks in its system and, further, that every proposed acquisition or formation should be closely examined to determine whether it serves certain private interests to the undue disadvantage of the bank or its minority shareholders (applications of First Southwest Bancorporation, Inc., Waco, Tex., to acquire four banks, 1972 Federal Reserve Bulletin 301, application of Seilon, Inc., Toledo, Ohio, to acquire shares of First Bancorporation, 1972 Federal Reserve Bulletin 729, and application of The Trust Company of New Jersey, Jersey City, N.J. for merger with a nonoperating bank, 1972 Federal Reserve Bulletin 717). In this regard, the Board considers relevant the management policies of Valley Bank and of other banks controlled directly or indirectly by applicant's principal shareholder.

Applicant's principal shareholder acquired control of Valley Bank early in 1971 and although he is neither an officer or director of Valley Bank, he influences all major policies of Valley Bank. Valley Bank now has outstanding a significant amount of loans to affiliates of its principal shareholder and other banks controlled by applicant's principal shareholder have made similar loans. Valley Bank has greatly expanded its out of territory loans by participating with and/or purchasing outstanding loans from banks in which applicant's principal shareholder and other business associates have an interest. In view of the obvious conflicts of interests presented, great care must be exercised in circumstances of this nature to avoid possible implications of self-serving transactions. The Board is unable to conclude that such care has been exercised by management in all instances.

Further, applicant plans to charge Valley Bank a management fee of $12,000 per year. It is noted that applicant has no separate staff to service Valley Bank and that the majority of services proposed to be rendered appear to be no different in type or amount than services that would generally be provided by a bank's officers and directors. A similar pattern of charges can be observed in five other banks in which applicant's principal shareholder has an interest. In the Board's judgment, the proposed management fee appears to be excessive in comparison to the services to be rendered. To the extent that such fees are excessive, their imposition would operate to the detriment of Valley Bank's minority shareholders and possibly to the bank itself.

On the basis of the record, the Board is unable to conclude that considerations relating to the management factor are consistent with approval of applicant's section 3 application may not immediately affect existing relationships, approval would make these relationships more permanent and would represent Board sanction of management practices that it finds inconsistent with the public interest.

In the light of the above, it is the Board's judgment that approval of section 3 application would not be in the public interest and is hereby denied.[1]

By order of the Board of Governors,[2] effective October 18, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-18219 Filed 10-25-72;8:49 am]

NATIONAL SCIENCE FOUNDATION

NIMITZ MARINE FACILITY

Summary Statement of Proposed Federal Action Affecting the Environment

This summary statement is published pursuant to section 102 of the National Environmental Policy Act (Public Law 91-190) and the Guidelines of the Council on Environmental Quality (36 F.R. 7724-7729, April 23, 1971). The proposed Federal activity is described as follows:

The Nimitz Marine Facility, located on the Point Loma shoreline in San Diego Bay, is the shore facility established in 1964 to provide support for oceanographic research vessels operated by the Scripps Institution of Oceanography, University of California, San Diego, Calif.

The proposed project involves the construction of a reinforced concrete pier 365 feet by 50 feet, extension of the existing marginal wharf by 62 feet to the north rock revetment associated with the marginal wharf extension, and tying the pier structure to the marginal wharf. Electrical, telephone, water, compressed air, and sewer connections would be provided on the pier and wharf, and dredging done to accommodate full use of the berths and to provide safe deep water access to the Shelter Island navigational channel. The dredge spoil would be sand of quality acceptable for use in beach restoration on (1) a badly eroded beach immediately north of the facility, and (2) on the beach at the tip of Shelter Island, extending slightly around the end on the bay side. The proposed permanent reinforced concrete pier would replace two barges now used as a temporary floating pier. A primary requirement for the project is the installation of a sewer system to meet water quality standards for San Diego Bay which forbid direct discharge of vessel wastes to the bay.

Protective features of the proposed project include the prevention of vessel waste discharge to the waters of the bay, the probable improvement of surface water circulation resulting from the replacement of the deepdraft barges by the piling used as pier supports, and the replenishment of presently eroded beaches. There are no long term adverse effects anticipated.

Copies of the draft Environmental Impact Statement are available from the Deputy Assistant Director for National and International Programs, National Science Foundation, Washington, D.C. 20550. Comments from appropriate State and local agencies, addressed as above, should be submitted within 30 days following the publication of this summary statement.

Dated: October 19, 1972.

H. GUYFORD STEVER,
Director.

[FR Doc.72-18211 Filed 10-25-72;8:52 am]

OFFICE OF EMERGENCY PREPAREDNESS

VIRGINIA

Amendment to Notice of Major Disaster

Notice of major disaster for the State of Virginia, dated October 13, 1972, and published October 19, 1972 (37 F.R. 22418) is hereby amended to include the following counties among those counties and cities determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 10, 1972:

THE COUNTIES OF

Bedford.	Chesterfield.
Buckingham.	Sussex.

Dated: October 20, 1972.

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

[FR Doc.72-18237 Filed 10-25-72;8:47 am]

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[1] Denial of applicant's 3(a)(1) application makes moot Board action on attendant 4(c)(8) proposal.

[2] Voting for this action: Governors Mitchell, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governors Robertson and Daane.

WISCONSIN

Amendment to Notice of Major Disaster

Notice of major disaster for the State of Wisconsin, dated September 14, 1972, and published September 20, 1972 (37 F.R. 19404), is hereby amended. Notice is hereby given that on October 18, 1972, the President amended his declaration of a major disaster of September 10, 1972, for Wisconsin as follows:

I have determined that the damages in certain areas of the State of Wisconsin from heavy rains and flooding, subsequent to August 21, 1972, are of sufficient severity and magnitude to warrant amendment of my declaration of September 10, 1972.

In order to provide Federal assistance, you are hereby authorized to extend the incidence period to September 21, 1972, as requested by Governor Lucey, and to allocate, from the funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

The notice is hereby further amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 10, 1972:

THE COUNTY OF
Douglas.

Dated: October 20, 1972.

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

[FR Doc.72-18238 Filed 10-25-72;8:47 am]

SECURITIES EXCHANGES COMMISSION

[Files Nos. 7-4281—7-4289]

BOWMAR INSTRUMENT CORP. ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 18, 1972.

In the matter of applications of the Philadelphia-Baltimore-Washington Stock Exchange, for unlisted trading privileges in certain securities, Securities Exchange Act of 1934.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Bowmar Instrument Corp	7-4281
Cordon International Corp. (Delaware)	7-4282
Pioneer Plastics Corp	7-4283
Rexham Corp	7-4284
Security Mortgage Investors	7-4285
Sonderling Broadcasting Corp. (Delaware)	7-4286
Trans-Lux Corp	7-4287
Unitrode Corp	7-4288
Vecco Instruments, Inc	7-4289

Upon receipt of a request, on or before November 3, 1972, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-18225 Filed 10-25-72;8:51 am]

[812-3213]

ENTERPRISE FUND, INC., ET AL.

Notice of Application for an Order Exempting Applicants

OCTOBER 18, 1972.

Notice is hereby given that Enterprise Fund, Inc., Comstock Fund, Inc., Legal List Investments, Inc., Fletcher Fund, Inc., Harbor Fund, Inc., and Pace Fund, Inc. (Funds), care of Alfred Weeks, Jr., Esq., Shareholders Management Co., 1888 Century Park East, Suite 700, Los Angeles, CA 90067, all of which are open-end diversified management investment companies registered under the Investment Company Act of 1940 (the "Act"), and Shareholders Management Co. (SMC), a California corporation and principal underwriter of each of the Funds (hereinafter collectively called "Applicants") have filed an application pursuant to section 6(c) of the Act for an order exempting Applicants from the provisions of section 22(d) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

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 public 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: (a) Reinstate their accounts by repurchasing shares at net asset value without a sales charge up to the amount redeemed; or (b) purchase under the exchange privileges available generally to shareholders of the Funds, shares of any other of the Funds at net asset value without a sales charge up to the amount redeemed. Notice of this proposed privilege will be given to eligible persons in writing or by telephone as part of the processing of their redemption request. To be effective, notice from such eligible persons of the exercise of the privilege must be received or postmarked within 15 days after the redemption request is received. The reinstatement will be made at the net asset value next determined after receipt of the order to reinstate the account.

The application states that no compensation of any kind will be paid to any dealer or salesman in connection with the purchase or exchange of shares pursuant to exercise of the privelege. Any cost involved will be borne by SMC, the underwriter of the Fund's shares, except that the $5 service fee payable by all shareholders exercising the exchange privilege will be charged where appropriate.

Applicants represent that in order to defeat the possibility of abuse, the privilege will be offered to shareholders who have requested redemption on a one-time basis. Once a person has exercised the privilege as to his holdings in any of the Funds, the privilege will not thereafter be available to him upon redemption of shares in that or any other of the Funds.

Applicants contend 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. In addition, Applicants assert that the privilege does not operate to the prejudice of the Funds or their shareholders, and that the one-time feature will prevent any speculation or trading against the Funds.

Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person or transaction from any provisions of the Act if 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 November 10, 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, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should 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 thereon shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Company Regulation, pursuant to delegated authority.

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

[FR Doc.72–18224 Filed 10–25–72;8:51 am]

[811–1754]

FINEVEST FUND, INC.

Notice of Filing of Application for Order Declaring Company Has Ceased To Be an Investment Company

Notice is hereby given that Finevest Fund, Inc. (Applicant), 1345 Avenue of the Americas, New York, NY 10019, a Maryland corporation registered as a diversified open-end management investment company under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein, which are summarized below.

Applicant was organized as a Maryland corporation on August 21, 1968, and registered under the Act as a diversified open-end management investment company by filing a Notification of Registration on Form N–8A on November 4, 1968.

Applicant represents, among other things, that as of August 7, 1972, it had total net assets of $17,388; that on such date all 1,500 shares of its outstanding stock were held by a single shareholder, which shares were acquired by the holder thereof under circumstances not requiring registration under the Securities Act of 1933; that the management has abandoned all plans to make a public offering; and it is anticipated that Applicant will be continued as a personal holding company for its single shareholder.

Section 3(c)(1) of the Act excepts from the definition of an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 10, 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 interests, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in the 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.72–18223 Filed 10–25–72;8:50 am]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING THE EMPLOYMENT OF FULL-TIME STUDENTS WORKING OUTSIDE OF SCHOOL HOURS AT SPECIAL MINIMUM WAGES IN RETAIL OR SERVICE ESTABLISHMENTS OR IN AGRICULTURE

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulation on employment of full-time students (29 CFR, Part 519), and Administrative Order No. 621 (36 F.R. 12819), the establishments listed in this notice have been issued special certificates authorizing the employment of full-time students working outside of school hours at hourly rates lower than the minimum wage rates otherwise applicable under section 6 of the act. While effective and expiration dates are shown for those certificates issued for less than a year, only the expiration dates are shown for certificates issued for a year. The minimum certificate rates are not less than 85 percent of the letter statutory minimum.

The following certificates provide for an allowance not to exceed the proportion of the total hours worked by full-time students at rates below $1 an hour to the total number of hours worked by all employees in the establishment during the base period in occupations of the same general classes in which the establishment employed full-time students at wages below $1 an hour in the base year; or provide the same standards authorized in certificates previously issued to the establishment.

Aland's, Inc., apparel store; 7732 Eastwood Mall, Birmingham, AL; 7–31–73.

Basco, Inc., restaurant; 3515 50th Street, Lubbock, TX; 6–30–73.

A. J. Bayless Markets, Inc., foodstore; No. 60, Flagstaff, Ariz.; 8–15–72 to 7–31–73.

Big Apple Supermarket, foodstores, 9–2–73: Nos. 2 and 3, Reidsville, N.C.

Big John Store, foodstore; No. 8, Carmi, Ill.; 7–26–72 to 4–24–73.

Birmac Planting Co., agriculture; Route 1, Altheimer, Ark.; 7–31–73.

Black Angus Restaurant, restaurant; Poteau, Okla.; 7–31–73.

Bonfiglio Pharmacy Co., Inc., drugstore; 530 South Broadway, Greenville, OH; 7–30–73.

Braselton Bros., Inc., variety-department store; Braselton, Ga.; 8–8–73.

Braselton Improvement Co., hardware store; Braselton, Ga.; 7–31–73.

Bud's Foodland, foodstore; Arnolds Park, Iowa; 8–14–73.

Channelview Food Market, Inc., foodstore; 777 Sheldon Road, Channelview, TX; 7–20–73.

Clarys 5 & 10, variety-department store; 127–133 Front Street, Sylvester, GA; 8–12–73.

Columbia Crest 5-10-25c Stores Co., variety-department store; 519 12th Street, West Columbia, SC; 7–31–73.

Crest 5–10–25c Stores Co., variety-department stores, 7–13–73: Smith Crossroads Shopping Center, Lenoir, N.C.; Town & Country Shopping Center, Lincolnton, N.C.

Dickson Furniture & Appliance Co., furniture store; 101 West Ellison Street, Burleson, TX; 6–29–73.

Don's Rexall Pharmacy, drugstore; 127 North Main Street, Monticello, IN; 7–18–73.

Draper & Darwin Store, variety-department store; 334 Main Street, Franklin, TN; 7–28–73.

Duckwall Stores Co., variety-department store; No. 29, Lyons, Kans.; 8–14–73.

Eagle Stores Co., Inc., variety-department stores: No. 13, Asheboro, N.C., 9–14–73; No. 114, Gastonia N.C., 8–9–73; No. 3, Lincolnton, N.C., 9–9–73.

Edward's Inc., variety-department stores: University Ridge, Greenville, S.C.; 8–11–73; Highway 17 South at 10th Street, Myrtle Beach, S.C.; 8–12–73.

Ferguson Free Car Wash, service station; 7901 Beechmont Avenue, Cincinnati, OH; 8–14–73.

Feudo Foodtown, foodstores; No. 1, Corpus Christi, Tex., 7–10–73; No. 2, Corpus Christi, Tex., 7–7–73.

Fisers Thriftway Supermarket, foodstore; Main and Pine Streets, Sheridan, Ark.; 8–5–73.

Food Giant Super Market, foodstore; No. 11, Tucson, Ariz.; 7–31–73.

Glendive Community Hospital, hospital; Prospect and Ames, Glendive, Mont.; 8–9–72 to 8–5–73.

W. T. Grant Co., variety-department stores, 9–2–73, except as otherwise indicated: No. 647, Jacksonville, Fla. (9–11–73); No. 849, Jacksonville, Fla.; No. 70, Atlanta, Ga.; No. 853, Middlesex, N.J. (8–31–73); No. 724, Parsippany, N.J. (8–31–73); No. 393, Roselle, N.J. (8–31–73); No. 675, Asheville, N.C.

Hi Nabor Super Market, Inc., foodstore; 7201 Winbourne Avenue, Baton Rouge, LA; 8–13–73.

Home Town Super Market, foodstore; 6850 West Bank Expressway, Marrero, LA; 8–15–73.

Jim's Super Valu, foodstore; Rockwell City, Iowa; 7–20–73.

John D. Archbold Memorial Hospital, hospital; Thomasville, Ga.; 9–6–73.

Jr.'s J & J Cash Market, foodstore; Circle Drive, McKenzie, Tenn.; 8–5–73.

Kiefer's Pharmacy, Inc., drugstore; 201 South Seventh Street, Dade City, FL; 7–26–73.

S. S. Kresge Co., variety-department stores, 9–2–73, except as otherwise indicated: No. 4086, Birmingham, Ala. (7–26–73); No. 4184, Mobile, Ala. (7–26–73); No. 4046, Hot Springs, Ark. (8–2–73); No. 4127, Little Rock, Ark. (8–18–73); No. 728, Bradenton, Fla.; No. 763, Daytona Beach, Fla.; No. 4286, Jacksonville, Fla. (7–30–73); No. 742, St. Petersburg, Fla.; No. 4049, Macon, Ga. (9–16–73); No. 4586, Alton, Ill. (7–24–73); No. 4561, Chicago, Ill. (7–20–73); No. 4100, Lombard, Ill. (8–6–73); No. 4077, Lexington, Ky. (7–26–73); No. 235, Louisville, Ky. (8–3–73); No. 4128, Lake Charles, La. (8–3–73); No. 582, Detroit, Mich. (8–12–73); No. 659, Detroit, Mich. (7–23–73); No. 4192, Southfield, Mich. (8–13–73); No. 4393, Taylor, Mich. (7–31–73); No. 4204, Warren, Mich. (7–27–73); No. 578, Hazelwood, Mo. (7–27–73); No. 72, St. Louis, Mo. (8–1–73); No. 4280, Springfield, Mo. (7–20–73); No. 4619, Springfield, Mo. (7–31–73); No. 4120, Lincoln, Nebr. (7–31–73); No. 4053, Charlotte, N.C.; No. 4182, Greensboro, N.C. (8–5–73); No. 199, Dayton, Ohio (8–18–73); No. 4244, Knoxville, Tenn. (8–1–73); No. 4103, Nashville, Tenn. (7–23–73); No. 4133, Irving, Tex. (8–18–73).

Landry Stores, Inc., variety-department store; Corner Main and Pere Megret Street, Abbeville, La.; 8–7–73.

La Parisienne, Inc., apparel store; 810 Jefferson Street, Lafayette, LA; 8–2–72 to 7–31–73.

Lerner Shops, apparel stores: No. 490, Aurora, Colo., 8–14–73; No. 337, Burlington, N.C., 9–14–73; No. 295, Fairmont, W. Va., 8–3–73.

Lo Mark, Inc., foodstore; 600 West Raleigh Street, Siler City, NC; 8–23–73.

Luke's Foodliner, foodstore; 1 Ardmore Mall, Ardmore, Okla.; 7–14–73.

Magic Mart-Jefferson, Inc., variety-department store; 1605 East Harding, Pine Bluff, AR; 8–13–73.

H. B. Magruder Memorial Hospital, hospital; Fulton Street, Port Clinton, Ohio; 8–6–73.

The Mart, Inc., apparel store; 180 Main Street, Paterson, NJ; 8–31–73.

McCrory-McLellan-Green Stores, variety-department stores, 8–2–73, except as otherwise indicated: No. 444, Bessemer, Ala. (8–13–73); No. 1106, Birmingham, Ala.; No. 1128, Birmingham, Ala.; No. 7503, Decatur, Ala. (8–3–73); No. 442, Gadsden, Ala. (8–9–73); No. 1109, Montgomery, Ala.; No. 3501, Northport, Ala. (8–19–73); No. 205, Waterbury, Conn. (7–31–73); No. 256, Clearwater, Fla. (8–6–73); No. 371, Fort Lauderdale, Fla.; No. 172, Fort Walton Beach, Fla.; No. 318, Hialeah, Fla. (8–16–73); No. 361, New Smyrna Beach, Fla.; No. 7501, Orlando, Fla. (8–7–73 to 8–2–73); No. 98, St. Augustine, Fla. (8–27–73); No. 232, Wauchin, Fla. (7–31–73); No. 423, Dublin, Ga. (8–31–73); No. 315, Baton Rouge, La.; No. 298, Lafayette, La. (8–13–73); No. 299, New Orleans, La. (8–6–73); No. 1125, Shreveport, La.; No. 208, Columbia, Md. (7–31–73); No. 252, Brookline, Mass. (6–30–73); No. 231, Lansing, Mich. (8–9–73); No. 616, Columbia, Miss. (8–10–73); No. 575, Columbus, Miss. (8–4–72 to 8–2–73); No. 302, Gulfport, Miss. (8–3–73); No. 275, McComb, Miss. (8–6–73); No. 156, Tupelo, Miss. (7–31–73); No. 247, Omaha, Nebr. (7–31–73); No. 91, Burlington, N.J. (8–1–72 to 7–30–73); No. 7506, Jersey City, N.J. (7–29–73); No. 240, Orange, N.J. (7–29–73); No. 1006, Plainfield, N.J. (8–27–73); No. 301, Union, N.J. (7–29–73); No. 404, Salisbury, N.C.; No. 37, Bradford, Pa. (7–21–73); No. 1022, Easton, Pa. (7–26–73); No. 1, Scottdale, Pa. (8–4–73); No. 134, Rock Hill, S.C.; No. 215, Norfolk, Va. (7–23–73).

McDonald's Hamburgers, restaurant; 5347 Independence Avenue, Kansas City, MO; 8–14–73.

McKinley's Food Market, Inc., foodstore; Main Street, Hancock, Md.; 8–9–73.

Michael's, Inc., restaurant; I–80 and Highway 283, Lexington, Nebr.; 8–7–73.

Morgan & Lindsey, Inc., variety-department stores, 8–2–73, except as otherwise indicated: No. 3046, Alexandria, La. (8–16–73); No. 3090, Arabi, La.; No. 3030, Many, La. (8–11–73); No. 3083, Morgan City, La.; No. 3068, New Orleans, La. (8–13–73); No. 3086, Sulphur, La.; No. 3040, Indianola, Miss. (7–31–73); No. 3051, Jackson, Miss. (8–13–73).

Morgan Floral Co., agriculture; 624 Platte Avenue, Fort Morgan, CO; 7–26–72 to 7–20–73.

G. C. Murphy Co., variety-department stores, 9–2–73, except as otherwise indicated: No. 259, North Palm Beach, Fla. (8–31–73); No. 335, Pensacola, Fla. (8–31–73); No. 250, Rome, Ga.; No. 102, Tifton, Ga.; No. 422, Peru, Ind.; No. 305, Landover, Md. (8–6–73); No. 310, Jackson, Ohio (8–5–73); No. 429, Wapakoneta, Ohio (7–31–73); No. 34, Blairsville, Pa. (7–28–73); No. 307, Greensburg, Pa. (8–11–73); No. 51, McKees Rocks, Pa. (8–7–73); No. 56, Pittsburgh, Pa. (8–4–73).

The Name Dropper, apparel store; 122 Normandale Arcade, Montgomery, AL 8–4–73.

Neisner Bros., Inc., variety-department stores, 9–2–73: No. 192, Avon Park, Fla.; No. 188, Brandon, Fla.; No. 183, Dade City, Fla.; No. 99, Gainesville, Fla.; No. 175, Key West, Fla.; No. 21, Miami, Fla.; No. 187, New Port Richey, Fla.; No. 184, Palmetto, Fla.; No. 40, Pompano Beach, Fla.; No. 127, East Paterson, N.J.; No. 149, Middletown, N.J.; No. 142, Trenton, N.J.

Northwood Deaconess Hospital and Home Association, hospital; Northwood, N. Dak.; 8–9–72 to 8–6–73.

One Stop Pharmacy, Inc., drugstores, 7–29–73; 3824 Auburn, Rockford, IL; 517 Marchesano Drive, Rockford, IL.

Pattibone Ranch, agriculture; Bismarck, N. Dak.; 8–9–72 to 6–30–73.

Piggly Wiggly, foodstores, 9–2–73, except as otherwise indicated: 2–6 Cooper Street, Evergreen, AL (8–9–73); No. 1, Panama City, Fla.; Nos. 1 and 2, Columbus, Ga.; Highway 6 and Eureka Street, Batesville, Miss. (7–27–73); No. 66, Great Falls, S.C. (8–24–73); No. 45, Hampton, S.C. (8–11–73).

Post Gardens, Inc., agriculture; 3055 West Michigan, Battle Creek, MI; 7–16–73.

Public Drug Store, drugstore; Tusca Shopping Plaza, Beaver, Pa.; 8–4–73.

Raylass Department Store, variety-department store; 101 Franklin Shopping Center, Franklin, Va.; 7–31–73.

Reed Drug Co., drugstores, 7–20–73: 7810 Olson Highway, Minneapolis, MN; 201 South Main Street, Stillwater, MN; 505 South Lake Avenue, White Bear Lake, MN.

Reppert Pharmacy, drugstore; 3501 Ingersoll Avenue, Des Moines, IA; 7–30–73.

Ridgewood Variety, Inc., variety-department store; 623 42d Avenue, East Moline, IL; 7–31–72 to 5–13–73.

Rodenberg's, foodstores, 8–23–73: No. 1, Charleston, S.C.; No. 5, Mount Pleasant, S.C.

Rose's Stores, Inc., variety-department stores: No. 203, Meridian, Miss., 7–31–73; No. 8, Lenoir, N.C., 9–2–73; No. 184, Lexington, N.C., 7–13–73; No. 10, Rockingham, N.C., 8–18–73; No. 27, Warrenton, N.C., 7–7–73; No. 97, Lebanon, Tenn., 8–14–73.

W. A. Rowe Floral Co., agriculture; Kirwood, Mo.; 7–26–73.

Rozier Mercantile Co., variety-department store; No. 2, Perryville, Mo.; 8–15–73.

St. Joseph Mercy Hospital, hospital; 235 Eighth Avenue West, Cresco, IA; 8–7–73.

Schensul's Cafeteria, restaurants: West Main Street, Kalamazoo, Mich., 8–17–73; 5606 West Saginaw Street, Lansing, MI, 7–9–73.

Schnaible Drug Co., drugstore; 117 North Fourth Street, Lafayette, IN; 8–16–73.

Seeley, Inc., apparel store; 617 St. Joseph Street, Rapid City, SD; 7–23–73.

Smith's Food King, foodstores, 8–17–72 to 8–6–73, except as otherwise indicated: No. 12, Bountiful, Utah; Nos. 1 and 7, Brigham City, Utah; No. 25, Granger, Utah; No. 6, Layton, Utah; No. 88, Logan, Utah; No. 15, Murray, Utah; No. 3, Ogden, Utah (8–9–72 to 8–6–73); Nos. 4 and 19, Ogden, Utah; No. 5, Roy, Utah; Nos. 14 and 77, Salt Lake City, Utah.

Smith's Quality Super Market, Inc., foodstore; 141 Manchester Street, Glen Rock, PA; 8–7–73.

Sovine's Super Market, Inc., foodstore; Scott Depot, W. Va.; 8–6–73.

Spies Super Valu, foodstore; 910 East Sioux, Pierre, SD; 8–18–73.

Spurgeon's, variety-department store; 130 North Main Street, Paris, IL; 7–31–73.

Sterling Ranch, agriculture; Bismarck, N. Dak.; 8–9–72 to 6–30–73.

Sterling Stores Co., variety-department stores, 8–2–73, except as otherwise indicated: Capitol Avenue and Center Street, Little Rock, Ark.; 208–212 Main Street, Russellville, AR; 519 Waldron Street, Corinth, MS; 8–5–73.

The Stern and Mann Co., apparel stores, 8–19–73: 3040 Cromer Northwest, Canton, OH; 301 Tuscarawas Street West, Canton, OH.

Steve's Shoes, Inc., shoestores, 7–31–73, except as otherwise indicated: 7636 State Avenue, Kansas City, KS; 6949 Tomahawk, Prairie Village, KS; 345 Blue Ridge Center, Kansas City, KS (7–28–73).

Swiss Village, Inc., nursing home; Berne, Ind.; 8–19–73.

T. G. & Y. Stores Co., variety-department stores, 8–31–73, except as otherwise indicated; No. 1405, Lawrence, Kans. (7–31–73); No. 478, Liberty, Mo. (7–31–73); No. 13, Anadarko, Okla. (9–2–73); No. 31, Bartlesville, Okla. (9–2–73); No. 43, Cushing, Okla. (8–23–73); No. 30, Midwest City, Okla. (9–2–73); No. 1009, Tulsa, Okla. (8–13–73); No. 843, League City, Tex. (8–13–73); No. 804, Odessa, Tex. (8–13–73); No. 824, Pearland, Tex.

Town and Country Market, Inc., foodstore; 27th and Avenue B, Scottsbluff, Nebr.; 8–14–73.

Tradewell Super Market, foodstore; Sixth Avenue at Fifth Street West, Huntington, W. Va.; 8–19–73.

Trojan Seed Co., agriculture; Olivia, Minn.; 6–20–73.

Tuten's Red and White Food Store, Inc., foodstore, No. 532, Estill, S.C.; 8–11–73.

Tyler Bros., variety-department store; Wagener, S.C.; 8–8–73.

Variety Food Store, Inc., foodstore; 3226 Wrightsboro Road, Augusta, GA; 8–21–73.

Walker Shoe Store, shoestores, 7–21–73: 608 Walnut, Des Moines, IA; 756 Main, Dubuque, IA; 516 Fourth Street, Sioux City, IA; 112–116 East Fourth Street, Waterloo, IA.

Way-Fair Restorium, Inc., nursing home; Fairfield Memorial Hospital, Fairfield, Ill.; 8–16–73.

William Look & Sons, Inc., auto dealer; 200 Newman Street, East Tawas, MI; 7–12–73.

Wing Ranch, agriculture; Bismarck, N.C.; 8–9–72 to 6–30–73.

The following certificates issued to establishments permitted to rely on the base-year employment experience of others were either the first full-time student certificates issued to the establishments or provide standards different from those previously authorized. The certificates permit the employment of full-time students at rates of not less than 85 percent of the applicable statutory minimum in the classes of occupations listed, and provide for the indicated monthly limitations on the percentage of full-time student hours of employment at rates below the applicable statutory minimum to total hours of employment of all employees.

Big K Discount Department Store, variety-department store; 1927 East Maple Avenue, Campbellsville, KY; stock clerk, salesclerk, office clerk; 11 to 59 percent; 8–31–73.

Dillon Companies, Inc., foodstore; No. 11, Fayetteville, Ark.; cashier, checker, carryout, clerk, wrapper, maintenance; 11 to 32 percent; 8–14–73.

Feudo Foodtown, foodstore; No. 3, Portland, Tex.; stock clerk, bottle clerk, cleanup, carryout; 11 to 14 percent; 8–31–73.

Gerald Strickland, agriculture; Route 2, Claxton, Ga.; general farmworker; 0 to 20 percent; 8–31–73.

H. E. B. Food Store, foodstores, for the occupation of bottle clerk, package clerk, sacker, 10 percent, 8–14–73: No. 128, Copperas Cove, Tex.; No. 129, Ennis, Tex.; No. 131 San Antonio, Tex.

Harwell Farms & Investment Co., Inc., agriculture; Florence, S.C.; general farmworker; 0 to 55 percent; 8–15–72 to 7–19–73.

Jack & Jill Store, foodstore; Hankinson, N. Dak.; salesclerk; 20 to 40 percent; 8–31–73.

S. S. Kresge, Co., variety-department stores, for the occupations of salesclerk, stock clerk, office clerk, checker-cashier, 13 to 22 percent, 8–31–73, except as otherwise indicated: No. 4465, Sioux City, Iowa (8 to 15 percent); No. 4430, Livonia, Mich. (maintenance, stock clerk, office clerk, salesclerk, food preparation, 10 percent); No. 3042, Columbia Heights, Minn.; No. 3034, White Bear Lake, Minn.; No. 3039, Milwaukee, Wis. (11 to 29 percent).

Leisure Hills, variety-department store; 605 East Church Street, Kewanee, IL; nurse's aide, kitchen aide, maintenance; 1 to 2 percent; 8–31–73.

Quik, Inc., restaurant; Greenwood, S.C.; general restaurant worker; 8–14–73.

Rose's Store, variety-department store; No. 226, Lancaster, S.C.; salesclerk, checker; 11 to 27 percent; 8–31–73.

T. G. & Y. Stores Co., variety-department stores, for the occupations of salesclerk, stock clerk, office clerk, 22 to 30 percent, 8–31–73, except as otherwise indicated: No. 786, Orlando, Fla. (9–17–73); No. 1315, Orlando, Fla. (7 to 24 percent); No. 481 Grandview, Mo. (8–14–73); No. 1017, Oklahoma City, Okla.

Each certificate has been issued upon the representations of the employer which, among other things, were that employment of full-time students at special minimum rates is necessary to prevent curtailment of opportunities for employment, and the hiring of full-time students at special minimum rates will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under a certificate. The certificate may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 30 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 519.9.

Signed at Washington, D.C., this 18th day of October 1972.

DONALD T. CRUMBACK,
Authorized Representative of the Administrator.

[FR Doc.72–18272 Filed 10–25–72;8:55 am]

INTERSTATE COMMERCE COMMISSION

[Notice 103]

ASSIGNMENT OF HEARINGS

OCTOBER 20, 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 116710 Sub 17, Mississippi Chemical Express, Inc., now assigned November 7, 1972, at New Orleans, La., hearing will be held in Room 1210 Main Floor, Federal Building, 701 Loyola Avenue.

MC–108313 Sub 12, Caledonia Lines, Inc., is continued to December 6, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

AB–5 Sub 10, George P. Baker, Richard C. Bond, Jervis Langdon, Jr. and Willard Wirz, Trustees of The Property of the Penn Central Transportation Company, Debtor Abandonment Catskill Mountain Branch, Between Kingston and Bloomville in Delaware, Schoharie and Ulster Counties, in New York, now being assigned hearing December 11, 1972 (2 days) at Stamford, New York, in a hearing room to be later designated.

MC–F–11530 John R. Remis, Bernard Sacharoff, John Roncoroni, Louis Geik, Henry Bono, Nicholas Accaridi, New Deal Delivery Service Inc., Eastern Transportation Co., Inc., and Airfreight Transportation Corporation of New Jersey—Investigation of Control, MC–FC–71876, Resil Trucking Corp., Transferee, and Eastern Transportation Company, Inc., Transferor, now being assigned hearing December 13, 1972 (3 days), at New York, N.Y., in a hearing room to be later designated.

MC 114211 Sub 169, Warren Transport, Inc., and MC 123048 Sub 215, Diamond Transportation System, Inc., now assigned November 14, 1972, at Washington, D.C., is postponed indefinitely.

MS 117610 Sub 8, Derrico Trucking Corp., assigned November 6, 1972, MC 136741, Quick Service Drivers Exchange, Inc., assigned November 7, 1972, MC 136430, American Trials, Inc., assigned November 8, 1972, at New York, N.Y., will be held in Tax Court Room 206, 26 Federal Plaza, New York, N.Y.

I&S M 25955, Classification Ratings on Candy or Confectionery, hearing continued to November 2, 1972, at Washington, D.C., at the Offices of the Interstate Commerce Commission.

MC–F–11545, Miller Transfer and Rigging Co.—Purchase—Engel Trucking Inc., et al., now assigned November 1, 1972, at Washington, D.C., is postponed to December 11, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 9269 Sub 15, Bestway Motorfreight, Inc., now being assigned hearing January 8, 1973 (1 week), at Olympia, Wash., in a hearing room to be later designated.

MC 69635 Sub 4, The Fortune Corporation, now being assigned hearing January 16, 1973 (3 days), at Olympia, Wash., in a hearing room to be later designated.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72–18253 Filed 10–25–72;8:50 am]

[Notice 27]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

OCTOBER 20, 1972.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of

Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC–29623 (Deviation No. 5), SOUTHEASTERN STAGES, INC., 226 Alexander Street NW., Atlanta, GA 30313, filed October 12, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 278 and Georgia Highway 83, near Madison, Ga., over Georgia Highway 83 (an access road) to junction Interstate Highway 20, thence over Interstate Highway 20 to junction U.S. Highway 78, thence over U.S. Highway 78 (an access road) to junction U.S. Highway 278, near Thomson, Ga., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service as follows: From Atlanta, Ga., over U.S. Highway 278 to Augusta, Ga., and return over the same route.

By the Commission.

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

[FR Doc.72–18248 Filed 10–25–72;8:49 am]

[Notice 32]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

OCTOBER 20, 1972.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-29910 (Deviation No. 18), ARKANSAS-BEST FREIGHT SYSTEM, INC., Post Office Box 48, Fort Smith, AR 72901, filed October 12, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Erie, Pa., over Interstate Highway 79 to junction U.S. Highway 6–N, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Mansfield, Ohio, over U.S. Highway 42 to Cleveland, Ohio, thence over Ohio Highway 84 to Ashtabula, Ohio, thence over U.S. Highway 20 via West Springfield, Pa., and Silver Creek, N.Y., to junction New York Highway 78, thence over New York Highway 78 to junction New York Highway 5, thence over New York Highway 5 via Syracuse, N.Y., to Albany, N.Y., and (2) from West Springfield, Pa., over U.S. Highway 6–N to junction U.S. Highway 6, thence over U.S. Highway 6 to junction Pennsylvania Highway 92, near Tunkahannock, Pa., thence over Pennsylvania Highway 92 to junction Pennsylvania Highway 307 via Mill City, Pa., to junction U.S. Highway 6, thence over U.S. Highway 6 to Scranton, Pa., and return over the same routes.

No. MC–41432 (Deviation No. 20), EAST TEXAS MOTOR FREIGHT LINES, INC., 2355 Stemmons Freeway, Post Office Box 10125, Dallas, TX 75207, filed October 3, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From San Bernardino, Calif., over Interstate Highway 15 to junction U.S. Highway 395, thence over U.S. Highway 395 to junction California Highway 58, thence over California Highway 58 to Bakersfield, Calif., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: from San Bernardino, Calif., over Interstate Highway 10 to junction U.S. Highway 66, thence over U.S. Highway 66 to Los Angeles, Calif., thence over California Highway 99 (formerly U.S. Highway 99) to Bakersfield, Calif., and return over the same route.

No. MC–52110 (Deviation No. 12), BRADY MOTORFRATE, INC., 2150 Grand Avenue, Des Moines, IA 50312, filed October 12, 1972. Carrier's representative: Jerome F. Marks (same address as applicant). Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Pittsburgh, Pa., over Pennsylvania Highway 8 (an access road) to junction Interstate Highway 80–S, thence over Interstate Highway 80–S to junction Interstate Highway 71, thence over Interstate Highway 71 to junction Interstate Highway 270, thence over Interstate Highway 270 to junction Interstate Highway 70, thence over Interstate Highway 70 to St. Louis, Mo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Pittsburgh, Pa., over U.S. Highway 30 to Mansfield, Ohio, thence over U.S. Highway 30–N to Delphos, Ohio, thence over U.S. Highway 30 to Dyer, Ind., thence over Alternate U.S. Highway 30 to Chicago, Ill., and (2) from St. Louis, Mo., over U.S. Highway 66 to Chicago, Ill., and return over the same routes.

No. MC–52110 (Deviation No. 13), BRADY MOTORFRATE, INC., 2150 Grand Avenue, Des Moines, IA 50312, filed October 12, 1972. Carrier's representative: Jerome F. Marks (same address as applicant). Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Jersey City, N.J., over U.S. Highway 1 (an access road) to junction Interstate Highway 80 at or near Fort Lee, N.J., thence over Interstate Highway 80 to junction Interstate Highway 80–S, thence over Interstate Highway 80–S to junction Interstate Highway 71, thence over Interstate Highway 71 to junction Interstate Highway 270, thence over Interstate Highway 270 to junction Interstate Highway 70, thence over Interstate Highway 70 to St. Louis, Mo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From New York, N.Y., over U.S. Highway 1 to Newark, N.J., thence over U.S. Highway 22 to Pittsburgh, Pa., (2) from Pittsburgh, Pa., over U.S. Highway 30 to Mansfield, Ohio, thence over U.S. Highway 30–N to Delphos, Ohio, thence over U.S. Highway 30 to Dyer, Ind., thence over Alternate U.S. Highway 30 to Chicago, Ill., and (3) from St. Louis, Mo., over U.S. Highway 66 to Chicago, Ill., and return over the same routes.

No. MC–59488 (Deviation No. 14), SOUTHWESTERN TRANSPORTATION COMPANY, 1517 West Front Street, Tyler, TX 75701, filed October 3, 1972. Carrier's representative: Lloyd M. Roach, same address as applicant. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Pine Bluff, Ark., over U.S. Highway 270 to Malvern, Ark., thence over Interstate Highway 30 to Texarkana, Tex., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Memphis, Tenn., over U.S. Highway 70 to junction Arkansas Highway 17, thence over Arkansas Highway 17 to junction U.S. Highway 79, thence over U.S. Highway 79 to Magnolia, Ark., thence over U.S. Highway 82 to Texarkana, Tex., and return over the same route.

No. MC-75320 (Deviation No. 37), CAMPBELL SIXTY-SIX EXPRESS, INC., Post Office Box 807, Springfield, MO 65801, filed October 2, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction Interstate Highway 44 and U.S. Highway 66, near Chandler, Okla., over Interstate Highway 44 (Turner Turnpike) to Oklahoma City, Okla., thence over Interstate Highway 35 to junction U.S. Highway 70, thence over U.S. Highway 70 to Ardmore, Okla., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Ardmore, Okla., over U.S. Highway 70 to junction U.S. Highway 177, thence over U.S. Highway 177 to junction Oklahoma Highway 18, thence over Oklahoma Highway 18 to junction Interstate Highway 44 (Turner Turnpike), thence over Interstate Highway 44 to Tulsa, Okla., and return over the same route.

No. MC-103435 (Deviation No. 22), UNITED-BUCKINGHAM FREIGHT LINES, INC., Post Office Box 192, Littleton, CO 80120, filed October 12, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Minneapolis, Minn., over U.S. Highway 12 to junction U.S. Highway 10 (Interstate Highway 94), near Forsyth, Mont., thence over U.S. Highway 10 (Interstate Highway 94) to Billings, Mont., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From St. Paul, Minn., over city streets to Minneapolis, Minn., thence over U.S. Highway 212 to Redfield, S. Dak., thence over U.S. Highway 281 to junction South Dakota Highway 26, thence over South Dakota Highway 26 to junction South Dakota Highway 45, thence over South Dakota Highway 45 to Miller, S. Dak., (2) from Montevideo, Minn., over Minnesota Highway 7 to Minneapolis, Minn., (3) from Miller, S. Dak., over U.S. Highway 14 to junction South Dakota Highway 73, thence over South Dakota Highway 73 to Philip Junction, S. Dak., thence over unnumbered highway at or near Cottonwood, S. Dak., to junction U.S. Highway 14, thence over U.S. Highway 13 to Sturgis, S. Dak., (4) from Redfield, S. Dak., over U.S. Highway 212 to junction South Dakota Highway 79, (5) from Rapid City, S. Dak., over South Dakota Highway 79 to junction South Dakota Highway 36, thence over South Dakota Highway 36 to junction Alternate U.S. Highway 16, thence over Alternate U.S. Highway 16 to Custer, S. Dak., thence over U.S. Highway 385 to Hot Springs, S. Dak.

(6) from Sturgis, S. Dak., over Alternate U.S. Highway 14 to Deadwood, S. Dak., thence over U.S. Highway 85 to Belle Fourche, S. Dak., (7) from junction South Dakota Highway 45 and U.S. Highway 212 over South Dakota Highway 45 to junction South Dakota Highway 26, (8) from Rapid City, S. Dak., over South Dakota Highway 79 to junction South Dakota Highway 36, thence over South Dakota Highway 36 to junction Alternate U.S. Highway 16, thence over Alternate U.S. Highway 16 to Custer, S. Dak., (9) from Custer, S. Dak., over U.S. Highway 16 to Newcastle, Wyo., (10) from Newcastle, Wyo., over U.S. Highway 16 to Ucross, Wyo., thence over U.S. Highway 14 to Sheridan, Wyo., (11) from Sturgis, S. Dak., over South Dakota Highway 34 to junction South Dakota Highway 79, thence over South Dakota Highway 79 to junction U.S. Highway 212, thence over U.S. Highway 212 to Belle Fourche, S. Dak., (12) from Sturgis, S. Dak., over South Dakota Highway 34 to junction U.S. Highway 85, thence over U.S. Highway 85 to Deadwood, S. Dak., (13) from Moorcroft, Wyo., over U.S. Highway 14 to Spearfish, S. Dak., (14) from Broadus, Mont., over U.S. Highway 212 to junction unnumbered highway, thence over unnumbered highway via Biddle, Mont., to junction U.S. Highway 16, thence over U.S. Highway 16 to Gillette, Wyo., (15) from Broadus, Mont., over U.S. Highway 212 to junction Montana Highway 8, thence over Montana Highway 8 to Crow Agency, Mont., thence over U.S. Highway 87 to Billings, Mont., (16) from Broadus, Mont., over U.S. Highway 212 to junction Montana Highway 8, thence over Montana Highway 8 to junction U.S. Highway 87, thence over U.S. Highway 87 to Billings, Mont., (17) from Sheridan, Wyo., over U.S. Highway 87 to Acme, Wyo., thence over unnumbered highways to the Wyoming-Montana State line, thence over unnumbered highways via Decker, Mont., to Birney, Mont., and (18) from Sheridan, Wyo., over U.S. Highway 87 to junction Montana Highway 8 near Crow Agency, Mont., and return over the same routes.

No. MC-116004 (Deviation No. 10), TEXAS-OKLAHOMA EXPRESS, INC., 2515 Irving Boulevard, Dallas, TX 75221, filed October 6, 1972. Carrier's representative: Clayte Binion, 1108 Continental Life Building, Forth Worth, Tex. 76102. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Kansas City, Kans.-Mo., over Interstate Highway 70 to Topeka, Kans., thence over U.S. Highway 75 to Tulsa, Okla., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: from Kansas City, Kans.-Mo., over U.S. Highway 69 to Crestline, Kans., thence over Kansas Highway 26 to Riverton, Kans., thence over U.S. Highway 66 to Tulsa, Okla., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-18250 Filed 10-25-72;8:50 am]

[Notice 86]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

OCTOBER 20, 1972.

The following publications[1] are governed by the new Special Rule 1100.247 of the Commission's Rules of Practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

No. W 381 (Sub-No. 17) (Republication), filed May 11, 1972, published in the FEDERAL REGISTER issue of June 2, 1972, and republished this issue. Applicant: FEDERAL BARGE LINES, INC., 611 East Marceau Street, St. Louis, MO 6311. Applicant's representative: Thomas A. Phemister, 425 13th Street NW., Washington, DC 20004. An order of the Commission, Operating Rights Board, dated September 25, 1972, and served October 16, 1972, finds that applicant is entitled to an amended certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a *common carrier* by water, by non-self-propelled vessels with the use of separate towing vessels in the transportation of *general commodities*, and by towing vessels in the performance of general towage, between port and points along the Alabama River from its confluence with the Mobile River up to and including Montgomery, Ala.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, a notice of the authority actually granted will be published in the FEDERAL REGISTER and the issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

[1] Except as otherwise specifically noted, each applicant (on applications filed after Mar. 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 25798 (Sub-No. 230) (Republication), filed February 25, 1972, published in the FEDERAL REGISTER issue of March 23, 1972, and republished this issue. Applicant: CLAY HYDER TRUCKING LINES, INC., 502 East Bridgers Avenue, Post Office Box 1186, Auburndale, FL 33823. Applicant's representative: Tony G. Russell (same address as applicant). An order of the Commission, Operating Rights Board, dated September 25, 1972, and served October 17, 1972, finds that operation by applicant in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of meats, meat products, meat by-products, dairy products, and articles distributed by meat packinghouses, as described in Sections A, B, and C of Appendix to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Wilson Certified Foods, Inc., at Marshall, Mo., to points in Florida, Georgia, North Carolina, and South Carolina; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been prejudiced.

No. MC 13267 (Sub-No. 277) (Republication), filed February 28, 1972, published in the FEDERAL REGISTER issue of March 30, 1972, and republished this issue. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 312 West Morris Street, Caseyville, IL 62232. Applicant's representative: Lawrence A. Fischer (same address as above). An Order of the Commission, Operating Rights Board, dated September 25, 1972, and served October 17, 1972, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle over irregular routes, transporting *meats, meat products, meat by-products, dairy products*, and *articles distributed by meat packinghouses* as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Wilson Certified Foods, Inc., at Marshall, Mo., to points in Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina, and Tennessee, and restricted to the transportation of traffic originating at Marshall, Mo., and destined to the named States; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, a notice of the authority actually granted will be published in the FEDERAL REGISTER and the issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 136426 (Republication) filed February 17, 1972, published in the FEDERAL REGISTER issue of March 16, 1972, and republished this issue. Applicant: LESCO, INC., 3900 Dahlman Avenue, Omaha, NE 68107. Applicant's representative: J. Max Harding, 605 South 14th Street, Post Office Box 82028, Lincoln, NE 68501. An order of the Commission, Operating Rights Board, dated September 25, 1972, and served October 16, 1972, finds that operation by applicant, in interstate or foreign commerce, as a *contract carrier* by motor vehicle, over irregular routes, of (1) *unprocessed edible fats*, in containers, from Kansas City, Kans., and points in Iowa and Missouri to Waterloo, Nebr., (2) *food processing machinery*, from Omaha, Nebr., to points in the United States (except Alaska and Hawaii), and *materials, supplies and* equipment (except commodities in bulk) used in the manufacture and distribution of food processing machinery, on return, (3) *fabricated iron and steel*, from Omaha, Nebr., to Kansas City, Mo., and (4) *galvanized iron and steel*, from Kansas City, Mo., to Omaha, Nebr., under contract with Midwest Animal By-Products, of Omaha, Nebr., in (1) above, and with Omaha Manufacturing and Engineering Co., of Omaha, Nebr., in (2), (3), and (4) above, will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, a notice of the authority actually granted will be published in the FEDERAL REGISTER and the issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interst may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

NOTICES FOR FILING OF PETITIONS

No. MC 59206 (Notice of Filing of Petition for Removal of Operating Restriction), filed October 6, 1972. Petitioner: HOLLAND MOTOR EXPRESS, INC., 750 East 40th Street, Holland, MI 49423. Petitioner's representative: Robert G. Bouwman (same address as applicant). Petitioner presently holds a certificate in No. MC 59206, authorizing, as pertinent, operation as a common carrier by motor vehicle, over regular routes of: General commodities with the usual exceptions, (1) between Richmond, Ind., and Cincinnati, Ohio as an alternate route for operating convenience only, serving no intermediate points or Richmond, Ind., from Richmond over U.S. Highway 35 to Eaton, Ohio, and thence over U.S. Highway 127 to Cincinnati, and return over the same routes, (2) between Fort Wayne, Ind., and Cincinnati, Ohio, serving no intermediate points, from Fort Wayne over U.S. Highway 27 to Cincinnati and return over the same route, (3) between Muncie, Ind., and Richmond, Ind., serving no intermediate points or Richmond, from Muncie over U.S. Highway 35 to Richmond and return over the same route, and (4) between Muncie, Ind., and Portland, Ind., serving no intermediate points or Portland, from Muncie over Indiana Highway 67 to Portland, and return over the same route. Restriction: No operation is authorized over these routes in the transportation of shipments moving between points in Indiana and points in the States west thereof, on the one hand, and, on the other, points in Ohio and points in States east thereof. By the instant petition, petitioner seeks to remove the above "Restriction" thus allowing a free flow of traffic between Cincinnati, Ohio on the one hand, and, on the other, Fort Wayne and Muncie, Ind., without taking a circuitous route via Anderson and Shelbyville, Ind. Any interested person desiring to participate may file an orginal and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 4484 and 4484 (Sub-No. 19) (Notice of Filing of Petition for Reconsideration, and for Modification of Certificates), filed October 2, 1972. Petitioner: MOORE-FLESHER HAULING COMPANY, INC., 100 Hafner Avenue, Pittsburgh, PA 15223. Petitioner's representatives: Paul F. Sullivan and David C. Venable, 711 Washington Building, Washington, D.C. 20005. Petition presently holds certificates in Nos. MC 4484 and 4484 (Sub-No. 19), issued December 15, 1941, and February 8, 1949, respectively. The former authorizes operation as a common carrier by motor vehicle, over irregular routes, of *heavy machinery and construction materials and supplies*, between points and places in that part of Pennsylvania south of U.S. Highway 422, west of U.S. Highway

119 and north of U.S. Highway 40, including points and places on the indicated portions of the highways specified, on the one hand, and, on the other, points and places in Ohio, West Virginia, and that part of New York on and west of New York Highway 34, restricted so that iron and steel products shall not be transported (1) between points in Ohio and West Virginia, or (2) between Pittsburgh, Vandergrift, Ambridge, Aliquippa, Carnegie, Crafton, Ingram, McKees Rocks, Bellevue, Millvale, Etna, Sharpsburg, Aspinall, and Wilkinsburg, Pa., and points and places in Pennsylvania on the Monongahela River between Pittsburgh and Clairton, Pa., including Clairton on the one hand, and, on the other, points and places in Ohio east of U.S. Highway 21 and south of U.S. Highway 422, those in West Virginia north of U.S. Highway 50, and those in New York west of New York Highway 60, including points and places on the indicated portions of the highways specified; the latter authorizes operation as a common carrier by motor vehicle, over irregular routes, of *machinery and construction equipment and materials*, the transportation of which, because of their size or weight, requires the use of special equipment, and *related machinery parts*, and *related construction equipment, materials, and supplies* when the transportation thereof is incidental to the transportation by said carrier of machinery and construction equipment and materials which by reason of size or weight require special equipment,

(a) Between points and places in that part of Pennsylvania on and west of U.S. Highway 15, on the one hand, and, on the other, points and places in Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Kentucky, Illinois, Indiana, and Michigan, (b) between points and places in that part of Pennsylvania on and west of U.S. Highway 15, Ohio, New York, and West Virginia, (c) from points and places in Pennsylvania on and west of U.S. Highway 15 to points and places in Virginia and Maryland with no transportation for compensation on return except as otherwise authorized, (d) from points and places in West Virginia to points and places in Maryland except those in Garrett, Allegheny, and Washington Counties, with no transportation for compensation on return except as otherwise authorized, and with authority to traverse Vermont and the District of Columbia for operating convenience only, and restricted to the same restrictions as those above-listed for the former certificate. By the instant petition, petitioner seeks modification of its certificates to have the commodity description in its lead certificate modified so as to read as follows: "Commodities, the transportation of which because of their size or weight, requires special handling or special equipment, self-propelled articles, each weighing 15,000 pounds or more and related machinery, tools, parts, and supplies moving in connection therewith, and construction materials and supplies"; and to have the commodity description in its Sub-19 certificate modified so as to read as follows: "Commodities, the transportation of which because of their size or weight, requires special handling or special equipment, self-propelled articles, each weighing 15,000 pounds or more and related machinery, tools, parts and supplies moving in connection therewith, and related machinery parts, and related construction equipment, materials, and supplies when the transportation thereof is incidental to transportation by said carrier of commodities which because of size or weight requires special handling or special equipment". Any interested person desiring to participate may file an original and six copies of his written representations, views or arguments in support or on against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

N. MC 76467 (Notice of filing of petition for clarification and modification of certificate), filed September 28, 1972. Petitioner: SHARKIE'S TRUCKING SERVICE, INC., 829 Newark Avenue, Elizabeth, NJ 07208. Petitioner's representative: Joseph A. Milner, 15 Alden Street, Suite 10, Cranford, NJ 07016. Petitioner presently holds a certificate in No. MC 76467 issued November 2, 1951, authorizing, as pertinent, operation as a common carrier by motor vehicle, over irregular routes, of *general commodities* with exceptions, between New York, N.Y. and points in New Jersey counties. By the instant petition, petitioner seeks modification of its certificate to authorize operation between points in the New York, N.Y. Commercial Zone, as defined by the Commission, on the one hand, and, on the other, points and places in Essex, Hudson, Passaic, Union, Mercer, Middlesex, Morris, and Bergen Counties within 60 miles of the City Hall, New York, N.Y. Any interested person desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE.

No. MC 18121 (Sub-No. 15), filed September 28, 1972. Applicant: ADVANCE TRANSPORTATION COMPANY, a corporation, 2115 South First Street, Milwaukee, WI 53207. Applicant's representative: Eugene L. Cohn, One North La Salle Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading. (1) Within an area in Illinois bounded by a line commencing at the junction of Interstate Highway 80 and Illinois Highway 82; thence south along Illinois Highway 82 to junction Illinois Highway 17; thence west along Illinois Highway 17 to junction U.S. Highway 74; thence south along U.S. Highway 74 to Galesburg; thence west along U.S. Highway 34 to junction U.S. Highway 67; thence south along U.S. Highway 67 to Macomb; thence east along U.S. Highway 136 to Havana; thence south along Illinois Highway 97 to Menard-Sangamon County line; thence east along the Menard and Logan County lines to the Macon County line; thence north along the Macon County line to junction Illinois Highway 121; thence southeast along Illinois Highway 121 to Decatur; thence north along U.S. Highway 51 to Bloomington; thence northeast along U.S. Highway 66 to Illinois Highway 116; thence east along U.S. Highway 116 to Pontiac; thence west along Illinois Highway 116 to junction Illinois Highway 23; thence north along Illinois Highway 23 to junction Interstate Highway 80; thence west along Interstate Highway 80 to junction Illinois Highway 82, the point of beginning, including all points on the aforesaid highways. (2) Between points described in (1) above on the one hand, and, on the other, points in Illinois, restricted to traffic originating at or destined to points described in (1) above. NOTE: Applicant states that joinder with presently certificated routes in MC 18121 is proposed through points in the Chicago, Ill., commercial zone. Common control and dual operations may be involved. This application is a matter directly related to MC-F-11645 published in the FEDERAL REGISTER issue of September 7, 1972. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 69512 (Sub-No. 9), filed September 28, 1972. Applicant: THUNDERBIRD FREIGHT LINES, INC., 1515 South 22d Avenue, Phoenix, AZ 85009. Applicant's representative: Russell R. Sage, Suite 301, Tavern Square, 421 King Street, Alexandria, VA 22314. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular and regular routes, transporting: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment. (A) Irregular routes: (1) Between points in Bernalillo, McKinley, Valencia, Socorro, Guadalupe, San Miguel, Santa Fe, Taos, Rio Arriba, Los Alamos, Sandoval, and Torrance Counties, N. Mex.; (2) between points in San Juan, Colfax, Mora, Quay, Curry, Union, DeBaca, Harding, and Roosevelt Counties, N. Mex.; and (3) between points in Bernalillo, McKinley, Valencia, Socorro, Guadalupe, San Miguel, Santa Fe, Taos, Rio Arriba, Los Alamos, Sandoval, and Torrance Counties, N. Mex., on the one hand, and, on the other, points in San Juan, Colfax, Mora, Quay, Curry, Union, DeBaca, Harding, and Roosevelt Counties, N. Mex. Restriction: The above irregular authority is restricted: (a) Against service between Albuquerque and Belen, N. Mex.,

and (b) to the transportation of packages or articles weighing 500 pounds or less.

(B) Regular routes: (1) Between Gallup, N. Mex., and Albuquerque, N. Mex., serving no intermediate points: From Gallup over Interstate Highway 40 to Albuquerque, and return over the same route; (2) between Albuquerque, N. Mex., and Santa Fe, N. Mex., serving no intermediate points: From Albuquerque over Interstate Highway 25 and U.S. Highway 85 to Santa Fe, and return over the same route; and (3) between Albuquerque, N. Mex., and Clovis, N. Mex., serving no intermediate points: From Albuquerque over Interstate Highway 40 to the junction of U.S. Highway 84, thence over U.S. Highway 84 to Clovis, and return over the same route. Restriction: The above regular-route authority is restricted to the transportation of packages or articles weighing 500 pounds or less. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority at Gallup, N. Mex., between points applicant is authorized to serve in Arizona and California and points in New Mexico covered by the instant application. The instant application seeks to convert the certificates of registration of Oakley Transfer and Storage Co., Inc., to Certificates of Public Convenience. This application is directly related to MC–F 11675, published in the FEDERAL REGISTER of October 12, 1972. If a hearing is deemed necessary, applicant requests it be held at Albuquerque, N. Mex., or Phoenix, Ariz.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC–F–11675. (Correction) (THUNDERBIRD FREIGHT LINES, INC.—CONTROL AND MERGER—OAKLEY TRANSFER & STORAGE COMPANY), published in the October 12, 1972 issue of the FEDERAL REGISTER on page 21571. Prior notice should be modified to read. Applicants' attorneys: Donald E. Fernaays, Suite 312, 4040 East McDowell Road, Phoenix AZ 85008, and Jack A. Smith, 715 Simms Building, Albuquerque, N. Mex. Notice should also include MC–69512 (Sub-No. 9), is a matter directly related.

No. MC–F–11684. Authority sought for control and merger by TOWNE SERVICES HOUSEHOLD GOODS TRANSPORTATION CO., INC., Post Office Box 16091, San Antonio, TX 78246, of the operating rights and property of EMPIRE MOVING & STORAGE, INC., and for acquisition by Roy M. McNair, all of San Antonio, Tex. 78246, of control of such rights and property through the transaction. Applicants' attorney: Herbert Burstein, One World Trade Center, New York, N.Y. 10048. Operating rights sought to be controlled and merged: *Household goods*, as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, as a *common carrier* over irregular routes, between points and places in Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, traversing Tennessee for operating convenience only. Towne Services Household Goods Transportation Co., Inc., is authorized to operate as a *common carrier* in Texas, Illinois, Louisiana, Missouri, New Mexico, Oklahoma, Kansas, Colorado, Wyoming, Arkansas, Mississippi, Alabama, Florida, and Georgia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11685. Authority sought for purchase by DALLAS & MAVIS FORWARDING CO., INC., 4000 West Sample Street, South Bend, IN 46627, of the operating rights and property of ROBERTSON TRUCK-A-WAYS, INC., 7101 East Slauson Avenue, Los Angeles, CA 90022; Paul A. Mavis, also of South Bend, IN 46627, purchase a portion of the operating rights and property of DALLAS & MAVIS FORWARDING CO., INC., and for acquisition by Paul A. Mavis, of control of such rights and property through the purchase. Applicants' attorney: Charles Pieroni, 4000 West Sample Street, South Bend, IN 46627. Operating rights sought to be transferred: *New automobiles*, in initial movements, as a *common carrier* over irregular routes, from Long Beach, Calif., to points and places in Arizona, New Mexico, Nevada, Oregon, and Utah; *new automobiles and new trucks*, in initial movement, from Maywood, Calif., and points and places within 1 mile thereof, to points and places in Arizona, Nevada, and Oregon; *new automobiles*, in secondary movements, from points and places in California, on San Francisco Bay, to points and places in California, except Long Beach, San Pedro, and Wilmington: *new automobiles and new trucks*, in secondary movements, from Phoenix, Ariz., to Los Angeles, Calif.; *new automobiles, new trucks, and new chassis*, in initial movements, in truckaway service, from San Leandor, Calif., and all points and places within 1 mile of San Leandro except points and places in Oakland, Calif., to points and places in California, Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming; *new trucks and new chassis*, in initial movements, in driveaway service, from the above-specified origin points and places to the destination points and places described immediately above,

New trucks, in secondary movements, in driveaway and truckaway service, from San Leandro, Calif., and points and places within 20 miles thereof, to points and places in the States named above; *new automobiles, new trucks, and new chassis*, in secondary movements, in truckaway service, from Salt Lake City, Utah, to San Leandro, Calif., and points and places within 20 miles thereof; *automobiles*, in initial movements, in truckaway service, from the site of the plant of the Chrysler Corp. located adjacent to Maywood, Calif., to points in the Los Angeles harbor commercial zone, as defined by the Commission, and points in Idaho and Washington; *automobiles*, in secondary movements, in truckaway service, from points in the Los Angeles harbor commercial zone, as defined by the Commission, to points in Los Angeles County, Calif.; *new automobiles*, in secondary movements, by the truckaway method, from Phoenix, Ariz., to a defined area in California; *automobiles, trucks, and buses* (except those which have been repossessed, embezzled, stolen, or wrecked, and except trailers), in secondary movements, in truckaway service, from points in Nebraska to points in New Mexico, Arizona, and California, between points in New Mexico, Arizona, and that part of California south of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties, Calif.; *automobiles* (except used automobiles, and except repossessed, embezzled, stolen, or wrecked automobiles), in secondary movements, in truckaway services, from Sacramento, Calif., to points in Arizona and New Mexico, with restriction;

New and used motor vehicles (except trailers), in secondary movements, in truckaway service, between points in Arizona, New Mexico, Nevada, and Utah (except shipments from Phoenix, Ariz.), with restriction, from Phoenix, Ariz., to points in Arizona, New Mexico, Nevada, and Utah; *automobiles and trucks*, in initial movements, in truckaway service, from the plantsite of Chrysler Corp., in Maywood, Calif., to Farwell, Tex., and points in New Mexico, from Maywood, Calif., to points in Montana; *motor vehicles* (except trailers, trucks, imported motor vehicles, and used motor vehicles which have been repossessed, embezzled, stolen, or damaged) in secondary movements, in truckaway service, between points in Nevada and points in that part of California south of the northern boundaries San Luis Obispo, Kern, and San Bernardino Counties, Calif., with restriction. Vendee is authorized to operate as a common carrier in all of the States in the United States and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11686. Authority sought for purchase by GRIM BROS., TRUCKING CO., 997 Loucks Mill Road, York, PA 17402, of a portion of the operating rights of ROY A. LEIPHART TRUCKING, INC., 1298 Toronita Street, York, PA 17405 and for acquisition by JOHN V. GRIM, RICHARD R. GRIM, and E. GLENN GRIM, all of 997 Loucks Mill Rd., York, PA 17402, of control of such rights through the purchase. Applicants' attorney: Chester A.

Zyblut, 1522 K Street, NW., Washington, DC 20005. Operating rights sought to be transferred: *Clay products*, as a *common carrier* over irregular routes, from York, Pa., to Amagansett, Chester, Franklin Square, Monticello, Great Neck, Manhasset, Riverhead, and New York, N.Y., Trenton, Mountain Lakes, and New Brunswick, N.J., Newark, Wilmington, Smyra, and Dover, Del., Washington, D.C., Alexandria, Va., Baltimore, Md., and points in Anne Arundel, Carroll, Cecil, Harford, Montgomery, Talbot, and Baltimore Counties, Md. Vendee is authorized to operate as a *common carrier* in Maryland, Delaware, New Jersey, New York, Pennsylvania, Virginia, Ohio, Michigan, West Virginia, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11689. Authority sought for purchase by JACKSON AND JOHNSON, INC., West Church Street, Box 7, Savannah, NY 13146, of the operating rights of KENNETH E. FIDLER, doing business as K. E. FIDLER (Internal Revenue Service-Successor-In-Interest), 340 West Division Street, Syracuse, NY 13204, and for acquisition by JOHN W. JACKSON, and LEWIS G. JOHNSON, both of Savannah, NY 13146, of control of such rights through the purchase. Applicants' attorney: Raymond A. Richards, 44 North Avenue, Webster, NY 14580. Operating rights sought to be transferred: *Coal and coke*, as a *common carrier*, over irregular routes, from Syracuse, N.Y., to points in Onandaga, Cayuga, Madison, and Oswego Counties, N.Y.; *salt*, from the facilities of the Morton Salt Company, Division of Morton International, Inc., at Milo, N.Y., to points in Connecticut, Massachusetts, Pennsylvania, and Vermont. Vendee is authorized to operate as a *common carrier* in New York, Connecticut, Massachusetts, and Rhode Island. Application has been filed for temporary authority under section 210a(b).

NOTE: Petition for Subpoena filed simultaneously herewith.

No. MC–F–11690. Authority sought for purchase by PINTER BROS., INC., Carll's Path and Lake Avenue, Deer Park, NY 11729, the operating rights of ARBOR MOTOR LINES, INC. (Internal Revenue Service-Successor-In-Interest), 313 State Street, Perth Amboy, NJ 08861, and for acquisition by JOSEPH A. PINTER, 271 Plymouth Avenue, Brightwaters, NY 11718, of control of such rights through the purchase. Applicants' attorney: John P. Tynan, 65–12 69th Place, Middle Village, NY 11379. Operating rights sought to be transferred: *General commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over irregular routes, between New York, N.Y., on the one hand, and, on the other, Newark, Elizabeth, and New Brunswick, N.J. Vendee is authorized to operate as a *common carrier* in Connecticut, New Jersey, and New York. Application has been filed for temporary authority under section 210a(b).

No. MC–11691. Authority sought for control by WILLIAM M. WALSH, 140 Epping Road, Exeter, NH 03833, of DEARBORN'S MOVING & STORAGE COMPANY, INCORPORATED, 69 Main Street, Exeter, NH 03833. Applicants' attorneys: Mary E. Kelley, 11 Riverside Avenue, Medford, MA 02155, and Robert E. Dastin, 1000 Elm Street, Manchester, NH 03101. Operating rights sought to be controlled: *Household goods*, as a *common carrier*, over irregular routes, between points in Rockingham and Strafford Counties, N.H., on the one hand, and, on the other, points in Maine, Vermont, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. WILLIAM M. WALSH holds no authority from this Commission. However, he is affiliated with DEARBORN'S MOTOR EXPRESS, INC., Post Office Box D., 140 Epping Road, Exeter, NH 03833, which is authorized to operate as a *common carrier* in Massachusetts, Maine, and New Hampshire. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11692. Authority sought for purchase by SIOUX TRANSPORTATION COMPANY, INC., 1230 Steuben Street, Sioux City, IA 51102, of the operating rights of H & S MOTOR SERVICE, INC., 32 East Lake Street, Northlake, IL 60164, and for acquisition by PAUL BECK and HELENA BECK, both of 4411 Morningside Avenue, Sioux City, IA 51102, and ROBERT BECK, 3515 Orleans Avenue, Sioux City, IA 51102, of control of such rights through the purchase. Applicants' attorney: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Operating rights sought to be transferred: Under a certificate of registration in Docket No. MC–120940 (Sub-No. 1), covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Illinois. Vendee is authorized to operate as a *common carrier* in Illinois, Iowa, Indiana, and Nebraska. Application has been filed for temporary authority under section 210a(b).

NOTE: MC–22301 (Sub-No. 13) is a matter directly related.

No. MC–F–11693. Authority sought for purchase by AERO TRUCKING, INC., Post Office Box 308, Monroeville, PA 15146, of the operating rights of B. B. MOTOR EXPRESS, INCORPORATED, 76 Roberts Street, Plainville, CT 06062, and for acquisition by EDWARD J. CONTO, also of Monroeville, Pa. 15146, of control of such rights through the purchase. Applicants' attorneys: John E. Fay, 342 North Main Street, West Hartford, CT 06117, and A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Operating rights sought to be transferred: Under a certificate of registration in Docket No. MC–120109 (Sub-No. 1), covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Connecticut. Vendee is authorized to operate as a *common carrier* in Ohio, Pennsylvania, West Virginia, Kentucky, Illinois, Michigan, New York, Indiana, Wisconsin, Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Rhode Island, Virginia, Tennessee, Alabama, Mississippi, Maine, New Hampshire, Vermont, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Texas, and the District of Columbia. Application has been filed for temporary authority under seaction 210a(b).

NOTE: MC–60014 (Sub-No. 32), is a matter directly related.

No. MC–F–11694. Authority sought for purchase by ALL-AMERICAN TRANSPORT, INC., 1500 Industrial Avenue, Sioux Falls, SD 57101, of a portion of the operating rights of HENNIS FREIGHT LINES, INC. OF NEBRASKA, Post Office Box 612, Winston-Salem, NC 27102, and for acquisition by BUFFALO EXPRESS, INC., and in turn by H. LAUREN LEWIS, both of 1500 Industrial Avenue, Sioux Falls, SD 57101, of control of such rights through the purchase. Applicants' attorneys: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603, and James E. Wilson, 1032 Pennsylvania Building, Washington, D.C. 20004. Operating rights sought to be transferred: *General commodities*, with exceptions, as a *common carrier* over regular routes, between Omaha and Lincoln, Nebr., between Lincoln and Union, Nebr., between Nebraska City, Nebr., and Sidney, Iowa, between Lincoln, Nebr., and junction Nebraska Highway 4 and U.S. Highway 73, between Hiawatha, Kans., and St. Joseph, Mo., between Fairmont, and Grand Island, Nebr., between Lincoln, and Henderson, Nebr., serving all intermediate points, between Sioux City, Iowa, and Omaha, Nebr., serving all intermediate points; and the off-route points of Little Sioux, Modale, and Turin, Iowa, between Sioux City, Iowa, and Bancroft, Nebr., serving all intermediate points; and the off-route points of Homer, Thurston, and Rosalie, Nebr., between McCook and Grand Island, Nebr., serving all intermediate points, between McCook and Grand Island, Nebr., serving all intermediate points; and the off-route points of Kenesaw and Juniata, Nebr., between Holdrege and Maywood, Nebr., serving all intermediate points; and the off-route points of Orafino and Ingham, Nebr., between Omaha, Nebr., and Denver, Colo., serving various intermediate and off-route points, between McCook, Nebr., and Denver, Colo., serving no intermediate points, with restriction, over two alternate routes generally between Bancroft and Lincoln, Nebr., and Missouri Valley, Iowa, and Fremont, Nebr.; *building material, animal poultry feed, tires, lubricating oil and grease* in containers, *farm machinery and parts thereof*, from Sioux City, Iowa, to Wakefield, Nebr., serving all intermediate and and off-route points within 20 miles of Wakefield, Nebr.;

Livestock, dairy products, grain, hay, and *household goods* as defined by the

Commission, over irregular routes, between Sioux City, Iowa, on the one hand, and, on the other, Randolph, Nebr., and points in Nebraska within 45 miles of Sioux City, Iowa; *livestock* and *agricultural commodities*, between Wakefield, Nebr., and points within 20 miles thereof, on the one hand, and, on the other, points in that part of Iowa north of U.S. Highway 30 and west of U.S. Highway 71, including points on the indicated portions of the highways specified, from Emerson, Nebr., and points within 15 miles thereof, to Sioux City, Iowa; *coal, cement, commercial feeds, building materials, hardware, farm machinery, furniture,* and *oil and grease*, in containers from Sioux City, Iowa, to Emerson, Nebr., and points within 15 miles of Emerson; *grain*, from points in that part of Iowa west of U.S. Highway 69, to Emerson, Nebr., and points within 15 miles of Emerson; *eggs, hides,* and *pelts*, from Lincoln and Fremont, Nebr., to Omaha, Nebr.; *poultry and eggs*, from Randolph, Nebr., and points in Nebraska within 45 miles of Sioux City, Iowa, to Sioux City, Iowa; *cream station supplies, poultry coops, feed, salt,* and *farm machinery* and *farm machinery parts*, from Sioux City, Iowa, to Randolph, Nebr., and points in Nebraska within 45 miles of Sioux City, Iowa. Vendee is authorized to operate as a *common carrier* in Iowa, Minnesota, South Dakota, Nebraska, Illinois, Indiana, North Dakota, Wisconsin, Kentucky, Michigan, Ohio, Kansas, and Missouri. Application has been filed for temporary authority under section 210a(b).

NOTICE

Notice is hereby give pursuant to 49 CFR 1111.4(d) of the filing by Weyerhaeuser Co. of an application to acquire control of Mississippi and Skuna Valley Railroad Co. through ownership of the majority of its stock, in Finance Docket No. 27195.

(1) Applicant is Weyerhaeuser Co., Tacoma Building, Tacoma, Wash. 98401. Applicant's attorneys are: Daniel C. Smith, Vice President and General Counsel, Weyerhaeuser Co., Tacoma, Wash. 98401. Charles J. McCarthy, 1750 Pennsylvania Avenue NW., Washington, DC 20006.

(2) The proposed transaction is the acquisition of control of Mississippi and Skuna Valley Railroad Co., a carrier subject to Part I, through acquisition of 1,890½ shares of the 1,925½ shares of its common stock.

(3)(a) Mississippi and Skuna Valley Railroad Co. will continue to operate its line of railroad from Bruce, Miss., to Bruce Junction, Miss.

(b) Weyerhaeuser serves ports in Washington, California, Oregon, Rhode Island, New York, New Jersey, and Maryland as a common carrier by self-propelled and non-self-propelled vessels. It also owns all the capital stock of the Columbia & Cowlitz Railway Co. which operates in Washington, the De Queen and Eastern Railroad Co. which operates in Arkansas and the Texas, Oklahoma, and Eastern Railroad Co. which operates in Oklahoma.

(c) The Commission action requested in this application will have no effect on the quality of the human environment, in the opinion of the applicant.

4. The Mississippi and Skuna Valley Railroad is located in Calhoun and Yalobusha Counties, Miss. It extends 22.04 miles from Bruce, Miss., to a junction with the Illinois Central at Bruce Junction, Miss.

The proceeding will be handled without public hearing unless protests are received which contain information indicating a need for such hearings. Any protests submitted shall be filed with the Commission no later than 30 days from the date of first publication in the FEDERAL REGISTER.

NOTICE

The Atchison, Topeka & Santa Fe Railway Co. and the Denver & Rio Grande Railroad Co. hereby give notice that on the 11th day of September 1972, they filed with the Interstate Commerce Commission at Washington, D.C., an application for a certificate of public convenience and necessity permitting the applicants to operate their trains, including Colorado & Southern Railway Co. trains operated by the A.T. & S.F. Railway Co., over a single track railroad between Mile Post 686.24 at Palmer Lake and Mile Post 654.31 at Crews, all in El Paso County, Colo., via portions of Applicant's existing tracks and to approve an agreement dated June 9, 1972, to accomplish the single track operation. This application has been assigned Finance Docket No. 27185. The proceedings will be handled without public hearings unless protests are received which contain information indicating a need for such hearings. Any protest submitted shall be filed with the Commission no later than 30 days from the date of first publication in the FEDERAL REGISTER. Any person opposed to this application should advise the Interstate Commerce Commission at Washington, D.C. 20433, by an original and six copies of any such protest, and send a copy of the protest to Thomas J. Barnett, 80 East Jackson Boulevard, Chicago, IL 60604, and John S. Walker, 1531 Stout Street, Denver, CO 80217. In the opinion of the applicants the authority sought by this application will not significantly affect the quality of the human environment.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-18245 Filed 10-25-72;8:49 am]

[Notice 147]

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-73972. By order entered October 10, 1972, the Motor Carrier Board approved the transfer to Sims Transfer Co., Inc., Spartanburg, S.C., of the operating rights set forth in Certificate No. MC-125895, issued February 25, 1965, to N. A. Sims, doing business as Sims Transfer Co., Spartanburg, S.C., authorizing the transportation of textile waste materials and used bagging, and textile waste materials and cotton which are within the exemption of section 203(b)(6) of the Interstate Commerce Act, when transported in the same vehicle with the commodities specified immediately above, between points in North Carolina, South Carolina, Alabama, Georgia, and Tennessee; and those in Permits Nos. MC-112977 and MC-112977 (Sub-No. 2), issued February 21, 1952, and March 13, 1958, to N. A. Sims, authorizing the transportation of lumber, brick, concrete blocks, construction machinery, and concrete pipe, from, to, or between specified points and places in South Carolina, North Carolina, and Georgia. Dual operations authorized. Nathan A. Sims, 145 Alice Street, Post Office Box 941, Spartanburg, SC 29301, representative for applicants.

No. MC-FC-73505. By order of October 19, 1972, the Motor Carrier Board approved the transfer to Harold C. Earnhardt, doing business as Earnhardt Trucking Co., Rockwell, N.C., of that portion of the operating rights in Certificate No. MC-30655 issued November 8, 1971, to Jones Transfer, Inc., Fairmont, N.C., authorizing the transportation of general commodities, with usual exceptions, between Fairmont, N.C., and points in North Carolina within 50 miles thereof, on the one hand, and, on the other, Wilmington, N.C., partially restricted as to the transportation of leaf tobacco and fertilizer and fertilizer materials, and veneer and plywood, from Fairmont, N.C., to points in Delaware, Maryland, New Jersey, New York, Pennsylvania, South Carolina, Virginia, and the District of Columbia. Frank A. Graham, Jr., 707 Security Federal Building, Columbia, S.C. 29201, attorney for applicants.

No. MC–FC–73980. By order entered October 11, 1972, the Motor Carrier Board approved the transfer to Wilkerson Trucking Co., Inc., Lenoir City, Tenn., of the operating rights set forth in Certificates Nos. MC–124632, MC–124632 (Sub-No. 2), MC–124632 (Sub-No. 4), MC–124632 (Sub-No. 6), MC–124632 (Sub-No. 8), MC–124632 (Sub-No. 11), and MC–124632 (Sub-No. 12), issued by the Commission January 15, 1963, June 13, 1963, November 13, 1963, August 23, 1963, January 22, 1964, August 3, 1967, and August 12, 1968, respectively, and those in Permit No. MC–128985 (Sub-No. 1), issued December 9, 1969, to M. L. Wilkerson, doing business as Wilkerson Trucking Co., Lenoir City, Tenn., authorizing the transportation of calcium chloride, and dry calcium chloride in bags, dry ammonium nitrate fertilizer, ammonium nitrate fertilizer in bags, dry fertilizer and fertilizer material, petroleum and petroleum products, except in bulk, and petroleum products, in containers, from, to, or between points in Ohio, Tennessee, Kentucky, West Virginia, North Carolina, and Pennsylvania, as to the certificates, and as to the permit certain specified commodities, from, to, or between points in Tennessee, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Wisconsin, Illinois, Mississippi, Michigan, Indiana, Kentucky, Tennessee, Alabama, Ohio, Pennsylvania, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Maine, New Hampshire, Vermont, New York, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, and the District of Columbia. Dual operations authorized. Walter Harwood, 1822 Parkway Towers, Nashville, TN 37219, attorney for applicants.

No. MC–FC–73991. By order entered October 10, 1972, the Motor Carrier Board approved the transfer to Yarbrough Transfer Co., Winston-Salem N.C., of the operating rights set forth in Certificates Nos. MC–37828 and MC–37828 (Sub-No. 2), issued September 17, 1971, and July 28, 1972, respectively, to Coburn Moving and Storage Co., Inc., Roanoke, Va., authorizing the transportation of scrap iron, coal, household goods, building materials and lumber, farm produce, livestock, and machinery, from, to, or between points and places in Virginia, West Virginia, and North Carolina. Wesley D. Bailey, 1918 Wachovia Building, Winston-Salem, NC 27107, attorney for applicants.

No. MC–FC–35446. By order of October 6, 1972, the Motor Carrier Board approved the lease to Moore Transportation Co., Inc., Fort Worth, Tex., of the Certificate in No. MC–106676 and the Certificate of Registration in No. MC–106676 (Sub-No. 2) both issued September 18, 1970, to Orval Hall Trucking Co., a corporation, Fort Worth, Tex., and acquired by Don Moore, doing business as Moore Transportation Co., Fort Worth, Tex., pursuant to order in MC–FC–73577, the former authorizing the transportation of machinery, materials, supplies, and equipment, incidental to, or used in the gas and petroleum industry, between and over specified routes to Uvalde, Houston, and Freeport, Tex., including points on the indicated portions of the highways specified, and the latter evidencing a right of the holder to engage in transportation in interstate or foreign commerce as described in Certificate No. 5051, dated November 18, 1954, transferred and reissued April 9, 1970, by the Railroad Commission of Texas. Dan Felts, Post Office Box 2207, Austin, TX 78767, attorneys for applicants.

No. MC–FC–73577. By order of October 6, 1972, the Motor Carrier Board approved the transfer to Don Moore, doing business as Moore Transportation Co., Fort Worth, Tex., of the certificate in No. MC–106676 and the certificate of registration in No. MC–106676 (Sub-No. 2) both issued September 18, 1970, to Orval Hall Trucking Co., a corporation, Fort Worth, Tex., the former authorizing the transportation of machinery, materials, supplies, and equipment, incidental to, or used in the gas and petroleum industry, between and over specified routes to Uvalde, Houston, and Freeport, Tex., and including points on the indicated portions of the highways specified, and the latter evidencing a right of the holder to engage in transportation in interstate or foreign commerce as described in Certificate No. 5051, dated November 18, 1954, transferred and reissued April 9, 1970, by the Railroad Commission of Texas. Dan Felts, Post Office Box 2307, Austin, TX 78767, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72–18249 Filed 10–25–72;8:50 am]

PORT ROYAL MARINE CORP.

Notice of Filing of Petition for Declaratory Order

OCTOBER 20, 1972.

No. W–C–22, Port Royal Marine Corp.—Declaratory Order—"LASH" Towage Operations.

Petitioner: Port Rayol Marine Corp., 310 East Bay Street, Savannah, GA. Petitioner's representatives: Jacob P. Billig and Terence D. Jones, 1108 16th Street NW., Washington, DC 20036.

Petitioner is a Georgia corporation engaged in the business of providing a substitute means of propulsion for vessels used in lighter-aboard-ship (LASH) services operated in foreign commerce by ocean carriers of all flags. The lighters propelled by petitioner are comparatively small vessels loaded with cargo at ports in the United States and destined to points in foreign countries or loaded at ports in foreign countries and destined for ports in the United States. The LASH vessel itself does not move under its own propulsion. It must be either carried by a LASH mother vessel, usually with other LASH lighters, or placed in the water and pushed or towed by tugboats or pushboats. The lighters, which are owned by the ocean carrier who owns the mother vessel or by LASH ocean carrier, are in themselves documented and registered United States or foreign flag vessels, carrying their registry papers on board.

LASH mother vessels anchor or moor at or near Savannah, or other major ports, where the LASH mother vessel discharges into the water LASH lighters loaded with cargo of all types destined to other ports up and down the South Atlantic coast. The mother vessel will also receive at Savannah lighter vessels from other South Atlantic ports, which lighters are destined to points in foreign countries. Petitioner provides tugboats and pushboats to transport loaded and empty LASH lighters between the LASH mother vessel anchored or moored near Savannah or other major United States ports, on the one hand, and, on the other, the South Atlantic ports at which the lighters originate or to which they are destined. In the exchange of the fully loaded LASH lighters between the mother vessel and petitioner's boats, petitioner states that no transfer of cargo occurs.

In all cases, the origin and destination points named in the port to port ocean bill of lading, which is solely utilized in the subject movements, will be a point in a foreign country and a United States South Atlantic port. U.S. customs jurisdiction is said to attach to this cargo at the port of ultimate origin or destination, not at the port where the lighter is transferred to or from the mother vessel. All of the involved cargo is solicited by the LASH ocean carrier or its agents and moves under through rates on a through bill of lading issued by the ocean carrier. Petitioner does not advertise or offer any services to the public at large, but only to ocean common carriers by water subject to the jurisdiction of the Federal Maritime Commission (FMC). In each instance the ocean carrier appears to assume complete responsibility for the transportation of all property, and for any loss and damage to the cargo or the lighter between the points designated on the bill of lading. The ocean carrier receives all revenues derived from the movement, paying petitioner an agreed-upon fee for its propelling services.

It is the position of petitioner that the services it provides for LASH lighters are not subject to the jurisdiction of this Commission because (1) there is no transfer of lading among vessels, and thus no transshipment, (2) the services are performed by it solely as the agent of the LASH ocean carrier in connection with a foreign port-to-port movement wholly by water undertaken entirely by that ocean carrier, and (3) to the extent that the service involves the movements of lighters between the mother vessel anchored at or near a major port, and that port, such service constitutes "transportation by water solely within the limits of a single harbor or between places in contiguous harbors

* * *" and is thus exempt from regulation under section 303(g)(1) of the act, 49 U.S.C. 903(g)(1).

On May 12, 1972, this Commission and the Federal Maritime Commission issued a joint jurisdictional statement concerning LASH operations, wherein it was stated, in essence, that the LASH lighters are not subject to Commission jurisdiction. The final sentence of that joint statement reads as follows:

> However, the towage of barges between the United States ports, when undertaken by other than the ocean carrier, is subject to the jurisdiction of the Interstate Commerce Commission.

Notwithstanding this statement, petitioner believes that this Commission is without jurisdiction in the matter. It argues that if the cargo itself is not the subject of a transshipment when being transferred in the lighter between the mother vessel and the water, then neither is petitioner's operation in which it merely acts as a vehicle of propulsion for the same lighters. Petitioner also believes that its activities are to be distinguished from those recently found to be subject to Commission jurisdiction in Sacramento-Yolo Port District, Petition, 341 I.C.C. 105 (1972), because in the cited case a transfer of lading was found to occur.

Any interested person (including petitioner) desiring to participate may file with this Commission an original and (6) six copies of his written representations, views, or argument in support of, or against, the petition within 30 days from the date of publication of this notice in the FEDERAL REGISTER. A copy of each such document should be served upon petitioner's representatives.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-18251 Filed 10-25-72;8:50 am]

[Ex Parte 267]

SUN OIL COMPANY OF PENNSYLVANIA

Increased Freight Rates, 1971

Order. In the matter of waiver of Rule 22 of the General Rules of Practice.

Upon consideration of the record in the above-captioned proceeding, including: the report and order, 339 I.C.C. 125 (1971); and the petition filed on July 10, 1972, by Sun Oil Company of Pennsylvania requesting the Commission to enter a declaratory order finding that the increase on commodity rates for all export traffic (or, in the alternative, on refined petroleum, petroleum products, and naphthalene) authorized in the report and order was and is limited to 12 percent, regardless of the foreign destination of the traffic, and for certain affirmative action by the Commission in connection with the requested finding; and

It appearing, that Sun Oil Company's petititon does not comply with Rule 22 of the Commission's General Rule of Practice, 49 CFR 1100.22, requiring service of every pleading upon all parties to proceedings;

It further appearing, that the Commission's staff informed petitioner that the petition would not be processed until compliance had been effected with Rule 22;

It further appearing, that by letter dated September 1, 1972, petititoner stated that compliance with Rule 22 would be unduly burdensome because most of the parties to this proceeding would not have an interest in or be affected by the relief sought;

It further appearing, that the interests of justice will be best served by treating petitioner's letter of September 1, 1972, as a petition for waiver of Rule 22;

And it further appearing, that authorizing a waiver of Rule 22, as conditioned below, is appropriate in this instance;

Wherefore, and for good cause:

It is ordered, That the requirement of the said Rule 22 requiring service of every pleading upon all parties to proceedings be, and it is hereby, waived in this proceeding solely to permit the filing of the instant petition and replies thereto, provided that the petitioner herein furnish a copy of its petition to any party of record in this proceeding requesting such service. Requests for service should be addressed to Mr. Lee A. Christiansen, Director of Traffic, Sun Oil Co., 1608 Walnut Street, Philadelphia, PA 19103.

It is further ordered, That petitioner herein be, and it is hereby, required to submit a revised certificate of service, as it has agreed to do in its letter of September 1, 1972, showing service upon all parties to this proceeding known to have an interest in the rates on refined petroleum petroleum products, and naphthalene and upon each of the Commission's regional offices.

It is further ordered, That any party wishing to participate in the determination of this matter, should the Commission exercise its discretion in entertaining this petition for a declaratory order shall notify the Commission's Office of Proceedings to that effect within 30 days from that date of publication of this order in the FEDERAL REGISTER; that a service list for use in connection with this petition only shall thereafter be served upon the petitioner and all replicants; and that service of pleadings may be limited to those parties.

And it is further ordered, That notice of this action be given to the public by depositing a copy of this order in the Office of the Secretary of the Commission and by publication in the FEDERAL REGISTER, and that notice of the filing of the petition and of this action be further made by service of this order on all parties to this proceeding.

Dated at Washington, D.C., this 11th day of October 1972.

By the Commission, Commissioner Bush.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-18252 Filed 10-25-72;8:50 am]

CUMULATIVE LIST OF PARTS AFFECTED—OCTOBER

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during October.

3 CFR

Page

PROCLAMATIONS:

4160 ... 20665
4161 ... 20931
4162 ... 21411
4163 ... 21413
4164 ... 21415
4165 ... 21417
4166 ... 21419
4167 ... 21901
4168 ... 21903
4169 ... 22571

EXECUTIVE ORDERS:

July 2, 1910 (revoked in part by PLO 5273) ... 22617
August 25, 1914 (revoked in part by PLO 5287) ... 22745
July 21, 1915 (revoked in part by PLO 5274) ... 22618
August 27, 1915 (revoked in part by PLO 5274) ... 22618
May 21, 1920 (revoked in part by PLO 5288) ... 22746
5327 (revoked in part by PLO 5285) ... 22745
11671 (amended and superseded by EO 11686) ... 21421
11686 ... 21421
11687 ... 21479

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:

Determination of Oct. 18, 1972 ... 22573

4 CFR

PROPOSED RULES:

331 ... 21177
404 ... 20956

5 CFR

175 ... 21925
213 ... 21149, 21481, 21987, 22843
550 ... 22717
713 ... 22717
890 ... 20667
2411 ... 20668, 22724
2470 ... 20671
2471 ... 20671

6 CFR

101 ... 20949
201 ... 21306
202 ... 21306
300 ... 20828, 21440, 21943
305 ... 20950
Rulings ... 20829–20837, 21481, 21987

7 CFR

51 ... 21423
52 ... 21155
56 ... 22791
58 ... 22363
210 ... 22622
220 ... 22622, 22623
722 ... 21988
864 ... 21795
874 ... 21533
905 ... 21799
906 ... 21800, 21801
907 ... 22874
908 ... 20933, 21307, 21536, 21802, 22369, 22724, 22874
910 ... 21157, 21308, 21802, 22724
912 ... 21308
928 ... 21537
929 ... 22874
944 ... 21802
966 ... 21423
980 ... 21424
982 ... 21988
987 ... 21537
1036 ... 22623
1040 ... 20804
1043 ... 20804
1050 ... 22724
1475 ... 22875
1801 ... 21425
1832 ... 21158
1861 ... 21425
1890n ... 21425
1890o ... 22369

PROPOSED RULES:

58 ... 21331
319 ... 21444
722 ... 20721, 21642
724 ... 21950
725 ... 21443
728 ... 21642
729 ... 21853
730 ... 21173, 21642, 21643
775 ... 21332, 21642
811 ... 21333
Ch. IX ... 22878
906 ... 21947, 22751
909 ... 22798
911 ... 20951
929 ... 20867, 21538
982 ... 21442
984 ... 21443, 22000
987 ... 22387
989 ... 21538, 22625
991 ... 21539
999 ... 21538
1002 ... 22000
1007 ... 22625
1032 ... 21171
1050 ... 20952, 21171
1060 ... 22625
1061 ... 22625
1062 ... 21171, 21641
1063 ... 22625
1064 ... 21171, 22625
1065 ... 21171, 22625
1068 ... 22625
1069 ... 22625
1070 ... 22625
1071 ... 21821, 22625, 22753
1073 ... 21821, 22625, 22753
1076 ... 22625
1078 ... 22625
1079 ... 22625
1090 ... 22625
1094 ... 22625
1096 ... 22625
1097 ... 21821, 22625, 22753
1098 ... 22625
1099 ... 21332
1102 ... 21821, 22625, 22753
1103 ... 22625
1104 ... 21821, 22625, 22753
1106 ... 21821, 21947, 22625, 22753
1108 ... 21821, 22625, 22753
1120 ... 21821, 22625, 22753
1126 ... 21821, 22625, 22753
1127 ... 21821, 22625, 22753
1128 ... 21821, 22625, 22753
1129 ... 21821, 22625, 22753
1130 ... 21821, 22625, 22753
1131 ... 22625
1132 ... 21821, 22625, 22753
1133 ... 21539
1138 ... 21821, 22625, 22753
1139 ... 20867
1421 ... 21174, 21335
1464 ... 21956, 22883
1701 ... 20867, 20952, 22798

8 CFR

103 ... 22725
212 ... 22725
235 ... 22725
238 ... 22725
299 ... 22726
499 ... 22726

9 CFR

51 ... 22370
56 ... 21925
76 ... 20805, 20933, 21277, 21621, 22726–22728, 22844
78 ... 22370
82 ... 21427, 21989, 22844
92 ... 21149, 21804
94 ... 21149, 22728
301 ... 21926
312 ... 21926
327 ... 21927

10 CFR

1 ... 22791
2 ... 22791

PROPOSED RULES:

12 ... 22391
20 ... 21652
170 ... 20871

11 CFR

4 ... 22380

12 CFR

1 ... 21622
225 ... 20673, 21938
269 ... 21989
615 ... 22575

PROPOSED RULES:

291 ... 22003
545 ... 21178
561 ... 21179
563 ... 21179

13 CFR

302 ... 21154

PROPOSED RULES:

308 ... 21646

14 CFR

Page

23 ... 21320
27 ... 21320
39 ... 20673, 21320, 21527, 21528, 21626–21628, 21928, 22371, 22845, 22845
47 ... 21528
71 ... 20674, 20806, 20807, 20934, 21160, 21321, 21427, 21528–21530, 21628, 21804, 21805, 21928–21930, 22372, 22373, 22576, 22577, 22729, 22846, 22847
75 ... 20807, 21160, 21530, 22577
91 ... 20934, 21990
93 ... 22793
95 ... 21930
97 ... 20935, 21628, 22373
121 ... 20936
169 ... 21321
Ch. II ... 20807
207 ... 20674
208 ... 20674
212 ... 20674, 20807
214 ... 20675, 20807
217 ... 20675
239 ... 21161
241 ... 20676, 22847
249 ... 20676, 20808
297 ... 21805
372 ... 22849
372a ... 20808
373 ... 22850
378 ... 22851
389 ... 21806
405 ... 21162
1203 ... 22854

PROPOSED RULES:

39 ... 21444, 22390
71 ... 20727, 20871, 20952–20955, 21160, 21174 21175, 21542, 21651, 21853–21856, 21957, 21958, 22627, 22754, 22876
73 ... 21543, 21651, 21856
91 ... 20955, 22798
207 ... 21347
208 ... 21347
212 ... 21347
214 ... 21347
239 ... 21175
378 ... 22883

15 CFR

371 ... 21309
373 ... 21309
376 ... 21310
911 ... 21806

16 CFR

2 ... 22611
3 ... 22611
4 ... 22611
13 ... 21312, 21313, 21315–21318, 21932–21936, 22729–22731
429 ... 22934
600 ... 21319

PROPOSED RULES:

303 ... 21653

17 CFR

1 ... 22611
15 ... 22612
18 ... 22612
211 ... 20937
231 ... 20937, 22796
240 ... 22612
241 ... 20937, 22796
251 ... 20937
271 ... 20937

17 CFR—Continued

Page

PROPOSED RULES:

16 ... 22387, 22388
17 ... 22388
18 ... 22388, 22389
19 ... 22390
239 ... 21445
240 ... 21447, 21958, 22004
249 ... 21445

18 CFR

PROPOSED RULES:

2 ... 21181
101 ... 21181
104 ... 21181
201 ... 21181
204 ... 21181
260 ... 21544, 22884
801 ... 21355

19 CFR

11 ... 20678, 22863
12 ... 21804
24 ... 20678
133 ... 20678

PROPOSED RULES:

18 ... 22381
21 ... 22381
22 ... 20951
24 ... 22381
112 ... 22381
125 ... 22385
172 ... 22386

20 CFR

405 ... 21162, 21428, 21630
722 ... 21429

21 CFR

3 ... 21481, 21630, 21991
19 ... 20937
37 ... 21481
51 ... 21807
121 ... 21150, 21151, 21278, 21905, 21991, 22374
135 ... 21630, 21808
135a ... 20938, 21905, 22374
135b ... 20938, 20939, 21429, 21631, 21632, 21808, 21905
135c ... 20683, 20939, 21631, 21906
135e ... 20683, 20939, 21279
135f ... 21808
135g ... 20683
141 ... 21302
146c ... 21906
148i ... 21809, 21906
148n ... 21809
148p ... 21809
148z ... 21302
164 ... 20685
295 ... 21632, 21633, 21635

PROPOSED RULES:

10 ... 21102
26 ... 21103, 22883
50 ... 21106
51 ... 21112
135 ... 21174
141 ... 20870, 21344
141c ... 21344
146c ... 21344
148f ... 21347
149q ... 21344
150d ... 21344
191 ... 22000
295 ... 22001

22 CFR

Page

41 ... 21637

23 CFR

1 ... 21430, 21809

PROPOSED RULES:

230 ... 22876

24 CFR

35 ... 22732
200 ... 22378
1914 ... 20940, 21433, 21937, 22860, 22861
1915 ... 21434, 21938, 22862, 22863

25 CFR

503 ... 21938

PROPOSED RULES:

161 ... 21947

26 CFR

1 ... 20686, 20688, 20767, 20799, 21434, 21907, 21991, 22375, 22863
194 ... 22734
201 ... 21637, 22735
250 ... 22735
251 ... 22740

PROPOSED RULES:

1 ... 20700, 20719, 20853, 22387
49 ... 21818
170 ... 21330
201 ... 20838, 22000
250 ... 21330
251 ... 21330
301 ... 20700, 21442, 21818
601 ... 21818

29 CFR

1 ... 21138
5 ... 21138
55 ... 21165
101 ... 21481
102 ... 21481
103 ... 21939
1904 ... 20822, 20823
1910 ... 22102, 22743
1913 ... 21303
1915 ... 22458
1916 ... 22484
1917 ... 22510
1918 ... 22530
1919 ... 22554

PROPOSED RULES:

1902 ... 20728

30 CFR

75 ... 20689, 22375
77 ... 22375

PROPOSED RULES:

75 ... 21641, 22883

32 CFR

1 ... 21482
2 ... 21484
3 ... 21484
4 ... 21490
5 ... 21490
6 ... 21491
7 ... 21492
8 ... 21508
9 ... 21509
12 ... 21514
13 ... 21515
14 ... 21516

32 CFR—Continued

Page

15 ... 21516
16 ... 21519
18 ... 21521
19 ... 21524
23 ... 21524
24 ... 21525
26 ... 21525
30 ... 21526
818a ... 20823
824 ... 20825
1301 ... 20942
1302 ... 20942
1472 ... 20690, 21994
1477 ... 20690

PROPOSED RULES:

1611 ... 21544
1623 ... 21544
1624 ... 21544
1626 ... 21544
1627 ... 21544
1660 ... 21653

32A CFR

Ch. X:
OI Reg. 1 ... 22743

33 CFR

1 ... 21481
72 ... 20693
92 ... 21151
117 ... 22375, 22863
173 ... 21396
174 ... 21396
207 ... 22375

PROPOSED RULES:

117 ... 21853
175 ... 21262
209 ... 21818

37 CFR

1 ... 21994

38 CFR

2 ... 22864
3 ... 21436

39 CFR

11 ... 22578
12 ... 22578
13 ... 22578
21 ... 22578
22 ... 22582
23 ... 22587
24 ... 22588
25 ... 22589
31 ... 22589
32 ... 22594
41 ... 22595
42 ... 22596
43 ... 22598
44 ... 22599
45 ... 22599
46 ... 22599
47 ... 22601
51 ... 22601
52 ... 22602
53 ... 22603
54 ... 22603
55 ... 22604
56 ... 22604
57 ... 22604
61 ... 22604
62 ... 22608
71 ... 22608

39 CFR—Continued

Page

72 ... 22609
73 ... 22611
74 ... 22611

PROPOSED RULES:

123 ... 21641
124 ... 22812

40 CFR

115 ... 21441
123 ... 21441
180 ... 20225, 21151, 21152, 21278, 21995

PROPOSED RULES:

60 ... 21653
85 ... 20914
180 ... 22627

41 CFR

1–1 ... 20693
1–3 ... 20693
1–15 ... 20693
3–3 ... 22613
4–1 ... 22794
5A–1 ... 20693, 22614
5A–72 ... 22615
9–7 ... 21322
9–16 ... 21322
9–53 ... 21322
15–4 ... 21637
101–26 ... 20940, 22795
101–32 ... 20941
101–35 ... 22795
114–51 ... 20941

PROPOSED RULES:

60–1 ... 20870
101–19 ... 20958

42 CFR

57 ... 21939
87 ... 22864

43 CFR

5400 ... 22797
5490 ... 22797

PUBLIC LAND ORDERS:

127 (revoked in part by PLO 5282) ... 22744
967 (see PLO 5282) ... 22744
1747 (see PLO 5282) ... 22744
1985 (see PLO 5263) ... 20942
2334 (revoked in part by PLO 5264) ... 21638
2654 (revoked by PLO 5275) ... 22618
2946 (see PLO 5284) ... 22744
3064 (revoked in part by PLO 5268) ... 22616
3250 (revoked in part by PLO 5294) ... 22747
3645 (revoked in part by PLO 5281) ... 22744
3735 (revoked in part by PLO 5274) ... 22618
3736 (revoked in part by PLO 5274) ... 22618
3841 (revoked in part by PLO 5278) ... 22619
4522 (revoked in part by PLO 5285) ... 22745
5040 (amended by PLO 5289) ... 22746
5157 (see PLO 5285) ... 22745
5263 ... 20942
5264 ... 21638
5265 ... 22616
5266 ... 22616
5267 ... 22616

43 CFR—Continued

Page

PUBLIC LAND ORDERS—Continued

5268 ... 22616
5269 ... 22617
5270 ... 22617
5271 ... 22617
5272 ... 22617
5273 ... 22617
5274 ... 22618
5275 ... 22618
5276 ... 22619
5277 ... 22619
5278 ... 22619
5279 ... 22619
5280 ... 22744
5281 ... 22744
5282 ... 22744
5283 ... 22744
5284 ... 22744
5285 ... 22745
5286 ... 22745
5287 ... 22745
5288 ... 22746
5289 ... 22746
5290 ... 22746
5291 ... 22746
5292 ... 22747
5293 ... 22747
5294 ... 22747

45 CFR

Ch. I ... 21945
116 ... 20760
131 ... 21436
177 ... 20699
701 ... 21152
1068 ... 21437
1069 ... 21438

46 CFR

31 ... 20826, 21816
71 ... 20626
91 ... 20826
171 ... 21404
172 ... 21404
173 ... 21404
280 ... 21323
294 ... 22747

PROPOSED RULES:

10 ... 22626
24 ... 21264
25 ... 21264
160 ... 21266, 22876
390 ... 21335
Ch. IV ... 21184
547 ... 22003

47 CFR

73 ... 21324, 21996
83 ... 22577
91 ... 21997
97 ... 21325, 21997

PROPOSED RULES:

1 ... 22627
2 ... 20872, 21352
21 ... 21543
43 ... 22628
73 ... 20874, 21353, 21543, 21857, 22631, 22877
76 ... 21857
81 ... 20729
83 ... 20729
87 ... 20872
97 ... 22002

49 CFR

Page

1 ..... 21816, 21943, 22377
172 21638
177 21531
192 ..... 20694, 20826, 21638, 21816
393 21439
394 22868
555 20943
571 ..... 20695, 21328, 22620, 22871
1003 21999
1005 20943
1033 ..... 20827, 21153, 21532, 22377, 22871–22873
1062 22621
1064 22378
1201 20696

49 CFR—Continued

Page

1202 20696
1204 20697
1205 20697
1206 20697
1207 20698
1208 20698
1209 20698
1210 20699
1249 20944
1300 22797
1303 22797
1304 22797
1306 22797
1307 22797
1308 22797
1309 22797

49 CFR—Continued

Page

PROPOSED RULES:

173 21857
178 21857
567 22800
568 22800
571 ..... 20956, 21652, 22004, 22801
Ch. X 22884

50 CFR

10 ..... 20699, 21532
28 ..... 21999, 22577
32 ..... 20828, 20944, 20948, 20949, 21329, 21436, 21639, 21640, 22379, 22380, 22726, 22873

FEDERAL REGISTER PAGES AND DATES—OCTOBER

Pages	*Date*
20659–20760	Oct. 3
20761–20923	4
20925–21142	5
21143–21270	6
21271–21404	7
21405–21471	Oct. 11
21473–21614	12
21615–21787	13
21789–21894	14
21895–21980	17
21981–22356	Oct. 18
22357–22564	19
22565–22709	20
22711–22786	21
22787–22836	25
22837–22961	26

federal register

THURSDAY, OCTOBER 26, 1972
WASHINGTON, D.C.

Volume 37 ■ Number 207

PART II

FEDERAL TRADE COMMISSION

■

COOLING-OFF PERIOD FOR DOOR-TO-DOOR SALES

TRADE REGULATIONS RULE AND STATEMENT OF BASIS AND PURPOSE

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER D—TRADE REGULATION RULES

PART 429—COOLING-OFF PERIOD FOR DOOR-TO-DOOR SALES

Promulgation of Trade Regulation Rule and Statement of Its Basis and Purpose

Introduction. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., and the provisions of Subpart B, Part 1 of the Commission's procedures and rules of practice, 16 CFR 1.11 et seq., has conducted a proceeding for the promulgation of a Trade Regulation Rule pertaining to a cooling-off period for door-to-door sales. Notice of this proceeding, including a proposed rule, was published in the FEDERAL REGISTER on September 29, 1970 (35 F.R. 15164). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments, and to appear and express their views orally and to suggest amendments, revisions, and additions to the proposed rule.

After it had considered the suggestions, criticisms, objections, and other pertinent information in the record, the Commission on February 17, 1972, published a revised proposed rule in a notice in the FEDERAL REGISTER (37 F.R. 3551) extending an opportunity to interested parties to submit data, views, or arguments regarding the revised proposed rule. A period of 30 days was allowed for the submission of written statements.

The Commission has now considered all matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the record by interested parties in response to the notices, as prescribed by law, and has determined that the adoption of the Trade Regulation Rule and its Statement of Basis and Purpose set forth herein is in the public interest.

§ 429.1 The Rule.

In connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

(a) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) Fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10-point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

(date)

You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to

(name of seller)

at

(address of seller's place of business)

not later than midnight of

(date)

I hereby cancel this transaction.

(date)

(buyer's signature)

(c) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically his right to cancel the sale in accordance with the provisions of this section.

(e) Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

(f) Misrepresent in any manner the buyer's right to cancel.

(g) Fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to: (i) Refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(h) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(i) Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

NOTE 1: *Definitions.* For the purposes of this section the following definitions shall apply:

(a) *Door-to-Door Sale*—A sale, lease, or rental of consumer goods or services with a purchase price of $25 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) In which the consumer is accorded the right of recision by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or

(4) Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or

(5) In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(6) Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

(b) *Consumer Goods or Services*—Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

(c) *Seller*—Any person, partnership, corporation, or association engaged in the door-to-door sale of consumer goods or services.

(d) *Place of Business*—The main or permanent branch office or local address of a seller.

(e) *Purchase Price*—The total price paid or to be paid for the consumer goods or services, including all interest and service charges.

(f) *Business Day*—Any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

NOTE 2: *Effect on State Laws and Municipal Ordinances.*

(a) The Commission is cognizant of the significant burden imposed upon door-to-door sellers by the various and often inconsistent State laws which provide the buyer with the right to cancel door-to-door sales transactions. However, it does not believe that this constitutes sufficient justification for preempting all of the provisions of such laws or of the ordinances of the political subdivisions of the various States. The Record in the proceedings supports the view that the joint and coordinated efforts of both the Commission and State and local officials are required to insure that a consumer who has purchased from a door-to-door seller something he does not want, does not need, or cannot afford, is accorded a unilateral right to rescind, without penalty, his agreement to purchase the goods or services.

(b) This section will not be construed to annual, or exempt any seller from complying with the laws of any State, or with the ordinances of political subdivisions thereof, regulating door-to-door sales, except to the extent that such laws or ordinances, if they permit door-to-door selling, are directly inconsistent with the provisions of this section. Such laws or ordinances which do not accord the buyer, with respect to the particular transaction, a right to cancel a door-to-door sale which is substantially the same or greater than that provided in this section, or which permit the imposition of any fee or penalty on the buyer for the exercise of such right, or which do not provide for giving the buyer notice of his right to cancel the transaction in substantially the same form and manner provided for in this section, are among those which will be considered directly inconsistent.

AUTHORITY: The provisions of this Part 429 issued under 38 Stat. 717, as amended; 15 U.S.C. 41–58.

Effective: To be announced.

Promulgated: October 18, 1972.

By the Commission.

CHARLES A. TOBIN,
Secretary.

STATEMENT OF BASIS AND PURPOSE

CHAPTER I. HISTORY OF THE PROCEEDING

The Commission announced on September 29, 1970, the initiation of a proceeding for the promulgation of a trade regulation rule requiring a cooling-off period for door-to-door sales.[1] All interested persons were invited to file written data, views, or arguments concerning the proposed rule or to present such information orally at public hearings in Washington, D.C., and Chicago.[2]

When the hearings were convened in March 1971, Mr. William D. Dixon, Assistant Director for Industry Guidance, Bureau of Consumer Protection, presided.[3] Every person who had expressed a desire to present his views orally at these hearings was accorded the opportunity of doing so. The 485-page transcript of the Washington hearings and the 416-page transcript of the Chicago hearings have been included in the public record of the proceeding, which also contains 2,477 pages of written comments and a separate volume of documentary exhibits.[4] References to the transcript of the public hearings are preceded by the prefix "Tr." and references to the written comments are preceded by the prefix "R."

CHAPTER II. BACKGROUND

The concept of recognizing the consumer's right to rescind or cancel contracts or purchases made in the home originated in 1962 with a committee appointed by the President of the British Board of Trade.[5] The ensuing years have seen the adoption of so-called cooling-off legislation by a number of jurisdictions of the British Commonwealth, 33 of our States, the District of Columbia and at least seven cities.[6]

The National Conference of Commissioners on Uniform State Laws released its revised final draft of the Uniform Consumer Credit Code in February 1969. It includes a cooling-off provision whereby the consumer has a right to cancel a home solicitation sale until midnight of the third-business day after the day on which the buyer signs the agreement or offer to purchase.[7] To date only Colorado, Idaho, Indiana, Oklahoma, Utah, and Wyoming have adopted the code.[8]

In 1967 Senator Magnuson introduced a bill to provide for a cooling-off period in door-to-door sales.[9] Although hearings on the bill were held in 1968 and it was favorably reported,[10] it was not acted upon by the Senate. In the course of the hearings, statements in support of the objectives of the bill were made by the Federal Trade Commission and other Federal agencies.[11] The report of the Senate hearings contains a complete recitation of the views of those who support as well as those who oppose the cooling-off concept, and it also is a valuable source of information as to the practices and problems of door-to-door sellers generally.

The interest in the concept of providing the consumer with a nonjudicial weapon to use against the door-to-door seller is also reflected in the publication of several studies which commented favorably on the proposal.[12] In addition, in September 1969, the UCLA Law Review published the report of its survey of the direct selling industry.[13] This comprehensive report covered sales practice problems, debt collection problems, preventive remedies, and after-sale remedies. It concluded that the cooling-off concept should be encouraged, although it recognized that it would not provide a complete remedy for all of the consumer problems arising out of door-to-door sales.[14]

On August 6, 1969, the Commission included for the first time in an order to cease and desist a provision requiring a respondent to allow a 3-day period of grace during which all contracts negotiated in the consumer's home may be rescinded by the consumer.[15] In ordering this relief, the Commission said:

> This will serve as a cooling-off period during which any consumer, who may be subjected to the unfair pressures resulting from the deceptions we have discussed or similar deceits, may reevaluate and cancel her purchase.[16]

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[1] 35 F.R. 15164.

[2] The public hearings were originally scheduled to begin on Jan. 19, 1971. At the request of industry members, these proceedings were stayed for 45 days. 36 F.R. 945; 36 F.R. 1211. The hearings were held in Washington from Mar. 8 through Mar. 11, 1971, and in Chicago from Mar. 22 to Mar. 24, 1971.

[3] Pursuant to Commission directive, 35 F.R. 15164.

[4] File No. 215–28.

[5] Committee on Consumer Protection, Final Report, Cmnd. No. 1781 (1962).

[6] The United Kingdom, the Australian States of Victoria and Western Australia, the Canadian Provinces of Saskatchewan, Manitoba, Alberta, Ontario, Newfoundland, and British Columbia, and the States of Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming, the Ohio cities of Akron, Columbus, Grandview, Moraine, Westerville and Whitehall, and Joplin, Mo.

[7] Uniform Consumer Credit Code, Article 2, Part 5, 2.501–2.505.

[8] Colorado, Laws 1971, H. 1076; Idaho, Laws 1971, Ch. 299; Indiana, IC 1971, T. 24, Art. 4.5, Secs. 1.101–6.202; Oklahoma, 14 A.O.S. 1969 Supp., Secs. 1.101–9.103; Utah, Anno. Code Secs. 70B–1.101–70B–9.103; Wyoming, Laws 1971, Ch. 191.

[9] S. 1599, 90th Congress, 1st Sess.

[10] S. Rept. No. 1417, 90th Congress, 2d Sess.

[11] Hearings on S. 1599 before the Consumer Subcommittee of the Senate Committee on Commerce, 90th Cong., 2d Sess., Ser. 90–63 (1968).

[12] Sher, The "Cooling-Off" Period in Door-to-Door Sales, 15 UCLA Law Review, 717 (1968); Meserve, The Proposed Federal Door-to-Door Sales Act—An Examination of Its Effectiveness as a Consumer Remedy and the Constitutional Validity of Its Enforcement Provisions, 37 The Geo. Wash. Law Review, 1171 (1969).

[13] The Direct Selling Industry: An Empirical Study, 16 UCLA Law Review 890 (1969).

[14] Id., p. 1016.

[15] In the Matter of Household Sewing Machine Co., Inc., et al., Docket No. 8761, CCH Trade Reg. Rep. Transfer Binder 1967–70, par. 18,882.

[16] *Ibid*, page 21,216.

Since the Household Sewing case the Commission has included similar provisions in orders against other members of the direct selling industry.[17]

By way of summary, in recent years cooling-off laws and regulations have been widely supported by State legislatures, government agencies, and others who have studied the problems associated with door-to-door sales. We turn next to the characteristics of door-to-door sales which have led to the search for and adoption of this remedy.

CHAPTER III. NATURE OF DOOR-TO-DOOR SALES

Industry members prefer to characterize the type of sale which was the subject of this proceeding as a "home solicitation sale" because they claim that the term "door-to-door sale" is too narrow and obsolete.[18] However, it is generally agreed that both terms encompass, essentially, the selling of products on a person-to-person basis in the home, and that a company which distributes its products in this manner is a member of the direct selling industry.[19]

This method of distribution is defended by many. Thomas B. Curtis, vice president and general counsel of Encyclopedia Britannica, Inc., said:

> * * * home selling has been a traditional method of distributing goods since the earliest history of this country when the periodic visits of the spice merchant or tinker would be anticipated with delight in the settler's household. It continues to be an important factor in American retailing. Billions of dollars worth of goods are sold in the home each year and home selling provides jobs for millions of people * * *.[20]

Personal contact between the salesman and the customer in the home of the buyer is the dominant characteristic of the door-to-door sale.[21] Whether the sale results from a contact initiated by the salesman or from the salesman's response to an unsolicited call from the consumer the dominant characteristic—personal contact in a nonbusiness setting—is present in both situations.[22]

Direct sellers include route salesmen such as those who take orders for home delivery of milk, laundry, and drycleaning. Another type of direct seller is the local businessman engaged in the repair and sale of such home appliances as furnaces, air conditioners, and hot water heaters. In many cases such repairs or replacements are needed to meet an emergency and the contact with the seller is initiated on a spontaneous basis by the consumer.[23]

The record reflects that retailers of furniture, draperies, and carpets, while conducting most of their business in their stores, often send "decorator salesmen" to the home, generally in response to an invitation, for the purpose of permitting the consumer to choose their products where they will be used.[24]

Still another type of direct seller is the producer or distributor of such products as encyclopedias, pots and pans, baby furniture, vacuum cleaners, magazines, Bibles, and portrait plans, who sells either exclusively or primarily by the use of door-to-door salesmen.[25]

The ghetto peddler is the most distinctive of all direct sellers. He sells a variety of wares in the inner-city areas, on a repetitive basis and almost on a fixed schedule.[26] The ghetto peddler visits his customers frequently to collect payments and make repeat sales. He may provide a check cashing service for public assistance checks, and will often quote the prices of his merchandise in terms of weekly payments. He endeavors to become a family friend and counselor and to become a significant part of the social circles in which his customers move.[27] Peddlers, however, are not the only form of door-to-door salesmen operating in the ghetto. The record is replete with examples of many forms of door-to-door sales to the poor who live in these areas.[28]

The foregoing indicates the breadth and variety of the direct selling industry.[29] We turn next to an examination of the problems associated with door-to-door selling, and whether those problems

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[17] *Owen W. Lofthus*, t/a Metro Distributors, Docket C–1793, Sept. 15, 1970; Universal Chemicals, Inc., et al., Docket No. 9752, May 13, 1970; Windsor Distributing Co., et al., Docket No. 8773, Mar. 6, 1970; aff'd in Windsor Distributing Co., et al. v. FTC, 437 F. 2d 443 (3d Cir. 1971).

[18] The definition of "door-to-door sale" contained in the proposed rule was the subject of considerable comment. The ad hoc industry committee which formulated the alternative rule which is discussed at length in the text herein, suggested that the term "home solicitation sale" be used instead of "door-to-door sale" because the former term is used by 12 States and appears in the Uniform Consumer Credit Code UCCC, sec. 2.301. Neither the term "door-to-door sale" nor "home solicitation sale" is completely descriptive of the scope of the rule. Since the Commission's actions respecting the term "door-to-door sale" have been widely publicized, the adoption of a different title at this time would unnecessarily confuse the picture.

[19] J. Robert Brouse, president, Direct Selling Association (R. 924).

[20] Tr. 47.

[21] Jolson, Consumer Attitudes Toward Direct-To-Home Marketing Systems, 1 (New York, 1970). This view was supported by a statement in the record by the National Consumer Law Center: "It is a well known fact that your chances of selling a product are immeasurably increased if you can get the warm body of a buyer into the presence of a skilled salesman. Personal contact is still the key to closing a sale with the consumer * * * this fact is understood all too well by the door-to-door selling industry. * * *" (R. 842).

[22] Statement, Richard A. Givens, attorney in charge, New York Field Office, Federal Trade Commission (Tr. 98).

[23] Deception and other unfair practices are, of course, widely used in these areas. See for example, Holland Furnace Co. v. F.T.C., 295 F. 2d 302 (1961); D. 8690, Royal Construction Co., et al.; D. 8738, All-State Industries of North Carolina, Inc., et al.; 1967–70 CCH Trade Reg. Transfer Binder, para. 18740 (1967). The necessity for emergency repairs is recognized in section 226.9(e) of Federal Reserve Regulation Z and in sec. 2.503(1) of the Uniform Consumer Credit Code.

[24] Statement of the National Retail Furniture Association (R. 402–403). While direct selling usually by-passes both the retailer and the wholesaler to reach to consumer, direct selling methods are used by many other merchants who maintain retail or wholesale businesses. For example, the National Association of Music Merchants, Inc., which represents music retailers reports that many of its members consummate many sales in the home even though the majority of their sales are made in stores (R. 700). Other direct sellers operating out of local business establishments include vendors of vacuum cleaners (Kirby Co. of New Mexico, R. 576), cosmetics, toiletries, and home-care products (Douglas R. White, Holiday Magic Distributor, R. 528), storm windows and doors (Rusco Combination Window Distributors, R. 523), and water conditioning equipment (Statement, Water Conditioning Foundation, R. 1403).

[25] G. Fred Davis, National Photographers Album Co. (R. 166); Dortch Oldham, president, The Southwestern Co. (R. 234–235); L. M. Shwiller, assistant vice president, Atlantic Portrait Plan (R. 339); Thomas B. Curtis, vice president-general counsel, Encyclopedia Britannica, Inc. (R. 778); Brouse, supra, note 19 at R. 1001–1006.

[26] Theresa H. Clark, Chief of Program Coordination, United Planning Organization, said, "Experience has taught us that communities where the poor live are green pastures for door-to-door salesmen with their arms stuffed full of blankets, clocks, pictures, magazines, books, and bedspreads. There is no end to what they sell. Not only that, but if, by chance, the residents should mention something that a given salesman does not have ready, give him 3 minutes on the telephone and he can get it * * *" (Tr. 347). Mr. Edwards Sard, National Association of Installment Cos., in describing the peddler said, "* * * in a number of cases, where it is a question of opening a new account, many will use the procedure of taking * * * an inexpensive item * * * and * * * go up and down the street and make sales without verifying credit at all * * * if she makes her payments * * *. She has established her credit relationship with the installment firm. Then, when the appropriate time comes, they will try to make the add-on sale. In other words, they are looking for repeat business, not for the initial sale." (Tr. 232–233.)

[27] Hearings on S. 1599, supra note 11, at pages 30–41.

[28] "The salesman in the low-income neighborhood employs high pressure tactics. The salesman is concerned only with the signed order * * *. The use of psychologically coercive tactics can, therefore, result in the consumer purchasing an item that he neither wants or needs * * *. Finally, once the contract is signed, the merchant's attention is shifted from consumer satisfaction to enforcement of payment." (Statement of the Legal Assistance Foundation of Champaign County, Inc., R. 1918–19.) "Ghetto dwellers have been conned by door-to-door salesmen pretending to have inside information on their children's achievements in school. 'You have been selected to purchase an encyclopedia because your son Johnny is at the top of his second grade class goes one spiel. 'He needs this encyclopedia to stay on top'." (Betty Furness, Chairman, New York State Consumer Protection Board, Tr. 76.)

[29] According to the 1971 membership roster of the Direct Selling Association, its 91 active members sell some 63 commodity classifications (R. 990–1006).

are of such a magnitude as to justify special treatment by the Commission.[30]

CHAPTER IV. PROBLEMS ASSOCIATED WITH DOOR-TO-DOOR SALES

From the record in these proceedings, it is clear that the frequency and number of complaints arising out of door-to-door sales is substantial.[31] Those involved in legal aid programs and consumer protection activities were particularly vociferous in their condemnation of the practices of some door-to-door sellers.[32]

The complaints of consumers regarding door-to-door salesmen fall within five basic headings. These are: (1) Deception by salesmen in getting inside the door; (2) high pressure sales tactics; (3) misrepresentation as to the quality, price, or characteristics of the product; (4) high prices for low-quality merchandise; and (5) the nuisance created by the visit to the home by the uninvited salesmen.[33]

A. *Deceptive door openers*

The record contains evidence of widespread use of deception to obtain the person-to-person contact between the salesman and the consumer which is essential to the door-to-door salesman.[34]

The various schemes and devices used to open the door for the salesman are almost limitless in number. All of these devices are designed to convey to the consumer, at least initially, that the visitor is not going to attempt to sell him anything. Thus, the salesman may say that he is conducting a survey, is engaged in a brand identification program, or is connected with an advertising or other promotional program.[35] Some companies seek to pave the way for the salesman's admission into the home by advertising free gifts or a free demonstration,[36] always without obligation, provided the consumer answers an advertisement or responds favorably to a telephone offer of information.[37] Others use the cold canvass method wherein the salesman makes the initial contact on the doorstep. By its terms, most "door openers" must be misleading to a degree, or the salesman will simply not get into the home.[38]

Once the salesman has made the person-to-person contact with the consumer the stage is set for the use of high-pressure sales tactics and the other practices which the purchasers in the homes have found to be so objectionable.

B. *High-pressure sales tactics*

High-pressure sales tactics are the leading cause for consumer complaints about door-to-door selling. The use of such tactics is of course present to a degree in all forms of selling. The door-to-door sale, however, seems to be particularly susceptible to the use of these tactics. While various forms of misrepresentation may be utilized in the door-to-door sale, high-pressure sale techniques are almost always used. This explains the high degree of success of the glib, fast-talking, and persistent door-to-door salesman in selling a product which the

[30] Victor P. Buell, a marketing expert who appeared at the hearings on behalf of the direct selling industry said:

"Before one can take an intelligent stand on whether a proposed trade regulation * * * is sound he must determine at least two things: (1) Whether there is indeed a problem; and (2) if there is a problem, whether the proposed remedy is a sound approach to controlling the problem? On the first question it seems to me that there is. A review of testimony before legislative bodies and agencies, statements by local enforcement officials, statements by Better Business Association officials, and personal experiences as a consumer convinces me that there are in the direct selling field * * * some individuals who use deception and high pressure tactics to make sales." (Tr. 832.)

[31] For various 12-month periods the following complaints were reported by various official and nonofficial consumer protection agencies. Mrs. Jane Byrne, Commissioner, Department of Consumer Sales, Weights, and Measures of the city of Chicago, reported the receipt of 74 complaints (Tr. 498); the Wisconsin Attorney General's office received a total of 3,000 consumer complaints of which 670 arose out of home solicitation sales (Tr. 504); the Legal Service of Greater Miami, Inc., said that 15–20 percent of its complaints concerned door-to-door sales (Tr. 558); 68½ percent of the complaints processed by the Michigan Consumers Council related to problems involving door-to-door sales (Tr. 613); other States reporting a substantial number of such complaints include California (R. 274), Kentucky (R. 304), Ohio (Tr. 863), Oklahoma (R. 727–728), New York (Tr. 56), and Pennsylvania (Tr. 441).

[32] "* * * Without equivocation we can state that one of the most chronic and pernicous problems presented to the poverty lawyer is the resolution of issues created by high pressure, basically dishonest, selling practices of a far-too-large segment of the door-to-door sales industry. A tremendous amount of the time of the hard pressed and frequently over-burdened poverty lawyer is spent in attempting to extricate an unfortunate low-income purchaser from the economic and legal consequences of a home solicitation which was steeped in unfairness and deception." (National Consumer Law Center, R. 841.) "Last year, as editor of the Action Line column in Chicago Today newspaper, I handled 3,000–5,000 complaints dealing with door-to-door salesmen and their firms." (Kenan Heise, Tr. 737.) "* * * we have found one of the principal areas of abuse of high pressure sales tactics and consumer fraud is in the home solicitation sale. Many of our clients have been saddled with serious financial burdens simply because an aggressive salesman spent 3 or 4 hours with them late at night making numerous oral promises, wearing down their resistance and even intimidating them." (Legal Aid Service, Multnomah Bar Association, R. 684.) The Consumer Center of the Legal Aid Society of Metropolitan Denver wrote: "It has been our experience that the type of selling most subject to every variety of abusive practice is door-to-door selling * * *." (R. 540). "As an attorney at the Legal Aid Bureau handling hundreds of complaints and defending in court hundreds of defendants every year, I have been appalled at the great number and variety of unconscionable selling practices that seem to go hand-in-glove with door-to-door selling." (Ron Fritsch, attorney, Legal Aid Bureau, United Charities of Chicago, Tr. 515.)

[33] The Direct Selling Industry, supra, note 13, at 895.

[34] "The first step in door-to-door selling, the initial contact, is often where the deception starts. We have received many complaints that door-to-door salesmen pose as building inspectors, survey takers, or company representatives distributing 'free' products in order to gain entry to a house * * *" (Hon. Frank E. Moss, U.S. Senator from Utah, Tr. 37). Mr. Elasko Thigpen, director of the Greater Peoria Legal Aid Society said: "* * * One tactic that is used down our way is the salesman will come in with a check. They offer them $5. It is yours. You don't have to do anything. Just let me come in. He has the $5 check ready. He sits and sells them a vacuum cleaner * * *" (Tr. 899). "He said I'm not selling anything * * *." (D. 7751, Crowell-Collier Publishing Co., Trade Reg. Rep. Transfer Binder 1965–67, page 23069.) "I received a card in the mail which—informed me that I could win a $500 educational award plus I had a free gift coming. I was to phone and * * * and ask for Mr. Cunningham * * *" (Statement of David Hoel, R. 1489).

[35] D. 7751, supra, note 34 at pages 23067–23069, Docket C–1507, Hemphill Enterprises, Inc., et al., Trade Reg. Rep. Transfer Binder 1967–70, page 20,878. The Child's World, Inc., et al. Docket C–1452, Id. at page 20,892.

[36] One consumer reported responding to an advertisement of a school which offered a free aptitude test without obligation. Before he had returned the test he was visited by a salesman representing the school who sold him a course costing $35.59 a month for 24 months (R. 389). Another reported the receipt of a telephone call informing her that she had won several free magazine subscriptions. After she agreed to accept this gift a saleswoman called who sold her magazine subscriptions costing $133.50. Her bonus was Parents magazine although she had no children (R. 340). An uninvited salesman called at a home and sold the owner a water softener and conditioner costing $745.80. Although the owner did not know what was being offered for sale until after the salesman appeared, a long demonstration and sales pitch lasting until the wee hours of the morning resulted in the agreement to purchase (R. 100, 101).

[37] Frederick R. Sherwood, Chairman of the Ad Hoc Inter-Industry Committee, in describing his experiences as a door-to-door salesman said: "For instance the company that I represented prepared certain types of cards and mailing pieces, one, for instance, which offered a free map in connection with a preview or a brief demonstration of the product that I was representing" (Tr. 429).

[38] In reporting the results of his inquiry into the methods used to sell magazine subscriptions, Congressman Fred B. Rooney, testified at the hearings, "For example, almost all PDS magazine subscription sales—some of them involving contracts for $400 to $500 worth of magazines, books, and merchandise—begin with a telephone call to the prospective subscriber. Often, he is told he has been selected or designated to receive some form of free merchandise." (Tr. 13.) "It would be a tremendous handicap. I would say an impossible one for me to have to go to every door and say I am here to sell you a product." (Sherwood, note 37, supra, at Tr. 437.) "That this fact is understood all too well by the door-to-door selling industry is attested to by the gimmicks, and lies employed to gain entrance * * *" (Statement, National Consumer Law Center, R. 842).

customer often does not want, or does not need, or cannot afford.[39]

The high-pressure tactics used are not restricted to persistence and argumentativeness. Often subtle psychological techniques are used to instill in the consumer a desire for the product and to persuade him to purchase it.[40] Moreover, the circumstances under which a door-to-door sale is made is another reason for the success of high-pressure tactics and accounts for the frequency of their use.[41] Although he may not have previously considered the need for the merchandise or service, the consumer by admitting the salesman into his home has placed himself in a position of consenting to listen to a practiced, skilled, and almost hypnotic sales pitch which has been scientifically designed to create his desire for something he may not need, or cannot afford.[42]

C. *Misrepresentation of price and quality*

Misrepresentation on the part of salesmen regarding the quality, price, or characteristics of a product is the next source of consumer complaints regarding door-to-door sales. The quality and durability of products and services sold in the home frequently do not live up to the representations of the salesman.[43] Aside from instances in which a customer does not actually see the goods before the purchase is made, or have an opportunity to test the operation of a machine or device, the purchaser in the home is deprived of the opportunity to shop and compare values. He is thus forced to rely

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[39] One consumer wrote, "* * * after working 8 hours * * * I'm much too weary to defend myself against this type of selling * * * I also live alone, and many times I'll sign anything out of fear and frustration * * *" (R. 71). "People who write to our column display a fantastic sense of confusion as to why they made the deal. It is very common for us to hear, 'I was frightened of the man. I didn't know how to get rid of him.' * * * 'I was lonely and he was somebody to talk to.'" (Heise, supra, note 32, Tr. 738–739.) "The experience of the Bureau of Consumer Protection * * * is that the door-to-door selling industry frequently, and I would say mostly, utilizes the sales practices of a highly motivated nature which many consumers are unable to withstand. Frequently the persistence of the sales person in the home * * * makes it difficult for the consumer to withstand the highly motivated sales promotion." (Bette Clemens, director, Bureau of Consumer Protection, State of Pennsylvania, Tr. 439.) "Many more horror stories have been related to us * * * functional illiterates pressured into purchasing encyclopedias, homemakers without carpets * * * buying carpet sweepers * * *" (Memorandum, Ohio State Legal Services Association, R. 378). A housewife reported, * * * We were once a victim of one of those selling baby furniture * * * we were amazed that we had agreed to buy this expensive outfit that we didn't really need." (R. 423.) One woman described the purchase of $300 worth of baby furniture. She said she was 60 years old and didn't have a grandchild (Tr. 442). According to Lee Ellis, the village manager of Winnetka, Ill., an 80-year-old woman was sold $232.50 worth of magazine subscriptions (Tr. 658). A consumer said that she and her husband were sold an encyclopedia accompanied by a set of the Harvard Classics and a group of children's books all for $500 before the birth of their first child (R. 80). One couple expressed their chagrin about their purchase of an encyclopedia: "Recently we were approached about an encyclopedia (which we had no intention of buying for several more years) by a young man who came at 8:30 one evening. We are now sure that the trick is not to let them in the door * * *. After a 3-hour discussion we agreed to buy this set of books. Unfortunately we were tired by that time (11:30 p.m.) and our judgment was anything but good * * * in the morning we chastised ourselves for signing up for a $500 investment we did not even need at this time." (R. 88.)

[40] "The high pressure tactics of the skilled and often unscrupulous salesman breaks down the householder's resistance to his sales pitch. He is often selling a story not describing a product. The householder's conscience, shame, sympathy, pride, ignorance, or language difficulties are exploited. Equally capitalized upon is what we must honestly recognize as the householder's reluctance to throw the scoundrel out. In all honesty don't we all share the experience of at one time having tried to persuade an uninvited salesman to leave? One thing we should recognize about such an experience is that we found it very difficult to concentrate on the realities of the potential sales transaction. One wonders how many sales have been made just to be rid of the salesman. How many home solicitation contracts have been signed where the nature of the product and the legal consequences were unclear because of the buyers distraction or preoccupation with obtaining relief from the presence of the salesman." (Statement, National Consumer Law Center, R. 843.) "The poor and uneducated are particularly susceptible to the high pressure sales tactics employed * * * many of our clients have found themselves obligated to pay for items which they do not need and cannot afford as a result of the insidious psychological ploys employed by a door-to-dor salesman * * *" (Consumer Center, Legal Aid Society of Metropolitan Denver, R. 540).

[41] "* * * The consumer cannot end the discussion by leaving. On the contrary, if the salesman chooses to continue the conversation, the customer must somehow get the salesman to leave or agree to the transaction. The customer is vulnerable to the assertion that since the salesman has taken the trouble to come, the transaction should be completed without further deliberation or consultation by the buyer; to buttress this the salesman can plausibly say that he cannot give a promised 'discount' if he has to come back, or indeed cannot come back at all." (Givens, supra note 22 at Tr. 89.) "The Committee believes that the problem of the door-to-door salesman is based on the high-pressure sales pitch, which is caused by a number of factors. First, the salesman is working on a commission basis. He earns only if he sells. The contacts of the sale are made in the living room where the consumer has no opportunity to do comparative shopping. The Southern California consumer is shy, conscientious, and wants to play the role of a good host. It is difficult for the consumer to throw the salesman out of the door even after he realizes that the sales pitch is fraudulent. The consumer-salesman relationship in the living room is a one shot deal. The salesman knows that he can use a high-pressure sales pitch because he will never see the consumer again; the salesman has no reputation to maintain. Finally, another cause, the high-pressure sales pitch is due to the ineffective ways and means various companies use to control their salesmen. No company knows exactly what the door-to-door salesman is going to say once he enters the privacy of a living room." (Mayor's Consumer Protection Committee of Los Angeles, Calif., R. 599.) "Although high pressure tactics are not limited to peddlers, they are especially effective against a lone housewife trapped in her own home. It is far easier to walk out of a store when faced by an over-zealous salesman than to talk an obstinate peddler into leaving * * *." (Memorandum Brief of State Department of Justice of Wisconsin, R. 650.) "* * * we submit that the door-to-door sales transaction * * * especially in the homes of our clients—is totally different from sales in a store. * * * while both types can appeal to impulse buying, at least when the consumer goes to the store he has made a conscious decision to go shopping. The salesman at his door appeals strictly to the pressures of time and impulse—when the consumer goes to the store, it is at his convenience; the door-to-door salesman often is an intruder into the privacy of the home when he is not wanted. The door-to-door salesman often relies on the one-shot approach." (Benny L. Kass on behalf of the National Legal Aid and Defender Association, Tr. 137–138.)

[42] "A good salesman is highly trained in how to 'make the kill'. He may deliver his sales pitch a hundred times a week; so he knows all the angles.

"The consumer, of course, is a novice and is certainly not on an equal bargaining ground with the experienced salesman. There is an inherent unconscionability about such sales * * *. A consumer * * * told us of his experience with another type of high-pressure tactic, the scare tactic. Frightened by the salesman's story and pictures of small children burning to death in their beds, the consumer purchased an expensive home fire alarm system * * *." (Diane McKaig, Michigan Consumers Council, Tr. 615.)

[43] As to inferior merchandise, remember that merchandise sold door-to-door is very often purchased sight unseen. When the goods are ultimately delivered, it is not uncommon for them to be much less than anticipated—of inferior quality, sometimes even defective.

"A consumer * * * purchased a sewing machine from a door-to-door salesman. Shortly after delivery the machine stopped working. The consumer was unable to obtain the promised warranty service * * *. Because it was an off-brand machine, she had a difficult time finding anyone who would service it.

"Generally speaking, we have found that high quality brand name merchandise is seldom peddled door-to-door, and that the warranty * * * is usually meaningless." (Id. Tr. 617.) "A consumer * * * was told that she was purchasing a well-known brand of cookware. It actually turned out to be a different, lesser-known brand." (Id. Tr. 616.) A consumer wrote, "We have just had a bad experience with the Scholastics Systems, Inc. from whom we purchased a $400 reading program. Now we find it is unsatisfactory and faulty * * * they used deceptive measures in selling the equipment." (R. 343.) Elizabeth McCarthy, a social worker described the sale of a $600 course in motel management to a client living on social security and veterans benefits. The woman had no previous experience and had a severe speech impediment, but signed the contract because of the salesman's assurances of a guaranteed job. (Tr. 675; R. 1650.)

exclusively on the representations of the salesman.[44]

Door-to-door salesmen have often deceived their customers as to the actual cost of the goods or services being sold or the comparative value of these products.[45] Magazine subscription salesmen have been particularly adept at minimizing the cost of their services.[46] The record also shows that salesmen of various types of portrait plans have been successful in misleading consumers as to the actual cost of the plan.[47] Sellers of freezer food plans have been extremely active in door-to-door selling and have been the subject of numerous Commission orders. These reflect the use of misrepresentations of the quality of the food products sold and of the cost of the plan. In the typical case the freezer and food supplies together are represented to cost less than the food products alone, thereby affording substantial savings to those who are fortunate enough to participate in the plan.[48]

Excessive prices for products sold in the home are commonplace, and again it would appear that such pricing practices are facilitated by the nature of the door-to-door sale. Since the sale is being made in the home, the consumer is unable to ascertain the price of similar or substitute products as he could do if he visited several retail establishments.[49]

D. *Other aspects of door-to-door sales*

The nuisance occasioned by the unannounced and uninvited call of a door-to-door salesman has long been recognized and regulated by local authorities.[50] Municipal authorities from several communities reported the annoying tactics of door-to-door salesmen which were strongly objected to in their communities.[51] The chief of police of one com-

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[44] "The door to door selling technique strips from the consumer one of the fundamentals in his role as an informed purchaser, the decision as to when, where, and how he will present himself to the marketplace * * *. In the case of solicitation away from the regular place of business of the seller, that critical element in the consumers arsenal, time is now gone. Gone with it is the chance to reflect, compare, decide, walk away" (Statement, National Consumer Law Center, R. 842). "The salesman is not subject to supervision to the extent that is usual in stores, and, if the sales are on a commission basis, is more likely to make extravagant representations which he, himself, can later deny or which his employer may later dismiss as unauthorized" (Givens, supra Note 22 at Tr. 89).

[45] According to Mrs. Doris E. Behre, Virginia Citizens Consumer Council, Inc., "* * * For instance, many salesmen of cheap, poor quality encyclopedias have various tricks to deceive a customer into believing he is getting a free encyclopedia and that his only cost is a yearbook every year for 10 years. In many instances these * * * end up costing * * * as much as a reputable encycopedia" (Tr. 194). "Ask any housewife if she wants to spend $450 for pots and pans and she'll ask you back whether you are out of your head. But twist it into an organization that allows her to buy everything from diapers to cars wholesale, wear her resistance down and pressure her to the point where she will be relieved to get rid of you and you have a sale" (Heise, supra note 32 at Tr. 737). Robert J. Funk, a consumer wrote, "We had an experience with a young man who claimed to be hunting homes where he could place a 'free' encyclopedia set * * *. All you had to do was buy 10 years of yearbooks * * * at $6.95 per year and (a supplementary service) for 10 years which was worth more than the $350 we were asked to pay. The gist of the argument were as above with us gladly accepting the set and various extras under the pretext that this was truly a special bargain * * *" (R. 581). "* * * An example of an installment sale is the case * * * involving a contract for $1,800 worth of glassware signed by a 17-year-old girl. She never would have considered assuming such a debt had it not been for the high-pressure tactics of the door-to-door salesman who assured her that the cost of her purchase was only a few pennies a month." (Furness, supra note 28 at Tr. 78.) "* * * we bought a sewing machine from a door-to-door salesman. The next day I looked at another advertisement for the same machine that I had filed away and I discovered that we had payed exactly twice what I could have gotten it for from this other company * * *" (Rev. George W. Gerber, R. 546).

[46] "* * * A fast talking salesman can quote figures which will make it sound as if someone is really getting something for nothing. But it sometimes happens that these low, low figures are actually higher than regular subscription rates * * *" (Behre, supra note 45 at Tr. 194). Examples given by consumers included the following: "* * * After the salesgirl had left * * * he realized that $19.50 was too much money for two magazines which he did not want in the first place * * *" (R. 345). "My wife * * * was talked into a contract by a glib salesman into purchasing $127 worth of subscriptions which she could have bought on her own for about $34 * * *" (R. 84).

[47] "My wife signed a contract for some photographs. I * * * found the saleman had not gone over all the details with my wife clearly he failed to mention service charges, interest, etc., however it was written down on the contract" (R. 106–107). Another wrote, "Your salesman represented that each color enlargement of a snapshot would cost $1.88. He did not state that there was a $0.75 mailing and handling charge (a charge which would increase the cost to $2.63 each if submitted separately) * * *" (R. 1824).

[48] Typical Commission cases are: G&M Home Freezer Service, Inc., et al., Docket C–760, 65 F.T.C. 1031 (1964); American Foods, Inc., et al., Docket C–745, 65 F.T.C. 643 (1964). The authorities of the State of Wisconsin became so concerned with respect to the activities of the sellers of these plans that the Department of Agriculture adopted a regulation establishing a 3-day cooling-off period (Tr. 711). See also the Memorandum Brief of State Department of Justice Regarding Cancellation of Freezer Meat and Food Service Plan Contracts (R. 1340–1359). In summarizing the nature of complaints received, it was said that persons gave three reasons: (1) After comparative shopping they realized that the alleged savings under the freezer plan were false or inaccurate; (2) after recovering from the high-pressure sales pitch, often made late in the evening to a captive audience, they realized that the alleged virtues of the plan were unrealistic or misleading * * *; (3) after delivery of part of the merchandise promised under the plan they realized it was defective or misrepresented * * * (R. 1348).

[49] One woman paid $600 for a new roof which she could have purchased for only $250 from a reputable local contractor (R. 573). One consumer in describing the prices charged by door-to-door sellers said, "* * * The bedspreads downtown are $8.95 or $10.95, theirs starting at $29.95 and up. I have a neighbor who bought a set of aluminum ware from a door-to-door salesman. This aluminum ware at the stores downtown was $29.95 * * * she paid $60 * * *" (Tr. 311). A real estate assessor described the prices paid in one area for improvements as "unbelievable" (R. 704). "* * * the objective in an unlawful door-to-door selling scheme, is to extract an overcharge from the consumer. The consumer pays a higher price for the article or service than he would have in a freely functioning marketplace. It is simply a transfer of money from one person to another without any corresponding exchange of value." (Statement, National Consumer Law Center, R. 843.) The Legal Aid Society of Metropolitan Denver reported, "Typically, the item purchased from a door-to-door saleman could be purchased at a considerably lower price in a retail store, while the salesman represents that the opposite is true * * * A few examples * * *: A 'religious organization' sent salesmen into low income areas of Denver to sell sets of Bible story books and religious magazines for prices ranging between $50 and $200 * * * Another * * * sells furniture through a catalog. He represents the furniture to be of the highest quality and durability * * * yet when it is finally delivered it turns out to be of a very low quality, both in appearance and in durability. Typically, the consumer has paid this door-to-door salesman much more for the furniture than he might have paid in a retail establishment for identical or better furniture * * *" (R. 540–541). An investigator in the office of the district attorney of Oregon City, Oreg. wrote, "Invariably the merchandise or service is priced far above competitive market prices and frequently is of inferior quality * * *" (R. 545). Bess Myerson, Commissioner, Department of Consumer Affairs, New York City said, "The Department recently instituted suit against Compact Electra, a company which sells vacuum cleaners costing over $400 door-to-door * * *; No vacuum cleaner sold by any leading department store in New York City costs as much. We have found this frequently to be the case—the goods and services sold door-to-door far exceed in cost similar merchandise available at retail establishments." (R. 1829.)

[50] The business of peddling has been regulated since 1784. Sayerborough v. Phillips, 148 Pa. St. 428 (1892). "From early times, hawkers, peddlers, and petty chapmen, who ply their trade by going from house to house, have been considered as a class for the purpose of legislative control and restriction. Canvassers and solicitors are frequently included in the same class, and no objection to this can be found, where the object of the law is to prevent disturbance or annoyance." Town of Green River v. Burger, 50 Wyo. 52, 58 P2d 456 (1936), Appeal dismissed, 300 U.S. 638 (1937). In Breard v. City of Alexandria, 341 U.S. 622 (1951), the Supreme Court upheld the constitutionality of such an ordinance.

[51] "* * * we are * * * plagued by * * * hit and run mass solicitations. * * * They will obtain a group of 20 or 30 young people and * * * besiege a community en masse for a 2- to 3-day period. (At a hearing I conducted) * * * we introduced into evidence the fact that we had rejected (for licenses) over 16 persons with known criminal records. Some of the crimes were deviant sexual conduct, indecent liberties, confidence games, contributing to the delinquency of minors, burglary, fraud, larceny, pimping, breaking and entering. One salesman had 32 convictions of various offenses * * *. The local school superintendent * * * (found it neces-

munity described numerous complaints from consumers regarding the activities of door-to-door salesmen.[52] In his testimony at the hearing Congressman Fred B. Rooney described the results and information he gained during a 2-year investigation into magazine subscription sales and confirmed the potential danger to the householder in dealing with a door-to-door salesman.[53]

The foregoing testimony as well as other information in the record attests to the fact that the high and middle income consumer is also a prime target for the door-to-door salesman.[54] In recognition of the opportunities offered by the more affluent group, one firm is now marketing a portable charge card imprinter which the salesman can use in the home to charge the purchase price to an existing account.[55]

CHAPTER V. THE PROPOSED RULE

The original proposed Trade Regulation Rule read as follows:

For purposes of this proceeding, the following definitions shall apply:

Door-to-door sale—A sale of consumer goods or services with a purchase price of $10 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" shall not include any sale made in the presence of the buyer's attorney.

Consumer goods and services—Goods or services purchased primarily for personal, family, or household use, and not for resale or for use or consumption in a trade or business.

Seller—Any person engaged in the door-to-door sale of consumer goods or services.

Place of business—The main or permanent branch office or local address of a seller.

Purchase price—The total price paid or to be paid for the consumer goods or services, including all interest and service charges.

Business day—Any day other than a Saturday, Sunday, or holiday.

Accordingly, the Commission proposes the following Trade Regulation Rule:

In connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

(a) Fail to furnish each buyer at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller a form, entitled "Notice of Cancellation" and designed to be used by the buyer if he elects to cancel the contract or sale, which shall be attached to any contract or other instrument executed by the buyer and easily detachable, and which shall contain in 10 point bold face type of a conspicuous color other than that used for the rest of the contract or other instrument:

(1) The following statement:

Notice to buyer: You may cancel this contract or sale for any reason at any time during the period beginning when you sign the contract or purchase the goods or services and ending three business days thereafter.

If you choose to cancel this contract or sale, you may do so by notifying the seller of your intent to cancel at the seller's business address or telephone number shown on this form any time before 5 p.m. of the third business day following the day you signed the contract or purchased the goods and services. If you choose to notify the seller by mail, the envelope should be postmarked any time before midnight of the third business day following the day you signed the contract or purchased the goods and services.

While any reasonable method of notification which informs the seller of your intent to cancel is permitted, you may wish to notify the seller by one of the following methods:

1. Sign and mail this Notice of Cancellation form, or any other written cancellation notice, to the seller's address shown on this form. If you choose this method of cancellation, it is recommended, but not required, that you send the cancellation notice by certified mail, return receipt requested.

2. Sign and deliver this Notice of Cancellation form, or any other written cancellation notice, to the seller's address shown on this form.

3. Orally inform the seller, in person or by telephone, of your intent to cancel.

If you choose to cancel this contract or sale, you must make available to the seller at the place of delivery any merchandise, in its original condition, delivered to you under this contract or sale, and

(2) A statement that the buyer, if he chooses to cancel, has a right, within 10 business days to a return: (i) Of any payments he made under the contract or sale; (ii) of any goods traded in, in substantially as good condition as when received by the seller; and (iii) of any notes or other evidence of indebtedness given by the buyer under the contract or sale; and that he also has the right to keep any goods or merchandise delivered by the seller under the contract or sale unless picked up at the place of delivery by the seller, at the seller's expense, within 20 business days after cancellation; and

(3) The date the buyer signed the contract or purchased the goods or services; and

(4) The name, address, and telephone number of the seller where he can be notified in the event the buyer chooses to cancel; and

(5) A space for the buyer to sign indicating his election to cancel the contract or sale.

(b) Fail to include in each door-to-door sales contract directly above the space reserved in the contract for the signature of the buyer and in bold face type twice as large as the other type in the contract and of a conspicuous color other than that used for the rest of the contract, the following statement:

You, the buyer, may cancel this sale or contract for any reason at any time up until 3 business days after you signed the contract or purchased the merchandise or services. See the attached notice of cancellation form for details of your cancellation rights and for methods of canceling.

(c) Fail to include in each door-to-door sales contract a clear and conspicuous statement that the seller agrees to arbitrate any dispute arising under the contract at the buyer's option and agrees further to submit to the jurisdiction of the buyer's place of residence.

(d) Include in any door-to-door sales contract any confessions of judgment or waivers of any of the rights to which a

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sary) to write a letter * * * advising parents of the school children in our community that no survey was in fact being taken and that the school district had not approved these particular encyclopedia." (Paul Hamer, village attorney, Wheeling, Ill., Tr. 630–631.) "The village of Wheeling was plagued by a series of vacuum cleaner salesmen prior to this encyclopedia incident. In that particular case this was the referral sales gimmick by which if you purchased a central vacuum cleaner system * * * I think the product was around—cost $900. You paid the $900 and then you gave them a list of some 25 persons. Then, if one of those persons purchased the central vacuum cleaner system you got $25 back on your purchase price * * *. The actual same product could be bought in a retail store for $195." (Id. at Tr. 633.) The village manager of Winnetka, Ill. said, "Our concern in terms of the experience we have relates principally to the magazine salesmen * * * here is the case of a salesman convincing a 12-year-old girl to forge her mother's signature to a check for $101.10 for the purchase of magazines * * * in a case of outright theft * * * the salesman while the housewife had gone to get her checkbook, stole credit cards from the household." (Tr. 658–659.)

[52] "It is not uncommon for us to have a crew of magazine solicitors in the California licensed vehicle with people from * * * numerous States * * *. I have a crew in my community today * * * a solicitor representing himself as a Job Corp worker * * * as being from the Office of Economic Opportunity or that they were from Poverty Appeals Programs * * * people were asked to sign contracts just to prove to the crew managers * * * that the man had * * * called * * * and unknown to the people they were filled out at a later time with high dollar value of purchases * * *. I think the highest was for some $256 * * *. We have had problems with the solicitors having consumed alcohol and becoming rather belligerent * * *" (George P. Graves, Western Springs, Ill., Tr. 662–663). Substantiating documents of these and other incidents are included in the record (R. 1696–1752).

[53] "All too often a knock on the American householder's door is the consumer's introduction to the business world's lowest form of practitioner—the petty thief, the forger, the shyster, the professional con artist, and worse. A survey made by Col. William Durrer, Chief of Police in Fairfax County, Virginia some time ago found that 35 percent of all door-to-door salesmen who worked the county during a 1-year period had police records and that some of these records were three pages long." (Tr. 11.) The Congressman submitted a random sampling of these records which is included in the public record. (R. 758.)

[54] Prof. Egon Guttman of the Washington College of Law, American University said, "* * * there is a need to protect most people in the United States from such predators, be they the wife of a commissioner in one of the U.S. Government agencies buying magazines for her husband * * * or the working man buying his clothes or other necessities from a door-to-door salesman." (Tr. 454.)

[55] Tr. 687.

buyer is entitled, including specifically his right to cancel a door-to-door sale.

(e) Fail to orally inform each buyer, at the time he signs the door-to-door sales contract or purchases the goods or services, of his right to cancel.

(f) Misrepresent, in any manner, the buyer's right to cancel.

(g) Fail to clearly, affirmatively and expressly reveal, at the time the seller initially contacts the buyer or prospective buyer, and before making any other statement or asking the buyer any question, that the purpose of the contract is to effect a sale, stating the goods or services which the seller has to offer.

(h) Fail or refuse to honor any valid notice of cancellation by any buyer and upon such cancellation:

(1) Fail, within 10 business days to return: (i) All payments made under the contract or sale by the canceling buyer prior to his cancellation; (ii) any goods or other property traded in, in substantially as good condition as when received by the seller; and (iii) any note or other evidence of indebtedness given by the buyer in connection with the contract or sale; and

(2) Fail, within 20 business days, to pick up, at the place of delivery and at the seller's expense, any goods or merchandise delivered under the contract or sale.

(i) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services purchased."

CHAPTER VI. SUPPORT FOR THE RULE

A. *Consumer and government support.* The favorable response of consumers to the proposed rule is demonstrated by the inclusion in the record of many statements urging that the Commission adopt it.[56] Support for the rule also came from government agencies throughout the country as well as from nonofficial consumer groups.[57]

B. *Industry support.* A substantial segment of the direct selling industry supported the proposed rule. Among the members who announced their unqualified support were Encyclopedia Britannica, Inc.[58] Various other industry members endorsed the principle of the rule subject to certain suggested changes.[59] The various changes and amendments they suggested are discussed in subsequent chapters of this statement.

CHAPTER VII. PAST HISTORY OF EFFECTIVENESS OF COOLING-OFF RULES

Inherent in the comments of those who expressed support for the rule was the belief that the rule would be effective, at least to some extent, in alleviating the problems the consumer has had with door-to-door sales. These problems have been grouped for purposes of discussion into five categories: High-pressure sales tactics; misrepresentation as to the quality, price, or characteristics of the product; high prices for low quality merchandise; and the nuisance created by the visit to the home of the uninvited salesman; and the use of deceptive door openers.[60] An examination of the effectiveness of a cooling-off rule with respect to each of these problems should demonstrate whether the proposed remedy is a sound approach to a solution of a substantial number of those problems and whether its adoption by the Commission is justified.

Documentation of the effectiveness of the cooling-off remedy as a solution to many of the problems arising out of door-to-door sales was provided by State officials and others concerned with consumer protection who reported an almost immediate and dramatic drop in the number of consumer complaints following the enactment of cooling-off laws in the various States.[61] These reports prove that the remedy is effective.

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[56] See for example R. 40–47. A logical explanation for this widespread general support may be found in Jolson's study (Note 21, supra), wherein he reports the data he collected showed that 80 percent of all items purchased would not have been purchased in the near future if the salesman had not called and only 13.2 percent of the transactions had been initiated by a consumer responding to a lead in some form (page 108). Fifteen percent of the consumer sample recommended that direct selling be abolished (page 111); "Forty-two percent objected to making a decision on the salesman's first call. Fifty-three percent feel that an unsolicited contact by a direct seller, either by phone or in person, is an invasion of privacy and should be against the law. Seventy-three percent feel that direct selling upsets the consumer's rational purchase-planning process * * * Approximately 50 percent of all consumers have regretted their purchase of a directly sold item and met with substantial resistance in attempting an order cancellation" (page 119). Typical consumer comments were, "Let's quit playing games and realize that much, if not most door-to-door selling is exceedingly deceptive and high pressure from beginning to end. A gimmick is used to get into the house and then a gimmick is used to sell. The seller is the expert and the consumer is the novice and the FTC should assume a greater responsibility for defending the novice (R. 61). "I'm writing in support of the proposal * * * I feel * * * that the presently practiced method of these sales * * * is very unfair to the individual * * *" (R. 586). "Having been victimized on several occasions by high-pressure salesmen, I should like very much to see a trade regulation rule in effect." (R. 71.)

[57] Department of Consumer Affairs of the city of New York (R. 1827); the Consumer Federation of America, whose spokesman said: "* * * CFA wholeheartedly applauds and approves the promulgation of regulations that consciously seek, as do the Commission's * * * to provide an effective, inexpensive remedy to consumers who have been enticed or baited into, or who out of impulse agreed to unneeded purchases from a door-to-door salesman. We believe that the concept of a 'cooling-off period' * * * provides such a remedy." (R. 912–913.) Public Interest Research Group, "* * * the need for regulation along the lines proposed by the Commission is painfully obvious * * *" (Tr. 316); Administrator, Department of Consumer Affairs, State of Oklahoma (R. 712); Executive Director of Consumer Assembly of Greater New York (Tr. 58); Betty Furness, Chairman, New York State Consumer Protection Board who said "* * * The proposed * * * regulations creating a 3-day cooling-off period are essential to protect consumers from the unscrupulous practices of a growing army of unethical door-to-door salesmen" (Tr. 76); National Legal Aid and Defender Association (Tr. 132); the National Consumer Law Center (R. 844); Legal Aid Society of San Joaquin County, Calif. (R. 9); New York State Bar Association (R. 424); Congressman Abner J. Mikva (R. 467); the Legal Aid Bureau of the United Charities of Chicago and the Consumer Protection Committee of the Chicago Council of Lawyers (Tr. 514); Consumers Union (R. 1572); Legal Services Organization of Indianapolis, Inc. (Tr. 813); Onondaga Neighborhood Legal Services, Inc. (R. 1100); Nassau County Law Services Committee (R. 1783); Eugene Oregon Area Chamber of Commerce (R. 328–329); Better Business Bureau of Greater New Haven, Inc. (R. 334); Chairman, Wayne County Legal Aid Association (R. 236); Department of Weights and Measures, Ventura County, Calif. (R. 1753); Deputy City Attorney, Stockton, Calif. (R. 207); District Attorney, Oregon City, Oreg. (R. 545); Prof. William F. Lemke, Loyola University School of Law (Tr. 646); Ohio State Legal Services Association (R. 376); Phyllis R. Snow, Dean, College of Family Life, Utah State University, Logan, Utah (R. 686); Village Attorney, Glenview, Ill. (R. 687); Mrs. Martha Pettus, Shaw Area Welfare Committee and Consumer Unit (Tr. 335); Judge Arthur Dunne, of Illinois (Tr. 596); John B. Martin, Special Assistant to the President for the Aging and Commissioner on Aging, Social Rehabilitation Service, of the Department of Health, Education, and Welfare (R. 1093); John B. Breckinridge, Attorney General, State of Kentucky (R. 304); Urban Law Institute (R. 741); William J. Scott, Attorney General, State of Illinois (Tr. 883); and many others.

[58] "* * * Encyclopedia Britannica has endorsed the Commission's cooling-off proposal * * * (and) * * * is implementing the FTC rule that has been promulgated * * * " (Curtis, supra note 25, at Tr. 48).

[59] Robert W. Frase, vice president, Association of American Publishers, Inc. (Tr. 272); Edward Sard, National Association of Installment Cos., Inc. (Tr. 222–223); Grolier, Inc. (Tr. 398); Council of Better Business Bureaus (Tr. 418); George P. Britt, vice-president and secretary, Health-Mor, Inc. (Tr. 895); Field Enterprises Educational Corp. (Tr. 868).

[60] See notes 34–37, supra.

[61] Walter W. Falck, president of the Maryland Consumers Association, in speaking of the Maryland cooling-off law said, "* * * Since the law became effective * * * on July 1, 1970 (we) have not received a single complaint in regard to the home solicitation sales problem * * * the law has been particularly effective in cases involving the sale of magazines, encyclopedias, fire alarm systems, water softeners, and various home improvements * * *" (R. 624–625). Mrs. Bette Clemens, supra note 39, testified, "* * * our law has been a godsend to Pennsylvania consumers * * * the 2-day cooling-off period has been a most important and useful tool in the protection of the consumer." (Tr. 440.) Mrs. Camille Haney, coordinator for Consumer Affairs, Department of Justice, State of Wisconsin, "* * * we have a 3-day cooling-off period in the area of freezer meat and food service plans. Problems in the food industry have just about been eliminated since it went into effect * * *" (Tr. 506–507). With respect to the effect of Utah's

The effectiveness of the remedy against high-pressure sales tactics is fully supported in the record by statements from both consumers and consumer representatives.[62] Many said that it was the only feasible remedy, as other efforts had been demonstrably unsuccessful.[63]

Those who gave the strongest support for the effectiveness of the remedy clearly recognized that it would not be a panacea for all of the problems associated with door-to-door selling.[64] However, they correctly pointed out that it would be of material assistance in alleviating some of the problems associated with door-to-door selling.

The 3-day cooling-off period will provide the consumer with an opportunity to discuss his purchase with others, to reflect upon the provisions of the contract, and perhaps to do a little comparative shopping. This will give him some opportunity to discover misrepresentations made by the salesman, or to realize either that he is paying too high a price for the product or that he simply didn't know when he agreed to buy what he was being asked to pay.[65]

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adoption of the Uniform Commercial Code cooling-off provision, Mrs. Richard P. Barnes, chairman, Council of Advisors on Consumer Credit said. "* * * it has been my privilege to observe first hand the effects * * *. Many unreputable dealers have left our State, some have gone out of business, others have improved their methods and our consumers are receiving more fair treatment * * *" (R. 573). Mr. Donald Elberson, executive director, Consumer Assembly of Greater New York, reported his investigations had shown a dramatic drop in the number of complaints arising out of door-to-door sales. (Tr. 56.) In speaking favorably of the results of cooling-off legislation, Attorney General William J. Scott, of Illinois expressed the need to improve the Illinois law on the subject (Tr. 889). Senator Moss testified, "In those jurisdictions where door-to-door sales are presently being regulated, abusive practices have been minimized. It is now time that the benefits available to some consumers through such regulation be made available to all * * *" (Tr. 35, 36). An attorney with the Legal Service of Greater Miami, Inc., said that the Florida law was certainly an improvement because it added an additional remedy. (Tr. 542.)

[62] "I would like to be counted as one citizen and consumer who is entirely behind your proposed regulation * * *. By increasing the time available for the consumer to reflect on the product and on the instrument he has signed, many injustices can be prevented." (R. 2.) "The proposed period of time would allow the consumer to think over the purchase and discover any hidden details that the salesman had glossed over. The consumer would also be able to decide for himself if he really wanted the goods or services." (R. 547.) The Legal Assistance Foundation of Champaign County wrote, "The cooling-off period is a proper response to the problem. It is a distinct disadvantage for the consumer to deal with the high pressure after the sale. This is because there is no judicial remedy for the high-pressure sale. The proposed regulation would neutralize the door-to-door salesman's advantage." (R. 1922.) "There is sucker born every minute and he is the one who needs protection from themselves and as well as crooked salesman." (R. 10.) "* * * If this proposal/rule would go through and be approved it would certainly help a lot of people of all walks of life, especially the senior citizen * * *" (R. 35). The Legal Aid Office, Multnomah Bar Association wrote, "Often when a consumer is prodded into buying something he does not want or need in his own home, he comes to his senses within a very short period of time. A 3-day cancellation period would be most helpful to thousands of low-income Oregonians who are pressured into unwise transactions." (R. 684.) "The marketplace is a meeting ground of professional sellers and amateur buyers. It is essential that a more equitable balance be established between the professional and the amateur. The adoption of this rule would be a small step, but at least a step in the right direction in bringing about a little more fairness between buyer and seller in the marketplace. Just recently three coeds came to see me about how cleverly they had been led to sign contracts for over $300 worth of merchandise under a type of door-to-door selling * * * I think it is essential that this rule be made effective." (Stewart Lee, chairman, Department of Economics and Business Administration, Geneva College, R. 605.) In commenting on the rule a management consultant wrote, "I feel that the proposed * * * rule is specifically designed to correct a specific problem * * * that of high pressure salesman obtaining signatures on contracts to purchase * * * (Robert A. Belden, R. 419). In commenting upon the effectiveness of the proposed rule a consumer said, "I suspect such a move would make high-pressure sales tactics sufficiently uneconomical as to encourage a more responsible 'soft sell' by merchants." (R. 50.)

[63] Congressman Mikva said, "It has become increasingly clear that self-regulation within the direct selling industry is inadequate to eliminate misleading and deceptive sales techniques * * * It is equally clear that existing Federal laws fail to provide adequate, easily accessible, and inexpensive remedies to consumers." (R. 468.) Congressman Rooney testified, "Adequate control of consumer abuses cannot result from crackdowns on individual industries in which abuses are rampant. Under pressure, the perpetrators of those abuses merely switch their sales talents to some other product or service. Thus the only answer is to set down some basic regulations for the conduct of all sales in the direct selling field. And the first line of consumer defense is to have the right during a specified period of time to cancel a contract without obligation. The cooling off period proposed by the Commission is a positive response to that need. It allows the consumer to revoke decisions made in haste, often because of pressure, or cajoling, or even intimidation during a confrontation with a salesman." (Tr. 12.) Mr. Alvin Friedman, a banker said, "A distinct advantage of the proposed rule is that the remedy is self-executing. It is readily available to all buyers, regardless of their socio-economic status or level of education. Experience has taught us, especially in the consumer field, the remedies are illusory unless it is automatic." (Tr. 772.) The Legal Aid Service Agency of Columbia, S.C. wrote: "It has not been unusual for our office to be frustrated in remeding the consumer in a door-to-door sale. The immediate finalization of a binding contractual obligation is the problem. The door-to-door salesmen's adept psychological manipulation of the buyer frequently wears off within a short period of time. Complaints * * * result in classification by the seller of the buyer's condition as 'simple buyers remorse'. The new regulation would also give the consumer an opportunity both to prevent deceptive practices that the Commission does not have the manpower to control and to provide an immediate remedy for well recognized abuses of interstate commerce." (R. 416.) The Secretary for the Mayor's Committee on Consumer Protection for the city of Los Angeles said that the following preventive remedies had been tried in the past and proved to be unsuccessful: Better control and training of salesmen; regulation by national associations of direct selling companies; local licensing laws; various consumer education programs (R. 600). The Honorable Daniel T. Prettyman, Associate Judge, the First Judicial Circuit of Maryland wrote, "From over 9 years experience as a County Prosecuting Attorney and for nearly 7 years as a Circuit Court Judge, I can think of no action by the Federal Trade Commission that would be of more effective and substantial benefit to the public than that now proposed for door-to-door salesmen * * *" (R. 240).

[64] Senator Moss pointed out that one of the problem areas not affected by the proposed rule is the situation in which the merchandise is delivered or the service performed after the cooling-off period has lapsed. (Tr. 41.) This was also recognized by the Legal Aid Society of Metropolitan Denver (R. 542). See also Statement by Senator Moss (Tr. 37).

[65] The Legal Assistance Foundation of Champaign County said, "The cooling off period will have a number of effects on the direct selling industry. The right to cancel will encourage comparative shopping. The right to cancel will force the salesman to shift his attention from pressuring the consumer to reach a decision to creating a sale based on quality merchandise at reasonable prices. The * * * period will allow the consumer to reevaluate purchases and prevent financial budgetary problems." (R. 1922.) In its brief, the Wisconsin Department of Justice said, "* * * a cooling off period * * * would alleviate these * * * complaints in several ways. First it would provide a 'decompression' period, which would permit the consumer * * * to recover from the high pressure * * * (it) would also serve to discourage high pressure sales pitches. This would result from the fact that a great number of sales * * * would be canceled * * * In addition, a cooling-off period * * * is consistent with the principle of comparative shopping and provides the buyer with a chance to carefully consider the documents he is required to sign * * * One further reason for supporting the need for a cooling-off period concerns the individual who is intimidated by the salesman. This is the person who is afraid to say no and who purchases the product in order to get the intruder out of his house * * *" (R. 644–645). After pointing out that sometimes consumers agree to a purchase simply because they feel helpless to resist, Mr. M. Paul Smith, president of the District of Columbia City Wide Consumer Council said, "There are also consumers who need assistance from someone other than a salesman to help him to understand the terms of the contract * * *. Your proposal would allow this consumer to consult with someone who could explain to him the details of the contract. Then he could decide whether or not he would like to proceed with the purchase * * *" (Tr. 340). The fear on the part of industry members that the rule would lead to comparative shopping is illustrated by the statement of one who said, "To allow 3 days really gives the consumer a situation whereby he then uses the original salesman, not because he has been misled, but to pressure other Sales Representatives to give him a better deal so that he can thereafter cancel the contract." (Alsar Manufacturers, Inc., R. 1773.)

On the other hand, in the absence of a successful and continuing consumer education program, the effectiveness of the rule upon the operations of the ghetto peddler would be problematical.[66]

Although the rule is envisioned by some as a method of reducing the number of door-to-door salesmen who annoy the householder by discouraging persons from seeking careers as direct salesmen, it is not designed or intended to have that effect even though it might curb some of the more objectionable and perhaps effective sales practices of individual salesmen.[67]

Standing alone, a unilateral right on the part of a consumer to cancel a door-to-door sale probably would not halt the use of deceptive door openers. However, it would be an indirect restraint because industry members would realize that the consumer will have time to reflect upon the means used to gain entrance to his home, and if that means outrages his sensibilities, he will cancel the sale.[68]

CHAPTER VIII. OPPOSITION TO THE RULE

A. Consumer opposition. There was little consumer opposition to the proposed rule. Several printed form petitions signed by individuals were submitted for inclusion in the record.[69] Some consumers objected to the rule on the grounds that it represented an unwarranted intrusion of government into the conduct of their business affairs.[70] Some individuals criticized the proposed rule saying that it would deprive them of a necessary and convenient service.[71] A few statements opposing adoption of the proposed rule without specifying the reasons were also received.[72] Several consumers also voiced one of the primary industry objections to the proposed rule, i.e., that it was discriminatory.[73]

One consumer representative questioned the effectiveness of the proposed rule on the grounds that many poor people would be unaware of their cancellation rights or would not become dissatisfied with the transaction until after the cooling-off period had expired.[74]

B. *Industry opposition.*

The most commonly expressed industry objection to the proposed rule was that it discriminated against sales in the home and left untouched other methods of retailing such as sales in stores and mail orders.[75] Several direct sellers objected to the proposed rule on the grounds that it was unfair to the salesman, cast unjust aspersions on the industry, and was based on the false premise that the consumer is susceptible, weak-kneed, ignorant, and incapable of making a rational decision.[76]

Others complained that the repetitive requirements for advising the consumer of his right to cancel was simply an invitation and encouragement for him to do so.[77] Some said that the consumer would use the rule as an escape hatch to cancel contracts because of changed circumstances and not because he had been high-pressured into buying something he did not want or could not afford.[78] One businessman wrote that the rule would have the effect of destroying the direct sales industry and that the rule was a classic example of over-kill.[79] Another wrote that there were already a sufficient number of laws and regulations on the books to control the activities of the bad merchants and that further controls were not needed.[80] Salesmen, for the most part, based their opposition to the rule on the theory of discrimination.[81]

A substantial number of direct sellers reported that they had already adopted a policy of permitting the consumer to cancel a sale within a stated period of time and that either the rule was unnecessary and should not be adopted or that they should be exempted from its requirements.[82] Some of the larger companies reported that they had used the cooling-off provisions either voluntarily or because of State requirements without any particularly adverse effects.[83]

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[66] The necessity for a consumer education program to support the rule was pointed out by a number of those who testified at the hearing (Tr. 361, 555, 889).

[67] See Note 51, supra.

[68] The fact that the cooling-off right would probably not have too much effect on the use of deceptive door openers is illustrated by the acceptance of the cooling-off principle by many industry members who at the same time objected to a provision in the proposed rule which would require the salesman to state immediately and forthrightly the purpose of the call (see Tr. 158, 159, 187, 188, 227, 228, 434).

[69] R. 114, 209, 258, 1639. These petitions stated in part: "* * * We firmly believe that such a restriction would permanently discourage any further direct selling and deprive us of the convenience we now enjoy in having salesmen come to the house where we can examine and select merchandise in the privacy of our homes, receive the personal attention you can no longer get in a store, and save us the time of a shopping trip. We are adults, quite capable of making a decision as to what we want to buy, and we don't need 3 days to make up our minds, especially at the cost of cutting off the kind of service you cannot get today from a harried salesgirl in a retail store."

[70] One individual wrote: "Government is already too complicated and too costly and already controls too much of the people's lives. Any additional controls can only be a further step toward eliminating the freedom that distinguishes this great society from the many oppressive societies that infest the world today."

* * * * *

"I believe that the average customer is capable of deciding for himself at the time of purchase whether he needs or wants the merchandise offered and, further, that he is capable of judging the quality. It is an insult to his intelligence to think otherwise." (R. 349.)

[71] R. 201, 679, 685.

[72] R. 202, 239, 391, 455, 636.

[73] "Some of the finest products I have purchased have been in my home * * * Deceptive contracts can be written in stores as well as the home and I feel any regulation imposed should apply to store sales as well as home sales." (R. 399–401.)

"In my opinion this rule is unfair and discriminatory and ridiculous unless it is also made to apply to every other person who sells merchandise * * *" (R. 635.) See also R. 685, 688.

[74] Richard F. Halliburton, Legal Aid and Defender Society of Greater Kansas City, Inc. (Tr. 559–560). Fears that a lack of knowledge on the part of consumers would frustrate the effectiveness of the rule were also expressed by Diane McKaig, supra note 42, at Tr. 619–620.

[75] Charles Betz, speaking on behalf of the Water Conditioning Foundation said, "We cannot accept the basic premise that in-home selling is guilty and in-store selling is not."

"We cannot accept the proposition that home solicitation sales should be regulated whereas sales from a business establishment should not be regulated to the same extent." (Tr. 757.) David Yoho, president, Surfa-Shield Institute testified, "The fact is this is class legislation and if, in fact, the recision of a contract represents a better way to do business for the consumer, then I believe the same rule should apply for every product and every service, whether it is sold at the seller's place of business or at the buyer's residence." (Tr. 122.)

"We feel that the imposition of a cooling-off period for door-to-door home solicitation sales is discriminatory and that the proposed rule of the Commission may exceed the authority it has received under the Act simply because the rule does not regulate, but legislates * * *"

* * * * *

"The cooling-off period that the Commission now wishes to prescribe is a further impediment to a traditional sales method of our industry. It hinders the seller and creates no benefit to the purchaser." (Statement, The National Remodelers Association, Inc., R. 1433.)

[76] See letter from the Southwestern Co. (R. 279). Other industry comments to this same effect appear at R. 524, 621, 682. Two local Better Business Bureaus wrote "* * * the rule * * * would * * * unfairly handicap legitimate business; encourage unfair competitive business practices; tend to undermine the fundamental basis of contract between buyer and seller; increase the cost of merchandise and services to the consumer." (R. 186 and 330.)

[77] "Why not give the buyer the right to cancel any purchase within 3 days? What about high pressure automobile, appliance, real estate salesmen and so on? * * * to advertise a 3-day period of cancellability is to immediately invite those who otherwise would not have signed a contract to sign anyway." (Charles Bedinghaus, Continental Associates, Inc., R. 30.)

[78] One merchant said, "* * * I used to operate a direct sales franchise and I would estimate that 97 percent of my customers were satisfied. I would also say that about 60 percent of them would have cancelled because of 'buyers remorse' before they realized the true worth of the product * * *" (Terrance J. Mitchell, R. 48).

[79] P. J. Schick, R. 192.

[80] Letter, Belvedere Furniture Co., R. 233.

[81] See for example letter, Thomas J. Saigh (R. 239); and letter, William E. Huff (R. 244).

[82] R. 257, 332.

[83] Encyclopedia Brittanica said that it was using and would continue to use a 4-day cooling-off period (Tr. 864–865). Mr. Robert Frase, said that he had the impression that compliance with the cooling-off laws of the various States had not had an adverse effect on the business of the members (Tr. 278). Other industry members said that their money-back guarantee was a far more effective and simple remedy. For an exposition of this view see the statement of Avon Products, Inc., R. 849.

The argument that reputable companies permit cancellations within reasonable time limits was also offered to show that these companies would be most adversely affected by the rule since they would comply with it while the more disreputable members of the industry would continue to use the deceptive and unfair practices which was the basis of the rule.[84] While it is true that a substantial amount of door-to-door selling is characterized by high-pressure salesmanship and there seems little likelihood that such tactics will be completely abandoned, it should be emphasized that the principal virtue of the rule is that it gives the consumer an effective weapon of self-help with which to combat those tactics.[85] Moreover, even industry members recognize that compliance with the rule will not unduly curtail the reputable salesman in his business activities.[86]

As for the discrimination argument, it cannot be denied that many retailers use high pressure to make sales in their respective establishments. However, even if it were conceded that retailers generally were guilty of the practices of door-to-door sellers this fact would not justify a failure to act against the latter.[87]

[84] The fact that high-pressure sales tactics and the other practices against which the rule is directed is employed by many reputable companies is thoroughly documented in the record. Congressman Rooney said, "* * * Permit me to remind you the PDS segment of the magazine sales industry was neither a small minority nor a fly-by-night operation. It is represented by some of the largest and most prominent publishing houses in the entire country * * *" (Tr. 10–11). Two salesmen for Brittanica pasted "Special Delivery" stickers over the cooling-off provision in the contract (R. 1496). The fact that this was directly contrary to the company's policy (R. 1888–1889) simply illustrates the difficulty that a direct sales company has in controlling its outside salesmen.

[85] Frederick R. Sherwood said, "* * * we back this treatment * * * it is a low-cost method of consumer protection because it is very much self-administered * * *" (supra note 37 at Tr. 36).

[86] George P. Britt, Health-Mor, Inc. (Tr. 893–895). The view was also expressed that the existence of the remedy would do much to restore the image of the direct selling industry (Professor Buell, supra note 30 at Tr. 835).

[87] In its statement the National Consumer Law Center said concerning the discrimination argument, "To those in the door-to-door selling industry who will say that such a rule is onerous or unfair, we say that they will have no more or less disadvantages than others who compete in the marketplace. That they have been able to sell in their desired manner this long is no justification for allowing them to perpetuate the system.

"The elimination of the unfair advantage of the door-to-door salesman is an idea whose time has come. These salesmen are to learn that the consuming public does not share their philosophy that the art of selling is limited to deceiving or pressuring the buyer into signing a piece of paper. As the consumer becomes more aware of the nature of the

Industry representatives also argue that the effect of the rule will be to increase costs and hinder the recruitment of a sales force.[88] These arguments overlook the fact that in those states which have adopted similar rules there has been no diminution in legitimate selling activity or increased costs resulting from the difficulty of recruiting a sales force.

CHAPTER IX. AUTHORITY OF THE COMMISSION TO PROMULGATE THIS RULE

The argument was made during the course of this proceeding, as has been done in other Trade Regulation Rule proceedings, that the Commission does not have the authority to promulgate Trade Regulation Rules.[89]

In the Statement of Basis and Purpose accompanying the Cigarette Rule, the Commission's trade regulation rulemaking authority was thoroughly discussed; and it was concluded that Trade Regulation Rules are "* * * within the scope of the general grant of rulemaking authority in section 6(g) (of the Federal Trade Commission Act), and authority to promulgate (them) is, in any event, implicit in section 5(a)(6) (of the Act) and in the purpose and design of the Trade Commission Act as a whole." (See Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking and Accompanying Statement of Basis and Purpose of Rule, pp. 127–150 and 150.) Nothing developed during the course of this proceeding warrants a change in the view that the Commission has the authority to issue Trade Regulation Rules.

Industry members also questioned the authority of the Commission to issue this specific rule because the remedy exceeds what the Commission may do to eliminate whatever abuses may exist in the direct selling field.[90] However, it is well established that the Commission has wide discretion both in determining what practices are unfair or deceptive[91] as well as in fashioning appropriate ways to eliminate such practices.[92] Moreover, the specific authority of the Commission to require business firms to include a cooling-off provision in their sales contracts has been confirmed as within the scope of the Commission's discretion.[93]

In extending the cooling-off rule to practically all direct sellers, the Commission is persuaded by the record proof that inherent in this method of selling is a potential for high-pressure sales tactics, misrepresentations as to the quality of the goods and services offered, misrepresentations as to the price or characteristics of the products sold, high prices for low quality, and other abuses which often result from the visit of a salesman to a consumer's home. Indeed, the use of such methods is facilitated by the circumstances of in-home sales. The salesman works on a straight commission basis, often unsupervised by his employer while he make the sales presentations; he also has a carefully and scientifically designed sales pitch and the status of quasi-guest in the home. With the exception of the ghetto peddler, it is unlikely that the door-to-door salesman of high ticket merchandise or services will have any further contact with the buyer. This makes the use of high pressure and misrepresentation much less repugnant to him.

As a remedy for the poor bargain, for high-pressure, and for misrepresentations which are promptly discovered, the unilateral right of the buyer to rescind has proven to be a highly effective weapon in those States and municipalities which have adopted a cooling-off statute. The enactment of such laws has been followed by a dramatic reduction in consumer complaints respecting door-to-door sales transactions.

Consumers and consumer representatives, i.e., those who participate in the activities of private organizations aimed at improving consumer protection, as well as State and local officials, approved adoption of the rule. In addition, the

competitive process, the less he will tolerate deviation from its standards." (R. 845.) In Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949) Justice Douglas said, "* * * equal protection (does not require) that all evils of the same genus be eradicated or none at all" (110).

[88] Professor Buell points out, *supra note* 24, at Tr. 834: "* * * Cancellation raises costs of distribution; there is a loss of invested sales time as well as costs to companies, and, in many cases to sales people, in processing canceled orders, returning downpayments, retrieving delivered goods, and returning traded-in merchandise * * *." See also The Direct Selling Industry, supra, note 13, at pages 733–735.

[89] See Statement of the American Retail Federation (R. 609–613); Brief on Behalf of the Direct Selling Association (R. 929–971); Statement of the Water Conditioning Foundation (R. 1404–1426); Views and Arguments of Crowell, Collier, and Macmillan, Inc. (R. 1843–1852) for very thorough presentations of the view that the Commission does not have the authority to promulgate trade regulation rules.

[90] Id.

[91] Federal Trade Commission v. R. F. Keppel & Bros., Inc., 291 U.S. 304 (1934); Max H. Goldberg v. Federal Trade Commission, 283 F. 2d 299 (7th Cir. 1960); Lichtenstein v. Federal Trade Commission, 194 F. 2d 607 (9th Cir. 1952); Cert. den., 344 U.S. 819 (1952); National Trade Publications Service, Inc. v. Federal Trade Commission, 300 F. 2d 790 (8th Cir., 1962); Federal Trade Commission v. Consumer Home Equipment Company, 164 F. 2d 972 (6th Cir. 1947), Cert. den., 331 U.S. 860 (1947); Dorfman v. Federal Trade Commission, 144 F. 2d 737, 739–740 (8th Cir. 1944); Federal Trade Commission v. Holland Furnace Co., 295 F. 2d 302 (7th Cir. 1961).

[92] Jacob Siegel Co. v. Federal Trade Commission, 327 U.S. 608 (1946), 1946–47 Trade Cases Section 57,451. Federal Trade Commission v. Ruberoid Co., 343 U.S. 470 (1952), 1952 Trade Cases Section 67,629. Federal Trade Commission v. National Lead, 352 U.S. 419 (1957), 1957 Trade Cases Section 68,629.

[93] Windsor Distributing Co. v. Federal Trade Commission, 437 F. 2d 443 (3d Cir. 1971).

record indicates that the majority of the direct selling industry has accepted the cooling-off concept. Finally, the record shows that use of a cooling-off provision in door-to-door sales contracts has not been harmful to the members of the industry which have already adopted it whether such action was taken voluntarily or to satisfy the requirements of applicable laws.

In sum, the record in these proceedings provides a firm basis for the conclusion that a trade regulation rule providing for a cooling-off period in door-to-door sales is justified and would be in the public interest as a means of enabling consumers to protect themselves from the tactics widely used by door-to-door salesmen.

CHAPTER X. THE SCOPE OF THE RULE

The record contains many comments about specific provisions of both the proposed rule and the revised proposed rule. Individual consumers and consumer groups suggested adoption of modifications which they believe will make the rule stronger and more effective. Industry members, who accept the cooling-off principle, have recommended changes which they believe will be more equitable from their standpoint and which will lessen the administrative burdens which they foresee would result if the rule were adopted as proposed. These alternatives and proposed modifications will be discussed below.

Following the release of the proposed rule for the receipt of comment, an ad hoc interindustry committee of direct selling companies and interested associations was formed. The principal task of this committee, under the chairmanship of Frederick R. Sherwood, was to formulate an alternative rule which would in their words reflect accurately and responsibly the realities of the direct selling business in order to provide maximum consumer protection with the lowest possible hardship to industry members.[84] The alternative rule was submitted and placed on the public record by Mr. Sherwood together with some explanatory memoranda.[85] The alternative rule will be commented upon later in this Chapter X and in Chapter XI.

A. *Leases and other special transactions.* Several representatives of consumer groups expressed the view that the definition of "door-to-door sale," as well as the definition of "consumer goods and services," be expanded to include leases and rentals.[86] They said that in some States door-to-door sellers were beginning to lease their goods instead of selling them in order to escape the provisions of the State cooling-off legislation.[87] This recommended change has been made in the final rule.

In addition, the word "use" was deleted and the word "purposes" has been inserted in its place in the final rule in order to avoid any connotation that the rule does not apply to goods which are not used or consumed.[88]

The phrase "including courses of instruction or training regardless of the purpose for which they are taken" was also added to this definition in the revised proposed rule and final rule. This addition was made since it is considered essential that there be no question that the rule applies to door-to-door sales of both home study and vocational school training.[89]

B. *Exclusions of sales under $25.* The definition of "door-to-door sale" released with the original proposed rule included sales of consumer goods or services with a purchase price of $10 or more, whether under single or multiple contracts. The phrase "whether under single or multiple contracts" was included in the original rule and in the final rule in order to insure that the rule would apply to transactions in which the seller writes up a number of invoices or contracts none of which show a price of $10 or more, but when taken together the total price exceeds that amount. In other words if the seller sells more than one bill of goods or services to a consumer at substantially the same time, the total price for all will be used to determine the applicability of the rule, even though the seller may prepare separate invoices or contracts for one or more of the goods or services sold.

In the revised proposed rule and in the final rule the exclusionary limit was established at $25. The principal purpose of this limit is to exclude sales by milkmen, laundrymen, and other route salesmen who customarily make sales which would otherwise fall within the scope of the rule.

The difficulty of establishing the exclusionary limit is illustrated by the striking differences among State laws. In three of the cooling-off States, the rule applies only to sales of $25 or more; in one State to sales of $50 or more; and in another to sales of $150 or more.[100]

The Uniform Consumer Credit Code provides only for coverage of "consumer credit sales."[101] The overwhelming majority of the State laws apply only to "installment sales," and some consumer representatives recommended that the proposed rule be amended to conform to such laws.[102]

Congressman Rooney said that the rule should apply to all door-to-door sales regardless of the amount involved, since he had discovered that some 56 percent of magazine subscription sales were valued between $10 and $25, with another 24 percent at less than $10.[103] A majority of industry members advocated exemption of transactions of less than $25.[104] Consumer representatives were not in agreement as to the amount of an exemption. Some said all door-to-door sales should be subject to the rule regardless of the amount;[105] others said the $10 limitation in the proposed rule should be retained.[106] Those who were familiar with the operation of State statutes having a $25 limitation, said that figure had been satisfactory.[107]

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[84] R. 789–794.

[85] Tr. 62–73; R. 787–788; a chart containing a comparison of the provisions of the alternative rule with those of the proposed rule was presented by Mr. Sherwood and is included in the record (R. 795–800).

[86] Benny Kass, Esq., on behalf of the National Legal Aid and Defender Association said, "* * * leasing has become a popular alternative to credit sales as a means of distributing goods to consumers, and certainly merits inclusion in the coverage of this Trade Rule." (Tr. 139.) David Cashdan, Consumer Federation of America. (R. 377.)

[87] Memorandum Submitted by Ohio State Legal Services Association (R. 379).

[88] This suggestion was made by a number of consumer representatives: Christian S. White, Public Interest Research Group, at Tr. 322, Fritsch, supra note 32 at Tr. 526, and Lemke, supra note 57 at Tr. 649.

[89] The United Business Schools Association stated that its members would not be subject to the rule since the courses offered were for the purpose of giving vocational training for use in business (R. 1591–1592). The need for this amendment was also expressed by a consumer representative (Ron Fritsch, supra note 32 at Tr. 525).

[100] R. 1791; S. 1599 applied only to transactions of $60 or more, Note 10, supra, page 4.

[101] The term "consumer credit sale" is defined in section 2.104 of the Code. Subsection (d) provides: "Either the debt is payable in installments or a credit service charge is made * * *."

[102] R. 1791; Mr. Donald Elberson said, "I think the major thrust should be, as far as we have been able to determine in New York, an installment sales contract. I think this is the major source of difficulty at the present time." (Tr. 60.) Miss Betty Furness concurred in this view (Tr. 78–79). Mr. Richard Givens said, "The unfair practices * * * have been concentrated exclusively in credit transactions obtained by solicitors. Cash sales by home solicitors, whether by Girl Scouts canvassing with cookies, or by such firms as Avon which do not use credit contracts or seek to enforce collection from customers, have not generated abuses * * *."

"If the Commission were to restrict the application of the proposed Trade Regulation Rule to credit sales * * * and cash sales of over $100, it would appear that much inconvenience which might be claimed to flow from the Rule as originally proposed could be obviated." (Tr. 97–98.) See also Tr. 176.

[103] Tr. 13–14.

[104] Tr. 66. However, those who anticipated that a few and perhaps a minority of their sales might be subject to the rule because of such a low exemption price advocated that it be increased. Although the average Avon sale was said to be under $10 the company recommended that the exemption be increased to $60 (Tr. 242, 249); Watkins Products said $50–$75 would be more realistic (R. 674); The Southwestern Co., $50 (R. 413); the National Institute of Drycleaning and the American Institute of Laundering, $100 (R. 706).

[105] Behre, supra note 45 at Tr. 166; National Consumers League statement (R. 1065). National Consumer Law Center (R. 2403–2404).

[106] Richard X. Connors, testifying on behalf of the National Consumer Law Center (Tr. 216); Byrne, supra note 31 at Tr. 503.

[107] Mrs. Bette Clemens of Pennsylvania, who said, "It has been our experience * * * that the contracts * * * for magazine sales * * * are over $100 * * * (Tr. 444). Miss Sally Weintraub of Florida said that the $25 limitation had covered most of the sales which had caused them difficulty and added that they were generally concerned with sales in the $150 to $200 range (Tr. 554).

The argument in favor of a $25 or higher limitation is that it would reduce the inconvenience to the seller while still enabling consumers to enjoy the benefits of the cooling-off provision if it is really needed—in cases where they have overextended themselves financially.[108] Support for a $10 or lower exemption is based on the assumption that the poor are particularly in need of protection, and that a $10 sale is just as important to them as a much larger sale is to the more affluent.[109]

In deciding that the $10 exclusion in the proposed rule should be increased to $25, the Commission was persuaded by the fact that a door-to-door salesman could not long survive if his livelihood depended upon the expenditure of very much time and effort to make a sale of under $25. Sales for less than that amount simply would not justify the use of a lengthy high-pressure sales pitch which has been identified as the most prevalent source of complaints regarding door-to-door sales. Virtually all of the examples of the sort of sales which outraged consumers were for amounts substantially in excess of $25.[110]

C. *"In-home" sales by retailers.* The revised proposed rule specifically excluded from the definition of door-to-door sales certain types of transactions. There was no substantial objection to these exclusions although they were the snbject of some comment.

In commenting upon the original proposed rule, industry members suggested an exemption for in-home sales by salesmen from established stores in the community who are invited to visit the home by the consumer as a result of an unsolicited telephone call or an unsolicited written request.[111]

The hazards of such a blanket exemption are illustrated by a description in the record wherein the consumer invited a home-improvement-type salesman to her home after seeing an advertisement for a patio roof at what seemed to be a bargain price, only to learn that it was a bait advertisement.[112] Such an exemption would also exclude the party plan sales, wherein the hostess invited the salesman to a party of her acquaintances.[113] It would open the door for salesmen using all sorts of spuriously obtained invitations.[114] Rather than grant such an exemption, the Commission believes it should be made clear that the rule applies to an ordinary transaction in which the buyer invites a salesman to the home. Therefore, in the revised proposed rule and in the final rule, the words, "whether in response to or following an invitation by the buyer" were added to the definition of "door-to-door sale," following the phrase, "in which the seller or his representative personally solicits the sale."

One exception to the scope of the proposed rule which appears to be worthy of adoption is the one which would exempt sales made in the home pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment, having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis. This exception which was included in the revised proposed and final rules would apply if the buyer visited a furniture or carpet store, for example, and after discussing certain merchandise, asked that a salesman be sent to the home to measure or show samples.

While such sales are actually consummated in the home, the attributes of the typical door-to-door sale are not present—the consumer has not been duped or otherwise deceived as to the purpose of the sales call. If such sales are not excluded, it would be necessary for retail stores who do most of their selling on their business premises to devise separate contracts or forms for use on home calls, or alternatively, to require the customer to return to the store to sign the contract.[115]

D. *Overlap with Regulation Z.* In addition to those dealing with sales resulting from previous negotiations in a retail establishment and emergency situations, a provision that the rule will not apply to transactions in which the consumer is accorded the right of recission pursuant to Regulation Z was added in the revised proposed rule. This is to avoid any conflict regarding the form of notice or to impose duplicitous requirements on the seller,[116] and has been retained in the final rule.

E. *Emergency Repairs.* Another exception to the consumer's right of cancellation appears to be necessary where the consumer is in need of emergency repairs, replacement, or service.[117] Some consumer witnesses expressed the fear that such a provision might be improperly used by unscrupulous sellers to avoid the effect of the rule,[118] while others stated that such an exception, if properly restricted, would be appropriate and not inconsistent with the purpose of the rule.[119]

The alternative rule proposed by the ad hoc industry committee contained an emergency exception provision patterned after the one used in Regulation Z.[120] However, as it appeared to the Commission that additional safeguards were required, the revised proposed rule limited the exception to instances in which: (1) The buyer has initiated the contact; and (2) the seller is furnished with a statement in the buyer's handwriting describing the situation requiring an immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days.

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[108] "I find the $10 limit, in my view, is perhaps too low rather than too high. I am concerned in this respect that the Commission may find a great deal of trivia involved * * *." (Prof. William F. Lemke of the Loyola Law School (Tr. 649).) Mr. Richard Givens testified to much the same effect (Tr. 98).

[109] R. 1065.

[110] See Notes 39, 49 supra.

[111] Miller Stormguard Corp. (R. 15); National Association of Music Merchants (R. 701). "Another less frequent transaction is a sale in the customer's home following a request by the customer to have a salesman bring to the customer's premises samples for demonstration purposes or descriptive literature for information purposes about products, such as washers, dryers, refrigerators, vacuum cleaners, sewing machines, hearing aids, or farm or garden equipment, such as tractors. These transactions also result from the customer's initial contact of the store and request for such a home demonstration or presentation. These demonstrations or presentations are made at the customer's home for the customer's convenience or accommodation, as when a customer is not physically able to visit a store because of age or other infirmity. Again, the transaction may be consummated at the customer's home after the demonstration or presentation without the customer ever visiting a store. As with the installation or custom-fitting transactions, these home demonstration or presentation transactions would be included by the proposed rule.

"The addition of the following new subsection to Note 1(a) is suggested to exclude the above described transactions by established retail store organizations:

"Made pursuant to prior contact initiated by the buyer in a telephone or mail communication in which the buyer requested the seller, who maintains a retail business establishment having a fixed location where the goods are exhibited or the services offered for sale on a continuing basis, to provide an estimate, demonstration, presentation or fitting in the buyer's residence or place of business as an accommodation or convenience to the buyer." (Sears, Roebuck & Co., R. 2127–2128.)

[112] Tr. 99.

[113] Tr. 186.

[114] Mr. Ron Fritsch said, "The most abusive of the door-to-door sales arise in connection with the companies who advertise in the newspapers and over the radio and television for free, no obligation home estimates for such items as draperies, reupholstery, carpeting, slip covers and home repair and remodeling * * *. Any worthwhile door-to-door sales law must apply to these cases. Time after time my clients tell me they sign contracts in their homes only to get rid of the salesman who has become too persistent and overbearing." (Tr. 517.)

[115] This exception is in the Uniform Consumer Credit Code (sec. 2.501) and its inclusion in the rule was strongly recommended by the National Association of Music Merchants (R. 700–701) and the National Retail Furniture Association (R. 402–403).

[116] Givens, supra Note 22 at Tr. 109

[117] The necessity for exceptions to the cooling-off provisions in such circumstances is recognized in sec. 226.9(e) of Federal Reserve Regulation Z and in sec. 2.503(1) of the Uniform Consumer Credit Code. The executive secretary of the National Pest Control Association said that a major portion of the exterminating business results from calls for assistance and service from consumers (Tr. 255). An emergency may arise when the consumer discovers the sudden appearance of insects—she would obviously not want to wait 3 days to obtain service (Tr. 263).

[118] Tr. 343; Tr. 531.

[119] Tr. 108; Tr. 500; Consumers Union also recommended the inclusion of such an exception (R. 1577).

[120] R. 793.

Industry members objected to the requirement that the waiver be in the buyer's handwriting and said that the arrangement was too cumbersome and time consuming and was an unnecessary appendage to a routine transaction.[121] They also correctly pointed out that if the buyer exercised his right of cancellation after the work had been performed the seller would not have any means of recovering the costs entailed in making the repairs or performing the service. Equally compelling were statements to the effect that the repair of a television set or the provision of laundry and dry-cleaning service would hardly be classed as an emergency, yet the buyer would not want to wait 3 days to have such services performed. Sellers, of course, would be reluctant to commence performance unless the cooling-off period had expired.[122] The record does not disclose whether a substantial number of the mentioned service industry members are in commerce and thus subject to the Commission's jurisdiction. However, it would appear that in many areas such businesses would be subjected to the rule. The Commission does not believe, as recommended by some, that the rule should not apply to services at all but only to the sale of goods.[123] Such a limitation would create a wide escape hatch which would no doubt be used by many undeserving industry members to avoid the effect of the rule. Nevertheless, the Commission is of the opinion, as in the case of the legitimate route seller of goods, that the typical service company should be granted the relief it requests. Accordingly, the Commission has formulated the following exclusion to the definition of a door-to-door sale:

"* * * The term 'door-to-door sale' does not include a transaction:

* * * * *

(5) in which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's *personal* property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion. [Italic supplied.]

The exclusion does not permit the seller to replace a furnace or appliance or to sell the buyer other personal property such as furniture, draperies, or fixtures; without complying with the rule, nor would it apply, for example, to the sale of an annual maintenance or service contract for appliances. The term "personal property" is used in its legal sense to limit application of the exception to property that is not real property, i.e. land, buildings, and the like. Thus this exception may not be used in transactions such as the sale of driveway resurfacing, aluminum siding, roofing materials or treatment, landscaping, repairs to the home, or to other real property.

F. *Telephone transactions.* An exemption of transactions conducted and consummated entirely by mail or by telephone was also in the revised proposed rule and has been retained in the final rule. This exemption is premised on the theory that mail order and telephone sales do not have the attributes of the door-to-door sale and that a consumer should be able to order goods or services by mail or telephone and the seller to deliver or perform the services so ordered without satisfying the notice and other requirements of the rule.[124]

G. *Cancellation after performance.* Concern was expressed about the possibility of cancellation by the buyer after services had been performed or expensive goods delivered. While some suggested, in keeping with the laws of several States, that the buyer should be required to pay a penalty, or pay on the basis of quantum meruit for services already performed,[125] the Commission believes that in non-emergency situations the seller should properly bear the risk of cancellation if he elects to perform before expiration of the cooling-off period.

H. *Sales in places other than the home.* The provision in the definition to the effect that the rule applies to sales made at a place other than the place of business of the seller was the subject of favorable comment by Miss Betty Furness, the Chairman of the New York State Consumer Protection Board, who said that a limitation in the New York statute restricted its applicability to sales in the home and that this had resulted in the invasion by salesmen of factories, shops, and other places.[126]

I. *Sales in the presence of an attorney.* The definition of "door-to-door sale" in the proposed rule also excluded sales made in the presence of the buyer's attorney. This provision was the subject of comment at the hearings with one interested party inquiring why his wife should be denied the benefits of the rule merely because he happened to be a lawyer.[127] This exclusion was found to be unnecessary and has been deleted.

J. *Special orders.* The Direct Selling Association joined several industry members in proposing that sales in which the seller offered the purchaser an unlimited satisfaction or money-back guarantee be excluded.[128] Industry members pointed out that such guarantees provide the consumer with greater protection than the cooling-off rule because they are generally unlimited as to time and the purchase price is refunded even though the product may have been used or consumed.[129]

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[121] "The emergency relief granted under Note 1(a)(3) is not practical in that it presents an almost impossible requirement to get 'a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days.' To explain such a requirement to the average customer with a pest problem and guide them through the writing of such a document would increase the cost of the service beyond reason. The response of our industry to this as relief has been to forget it as having any practical application. A preprinted form to be completed by the serviceman as to the nature and necessity of the emergency service could be used practically." (Letter, National Pest Control Association, R. 2283–2284.)

[122] "Should it be determined that this Regulation applies to the television service industry, and necessary changes to make it workable are not made, the net effect upon both the public and the industry would be most costly, as to protect themselves those engaged in the industry would be forced to bring all non-functioning television sets to their shops and do nothing to the sets until the 'Cooling-Off Period' had passed. This, of course, would result in delays, inconvenience and a much greater labor expense to an already overburdened consumer." (Letter, Martin J. Leavitt, R. 2128–2129, 2223.)

[123] "All references to services in the proposed rule should be eliminated. The proposed rule appears to be primarily directed to the sale of goods rather than continuing local oriented service industries such as ours. It is no secret that a poor service businessman is his own worst enemy. His life blood depends on the satisfaction of his customers on a continuing basis. It is for this reason, that examples of consumer abuse (of the kind intended to be eliminated by the proposed rule) are, for all practical purposes, nonexistent in the dry cleaning and laundry industries. It is conceivable that the proposed rule to include service industries would deprive the American consumer of delivery services by the milkman, the bakeryman, the cleaner, the launderer, and even the newspaper boy." (Letter on behalf of the American Institute of Laundering and the National Institute of Drycleaning, Inc., R. 2218.)

[124] The need for this provision was described by Mr. S. Arnold Zimmerman (Tr. 247–248). If this exception were not in the rule the placement of mail or telephone orders would be unduly complicated.

[125] David Cashdan, Consumer Federation of America (Tr. 381).

[126] Tr. 79, R. 345. The need for such a provision is fairly obvious as restriction of the effect of the rule to contracts signed in the home would lead to all sorts of subterfuges to get the consumer out of his home to sign.

[127] Kass, *supra* note 41 at Tr. 140. Suggestions that the provision is unnecessary also appear at Tr. 650, 715, 814; R. 1366.

[128] The Association said: "The Commission should also consider exempting sales that offer a satisfaction or money-back guarantee in a clear and obvious manner. The satisfaction or money-back guarantee is the ultimate in consumer protection and a step beyond the cooling-off rule which should be encouraged by the Commission. One way to accomplish this would be for the Commission to establish wording that would allow a seller to be exempt from the burdens of the cooling-off rule by providing the consumer with a satisfaction or money-back guarantee agreement that met the Commission's specifications." (R. 2228.) For supporting comments see letters from Sears, Roebuck & Co. (R. 2130); Mary Kay Cosmetics, Inc. (R. 2210); Avon Products, Inc. (R. 2212).

[129] "* * * we question the appropriateness of providing the consumer with a remedy which LIMITS his already existing remedy. We refer to those instances where companies are already providing the consumer greater

Adoption of a provision which would exclude from applicability of the rule sellers who provide a money-back guarantee would increase the enforcement problems associated with the rule to a point that the rule would be almost ineffectual. Every direct seller who desired such an exclusion would claim he offered such guarantee. Then the Commission would be confronted with a never-ending problem of determining whether the seller in fact gave such a guarantee and whether he performed his obligations under it. One of the principal advantages of the cooling-off rule is that it is self-enforcing. The consumer is given the unilateral right to cancel the sale. Its effectiveness does not depend upon whether a branch representative or subordinate manager understands the meaning and effect of a guarantee, or even upon his willingness to honor such a guarantee. The record does not contain any information which would indicate that it is impractical for a seller to use a money-back guarantee in addition to the cancellation right afforded by the rule, although two industry members attempted to illustrate the impracticality of such an arrangement.[130] In denying the request for this additional exclusion of certain sellers from the scope of the rule, the Commission recognizes that with respect to some sales an industry member will no longer be able to use the simple sales tickets which now evidence certain transactions and that compliance with the rule will entail some additional expense and inconvenience.[131] Nevertheless, for the reasons stated above the Commission is not persuaded that such an exclusion would be in the public interest or that the record would support it.

K. *Real property, insurance, and securities.* Recommendations were also received that the rule should contain provisions which clearly state that it is not applicable to transactions pertaining to the sale of real property, insurance, and securities. These will be considered in the order presented.

Insofar as the sale of real estate itself is concerned, neither the Commission nor members of the real estate sales industry believe that such sales would be subject to the rule as land would not fall within the scope of the definition of consumer goods or services. However, transactions in which a consumer engaged a real estate broker to sell his home or to rent and manage his residence during a temporary period of absence may fall within the class of transactions to which the rule would apply.[132]

The Investment Company Institute, the National Association of the Mutual Fund Industry, the Association of Mutual Fund Plan Sponsors, Inc., whose members sell contractual or periodic payment plans, the New York Stock Exchange, Inc., and the Securities Industry Association, all expressed a belief that the rule might be interpreted to apply to the sale of securities.[133] They pointed to a provision included in the Consumer Credit Protection Act which exempts "Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission",[134] and recommended that a similar provision be included in the rule.[135]

The National Association of Insurance Agents, Inc., on behalf of independent casualty insurance agents asked that sales of insurance agents be exempted from the requirements of the rule.[136] In taking this action they duplicated previous requests made by the American Life Convention, the Life Insurance Association of America, the Health Insurance Association of America,[137] and the National Association of Life Underwriters.[138]

The Louisiana Consumers League recommended that the definition of door-to-door sale be expanded to include "financial services such as insurance or investments less than $10,000." [139] The National Consumer Law Center also said that the definition of consumer goods and services should be amended to include expressly the sale of insurance.[140] Neither group gave its reasons for the respective requests.

It is the view of the Commission that the final rule would not apply either to the sale of securities or to insurance. Moreover, the record does not reflect that the sales of these intangibles have been accompanied by the objectionable practices which have characterized the sales in the home of consumer goods and services generally. Nevertheless the record does reflect concern on the part of both consumers and members of the affected industries as to whether the rule applies to these transactions. In order to resolve this uncertainty, the following provision has been added to the definition of "door-to-door sale":

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protection than that afforded by the 3-day cancellation privilege.

"Mary Kay Cosmetics offers its customers the following unconditional guarantee: 'If for any reason you are not completely satisfied with any product, it will be cheerfully exchanged or the full purchase price will be immediately refunded on its return to your Mary Kay beauty consultant or to the company.'

"This guarantee is brought to the attention of the customer by: (1) The beauty consultant reads it to the customers during her beauty show presentation directly from a 'flip-chart' telling the Mary Kay Story; (2) The guarantee is contained on product brochures and literature; (3) The guarantee is printed on the customer's receipt copy, also containing the beauty consultant's name, address, and telephone number, along with addresses of Mary Kay's corporate offices to which products may be returned.

"Please note that this product return privilege is given whether or not the products have been used and without limit as to time; therefore, it gives the consumer much broader protection than that afforded by the proposed rule. The guarantee is always scrupulously honored even though we sometimes received returned containers from unscrupulous consumers who have used all or almost all of the contents before returning the products for refund.

"In light of the proposed rule's applicability to companies which already provide this broader protection, we pose the very practical question—how does such a company comply with this rule in actual practice?" (Mary Kay Cosmetics, Inc., R. 2209.)

[130] "Imagine, if you will, a Mary Kay beauty show at which a lady beauty consultant is saying to the ladies present * * *

'Let's see, your purchase amounts to $22—you're alright. Mrs. Smith, yours is $30.50* (*the cost of the Mary Kay Complete Set, including Glamour Items is $30.50; the Basic Set cost is $18.50)—so, the Federal Trade Commission requires that I give you this notice of cancellation form which you have to return to me within 3 days, but don't pay any attention to that because Mary Kay allows you to return anything you don't like, whether you've used it or not without any time limit—no, you don't have to return it to me in 3 days if you don't like the night cream—I know it says that, and I have to give this form to you, but our company takes it back anytime. Now, Mrs. Jones, your purchase is $26, so I have to give you this Federal Trade Commission thing—but, Mrs. Doe, you can go, since you only bought $10, etc., etc., etc.'" (Mary Kay Cosmetics, Inc., R. 2210; Sears, Roebuck & Co., R. 2129.)

[131] A sample of one of these sales tickets appears at R. 855.

[132] See letter, National Association of Real Estate Boards (R. 2323–2324).

[133] R. 2325–2327, 2332–2334, 2340–2342.

[134] Section 104(2), Consumer Credit Protection Act.

[135] "We believe that as proposed the rule could be interpreted to apply to 'door-to-door sales' (as defined in the proposed rule) of securities by broker-dealers registered with the U.S. Securities and Exchange Commission (whether the securities are listed on a national securities exchange, traded over-the-counter or mutual fund shares). Such a result would not lead to increased consumer protection since securities transactions are already subject to a comprehensive system of Federal regulation. The U.S. Securities and Exchange Commission, the National Association for Securities Dealers, Inc. and the Federal Reserve Board regulate such matters as selling practices, qualification of salesmen, and extension of credit in connection with securities transactions.

"Furthermore, the proposed rule would be inappropriate in the securities area * * *. * * * Thus, a three business day rescission period would in effect give a customer a free 'put' and guarantee him against any loss for that period. Investors would be in a position to speculate free from risk for the period—if at the end of this time the securities increased in value the customer could keep it. But if it declined he could rescind the transaction and receive back his original investment.

"For these reasons, we believe that the rule as finally adopted should contain an exemption for securities transactions similar to that which Congress has included in recent consumer legislation. For example, 15 U.S.C. § 1603 exempts from the provisions of the Consumer Credit Protection Act 'Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.' We respectfully suggest that the rule as finally adopted should contain a similar exemption." (Letter, Investment Company Institute, R. 2325–2327.)

[136] R. 2452–2453.

[137] R. 359.

[138] R. 386–388, 1090.

[139] R. 2390.

[140] R. 2405.

"* * * The term 'door-to-door sale' does not include a transaction:

* * * * *

(6) pertaining to the sale or rental of real property, to the sale of insurance, or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

With regard to the real property provision, it is emphasized that it is not intended to apply to the sale of goods or services such as siding, home improvements, and driveway and roof repairs. The Commission stands ready to reconsider the exemptions respecting the sale of insurance and certain types of real property, e.g., recreational land, should the receipt of additional information or evidence indicate that such action is appropriate.

CHAPTER XI. THE MECHANICS OF THE RULE

A. *Form of notice.* Paragraph (a) of the proposed rule would have required the seller to furnish the buyer with a separate lengthy "Notice of Cancellation" printed in 10 point bold face type in a conspicuous color other than that used for the rest of the contract which described the various rights and obligations of the buyer relative to canceling the contract. Three alternative methods of cancellation were spelled out in this notice.

This provision was widely criticized by industry and consumer representatives because of the length and complexity of the notice and because of the expense entailed in multicolored printing.[141] There was also disagreement as to the placement of the notice. The ad hoc industry committee recommended that it be placed in the contract.[142] Others said that it should be placed on a separate form which would facilitate its use for notice of cancellation.[143]

A separate form for cancellation is provided by New York,[144] and both the notice and form for cancellation are placed on a separate document in transactions falling within the scope of Regulation Z.[145] While some advantage may accrue to the seller if he is permitted to place the notice and information as to the buyer's right to cancel in the contract and it is certain that the buyer would have this information in his possession if he is given a copy of the contract, this alternative has serious disadvantages. First, the longer the contract, the less is the likelihood that the consumer will read and comprehend its provisions. Second, if the consumer uses his copy of the contract to cancel the sale, in the manner suggested by industry members, he would be left without any record of the transaction.[146] Placement of the notice and explanation on a separate form is perhaps more expensive for the seller, and the buyer may not see it or may not even be given a copy of it. However, the latter contingency, if made a practice by a particular seller, would probably be brought to the attention of the Commission and appropriate action could be taken. In short, while an argument can be made on both sides, the record supports the view that use of a separate concise notice, which fully explains the rights of the consumer and tells him specifically how to cancel the contract is preferable and the rule so provides.

The proposed rule did not require the seller to furnish the buyer with a copy of any receipt or contract pertaining to the sale. This was considered to be a serious defect by both consumer and industry representatives.[147] It was also said that it was particularly important that the contract be in the same language as that used in the oral presentation.[148]

B. *Summary notice in the contract.* Paragraph (b) of the proposed rule required the inclusion in a door-to-door sales contract, directly above the place reserved for the buyer's signature and in bold face type, twice as large as the other type in the contract, and in a conspicuous and different color than that used for the rest of the contract, an additional notice in summary form of the buyer's right to cancel within 3 days. This requirement was also strongly criticized on the basis of cost.[149] However, as a safeguard against possible nondelivery of the separate cancellation form, the contract should contain this information.[150]

The provisions respecting conspicuousness and type size might, with respect to some contracts, be inconsistent with the provisions of section 226.6(a) of Regulation Z, which requires conspicuous disclosure of the finance charge and annual percentage rate and the printing of numerical amounts and percentages in figures in not less than the equivalent of 10 point type.[151]

The requirements of Regulation Z and this rule, if applicable to the same contract, might require the summary notice to be printed in 20 point type.[152] Requirements regarding placement of this notice also differ among the State laws.[153]

In view of the foregoing, the revised proposed rule provided that the buyer must be furnished with a fully executed receipt or copy of the contract, which is in the same language as that principally used in the oral sales presentation and that the contract must contain the summary notice printed in bold face type of a minimum size of 10 points and in immediate proximity to the space reserved in the contract for the buyer's signature. If a receipt rather than contract is used, the summary notice must be placed on the front page. If both a contract and receipt are used the summary notice should be placed on the contract. These provisions appear in paragraph (a) of the final rule.

Minor changes have been made in the summary notice in the interest of brevity. In addition, the words "for any reason" have been deleted in order to avoid giving the buyer any indication that he

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[141] "* * * the very people most easily defrauded are those who either cannot or will not read pages of complicated legal material * * *. With this in mind, I must point out that the FTC notice seems somewhat cumbersome" (Furness, supra note 28 at Tr. 81); "Larger type, and rainbow hues will make a more colorful instrument to be sure—at an exorbitant and unnecessary cost. An easily read, succinct notice would seem to be the answer" (Stephen Sheridan, vice president, Electrolux Division, Consolidated Foods Corp., Tr. 157); "* * * the very length of the proposed notice nullifies whatever good would come from separating it from the receipt or the contract" (Brouse, supra note 19 at Tr. 389); "* * * I think that you have done a good job in laying out the things a buyer can do, but it seems to me it is a little too long and would tend to be confusing * * *." (Dan Milan, Director, Bureau of Consumer Protection, Wisconsin Department of Agriculture, Tr. 716.)

[142] R. 790, Tr. 67.

[143] Regarding the form of notice one consumer representative said, "The Notice to the Buyer set forth in the alternative is not a separate or easily detachable document * * * I think this * * * is the most important element of the * * * proposed rule." "* * * these retail installment sales contracts * * * are called bed sheets because the Truth in Lending Act and the Illinois Home Solicitation Law caused so much to be put into them it is unlikely at all that any consumer is going to read * * * the whole contract. Therefore, it is very important, it is essential that the Federal Trade Commission keep its proposed regulation as to the document being separate and easily detachable document." (Fritsch, supra note 32 at Tr. 520–521.)

[144] Tr. 225.

[145] Sec. 226.9(a).

[146] "* * * the copy of the contract or receipt which the buyer receives can itself be used as a cancellation form simply by writing 'I hereby cancel,' signing it and returning it * * *." (Sherwood, supra note 37 at Tr. 67.)

[147] Kass, supra note 41 at (Tr. 143); "Frequently, low-income and unsophisticated consumers have been signing contracts in blank * * * the buyer should be given his copy at the time of the offer and acceptance." (Behre, supra note 45 at Tr. 166.) Mr. Sherwood in speaking of the industry proposed alternative rule said, "One very important improvement in our proposal is the assurance of receiving a written contract or receipt from the seller * * * we specify that the buyer must receive a written statement, a written contract or receipt." (Tr. 71.) This provision is set forth at R. 790.

[148] This requirement was incorporated in the alternative rule (R. 791); "* * * the New York statute provides for notice in Spanish and English in cities with a population over one million. On a national basis * * * FTC regulations should provide for a dual language provision wherever needed." (Furness, supra note 28 at Tr. 81.) "We have many clientele in the legal service program who don't speak English * * *." (Connors, supra note 106 at Tr. 204.) This requirement was also supported by the Cameron County Legal Aid Society which reported the inadvertent purchase of a set of encyclopedias by a Spanish-speaking couple who were told they were signing a cancellation form. (R. 1569–1570.)

[149] Richard F. Goodman, C. H. Stuart & Co., Tr. 184; Ralph Heal, executive secretary, National Pest Control Association, Inc., Tr. 257; Brief, National Association of Trade and Technical Schools, R. 1198.

[150] Fritsch, supra, note 32, at Tr. 522.

[151] R. 404.

[152] R. 180.

[153] Tr. 286–287. A summary description of the requirements of the various States appears in the record at R. 1797–1800.

must have a reason as a prerequisite to the exercise of this right.[154] As for the summary notice it does not appear necessary to prescribe its precise text; thus, the final rule provides that the statement need only be in substantially the prescribed form. Given this degree of flexibility, the seller will be allowed to phrase the summary notice so as to satisfy the specific language requirements of applicable State laws which are intended to provide the buyer with much the same information. Where the language requirements of the State statute contain a statement of the buyer's rights which is inconsistent with this rule (for example, "If you cancel, the seller may keep all or part of your cash down payment"), the seller would, of course, not be able to use the State notice unless the inconsistent language is stricken in sales to which this rule applies.

C. *Method of exercising the cancellation right.* Several paragraphs in the "Notice to Buyer" in the proposed rule contained detailed instructions regarding cancellation procedures and the various methods that the buyer could use. The notice authorized the use of any reasonable method of notification and specifically suggested the use of three—i.e., mailing the notice of cancellation form with the additional suggestion that it be sent by certified mail; delivery of the notice or any other written notice of cancellation to the seller; and oral cancellation by telephone or in person.

Most of the comment received was directed to the provisions concerning oral cancellation. Few of the persons who appeared at the hearings favored this method of cancellation.[155] Both industry and consumer representatives opposed it, primarily because of the obvious difficulty of resolving disputes as to whether the buyer had actually exercised his right of cancellation.[156] Consumer representatives said that the salesmen who frequent the poor neighborhoods would simply disregard oral cancellations and that the method would not be of any real assistance to the poor who were expected to benefit from it.[157] One law enforcement official said that disputes as to whether a sale had in fact been cancelled would pose serious problems for him and further that it would be extremely difficult for a consumer to catch up with a fast-moving sales team in order to effect an oral cancellation.[158] Other comment and testimony in opposition to this provision of the proposed rule emphasized the problems of proof which would arise and that it was not unreasonable to expect a consumer to mail a printed notice, preferably by certified or registered mail.[159]

Based on the information in the record, the objections to permitting oral cancellation are well-founded and the possibility of confusion and uncertainty is sufficiently great to warrant the conclusion that oral cancellation should not be permitted.

The language "any reasonable method of notification" is subject to all of the objections raised above with respect to oral cancellation, with the increased likelihood that even those sellers who desire to comply with both the letter and spirit of the proposed rule may not be informed or may be misled as to the buyer's intention to cancel. Accordingly, this phrase has not been included in the final rule.

Mail, and preferably certified mail, appears to be the best method for the buyer to use in canceling the sale or contract.[160] Regulation Z equates a telegram to mail as a means of giving notice. That is, a telegram filed prior to midnight of the third business day will be effective to cancel the contract in the same manner as a letter mailed at that time. Physical delivery of the written notice by the buyer to the seller's place of business would not seem to be practical in many situations, but there is no objection to authorizing its use.

D. *Identifying the Third "Business Day."* In the revised proposed rule the definition of "business day" was changed in that it listed specifically the nine legal holidays excluded. It also excluded Saturday and Sunday as did the original proposed rule.

Saturday is considered a "business day" in Regulation Z.[161] The majority of the State statutes consider Saturday a business day. Upon reconsideration and in the interests of uniformity, the Commission now believes that Saturday should be considered a business day for the purposes of this rule and the definition has been changed in the final rule to include Saturday as a business day."

The form of notice prescribed in the proposed rule did not require a specific identification of the third "business day." It was suggested that the notice be revised to require the seller to indicate therein the date and day of the week of the third business day. This would enable the consumer to determine easily the termination of the cooling-off period.[162] There is no reason why the seller should not do this in the same manner as he is required to do under section 226.9(b) of Regulation Z.

Accordingly, the form of notice in the revised proposed rule and in the final rule was changed to show both the date of the transaction and the date of termination of the cooling-off period. Moreover, the seller is also required to furnish the buyer with two copies of the notice in order that he may use one to cancel the sale and retain one for his records. A new provision (c) of the revised proposed rule required the seller to complete fully both copies of the notice before giving them to the buyer. This requirement is also in conformity with the aforementioned section of Regulation Z. Despite industry objections to this change [163] the Commission is of the opin-

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[154] This possibility was pointed out by Professor Lemke, supra note 108, who said, "I am wondering whether some buyers may feel they must come up with a good reason for cancelling a contract and thereby through their own inhibitions tend not to cancel or perhaps through the persuasion of an artful seller * * *." (Tr. 650.)

[155] Their support was based on the supposition that the poor and ignorant would rely primarily on this method. "I think it is clear that especially when we are dealing with less sophisticated and more impoverished consumers it is utterly hopeless to suppose that very many of them are going to exercise their right to cancel by * * * putting it in writing and sending it by mail." (Fritsch, supra note 32 at Tr. 519.) Several other consumer representatives who testified to the same effect, included Elizabeth McCarthy a social worker employed by the Hull House Association (Tr. 679); Mrs. Edie Rosenfels of "Call for Action," Radio Station WIND, Chicago (Tr. 811); and Lewis Rosenberg, staff attorney, Legal Services Organization of Indianapolis, Inc. (Tr. 818).

[156] Harold M. Ross, Assistant Secretary of Field Enterprises Educational Corp., inquired, "Does the buyer have a telephone? If he calls the local sales representative who has no responsibility for processing orders, would that be effective? If the fact of his call is unrecorded or denied, does he have a witness?" (Tr. 870.) "A buyer might claim, weeks after the purchase, that he telephoned and canceled the order 2 days after the purchase. Maybe he did—but maybe he did not. Even if he did, there might be no such record with the seller. This could be inadvertent. It could be deliberate. In any event, it is always a problem." (Brief, National Association of Trade and Technical Schools, R. 1200.)

[157] "By far the poorest and least dependable suggested method of cancellation is by telephone * * *." (Clark, supra note 26 at Tr. 349.)

[158] Graves, supra note 52 at Tr. 667–668; Milan, supra, note 141 at Tr. 713–714.

[159] "There is a question as to whether verbal cancellation is really a good idea because it so often is difficult to prove. We have had a number of complaints from people who have tried to cancel contracts directly after purchase and whose cancellations have been ignored * * *." (Furness, supra note 28 at Tr. 79–80.) "* * * to allow an oral cancellation * * * compounds the vulnerability of buyer and seller alike." (Sheridan, supra note 141 at Tr. 157.) "* * * it would be my thought perhaps an oral notice would be more conducive to controversy and have more difficulty of proof than the desirability of including * * * it * * *." (Lemke, supra note 108 at Tr. 651.) See also Tr. 824, 897, and R. 232 wherein similar views were expressed.

[160] Clark, supra note 26 at Tr. 349.

[161] Section 226.9(a).

[162] "* * * we are troubled by section 1(a) * * * which leaves to the consumer the burden of computing 'any time before 5 p.m. of the third business day * * *.' * * * Our suggestion is that the designations for when the period lapses, the time and the date, should be filled in by the salesman." (Cashdan, supra note 96 at Tr. 372.) "* * * I think the potential for disputes concerning the timeliness of notices would be minimized by requiring the seller to fill in a blank in the form, giving the date and day of the week of the third business day following the day of sale." (Christian S. White, Public Interest Research Group, Tr. 323.)

[163] "* * * we agree with the ad hoc Industry Committee that there is no reason why, if the notice explains the meaning of 'business day' to sales representatives and customers alike, any blanks on the notice of cancellation should be filled in by the sales representative except for the company name and place of business which can be printed in advance. Writing in the transaction date (which the buyer already has on his copy of the contract) and the expiration date of the cancellation period become appropriate and necessary only if and when a subsequent decision to cancel is made, a decision not to be assumed in advance. The company would

ion that the seller should bear this burden.

E. *Buyer's obligation to return goods.* The proposed rule provided that the buyer was obligated to make available to the seller at the place of delivery any merchandise "* * * in its *original* condition." (Italic added.) This provision was criticized as being unfair because in the next paragraph of the notice the seller was to be required only to return any goods traded in "* * * in *substantially as good* condition as when received by the seller." (Italic added.)[164]

The ad hoc industry committee would also adopt for both the seller and the buyer the "substantially as good condition" standard.[165] However, it suggested other changes in this portion of the notice. First, it said that the seller should have the option of returning any goods traded in or their value as stated in the agreement.[166] This suggestion was strongly opposed by consumer representatives who said that the goods traded in might be so undervalued in the contract that the purchaser would decide not to cancel for that reason alone, or that the buyer might not be able to pay the price for a replacement.[167]

The ad hoc committee also suggested that if the goods had already been shipped or delivered at the time the cancellation notice is received, the downpayment need not be returned until the goods were picked up or returned (by the buyer) in good condition pursuant to instructions of the seller.[168] This recommendation is objectionable, on two counts: First, because it may encourage the seller to ship or deliver the goods prior to expiration of the cooling-off period; and second, because it imposes upon the buyer the duty of returning the goods. The latter requirement is objectionable because the seller may give him unreasonable instructions regarding the return of the goods or imply that the buyer may have to bear a portion or all of the cost of doing so.[169] If the seller does not desire to run the risk of losing his goods or incur the expense necessary to pick them up, the obvious remedy would be to defer shipment or delivery.

We can conceive of circumstances when the seller may be reluctant to refund the downpayment until the goods are returned because the buyer has made it difficult or impossible for him to repossess the goods or because the goods may have been damaged or used.[170] The rule states it is the obligation of the buyer to make the goods available at the place of delivery in their original condition but provides no remedy to the seller for the buyer's failure to do so. While the rule is silent as to the seller's obligation in such circumstances, clearly the seller would not be charged with a violation of the rule if the buyer does not fulfill his obligations and as a result the seller refuses to cancel the contract.

The possibility of damage or failure on the part of the buyer to make the goods available was recognized by consumer representatives. One proposed remedy was to prohibit the delivery of goods costing over a certain amount until after expiration of the cooling-off period and after time has lapsed for the receipt of a cancellation notice by the seller.[171] Others pointed out that efforts must be made to lessen the period unwanted goods are left in the buyer's possession, and thus reduce the risk of damage or use. They expressed concern about allowing the seller 20 days to pick up the goods because of the "peanut butter and jelly syndrome." If the product is left in the home, the children, by using and looking through the encyclopedia, will, in effect, vitiate the right to cancel because they will soil the goods.[172]

A compromise solution regarding return of the goods was incorporated in the revised proposed rule by the addition of the following provision after the statement of the obligation of the buyer to make the goods available at the place of delivery:

> Or, you may if you wish comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

Of course, the seller can avoid this problem entirely by deferring delivery of the goods. In any event the additional option was thought to be advantageous to the seller since it will facilitate recovery of the goods, and it helps the buyer by allowing him to return the goods at the earliest practicable time and thus avoid accidental damage.

Industry strongly objected to this provision; first because it did not instruct the buyer exactly what he had to do to make the goods available and second because the option provision would make it possible for the buyer to mislead the seller as to his willingness to comply with instructions regarding return of the goods until the 20-day period for pickup had expired and the goods became the property of the buyer.[173]

Field Enterprises Educational Corp. said: "Although the Revised Proposed Rule appears to contemplate the kind of practice now utilized by FEEC as mentioned above, i.e., relying on the buyer's reasonable cooperation, the language of the Notice in fact informs the buyer that he need not comply with those requests, however reasonable, makes no mention whatsoever of the fact that the seller

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have no record of what was filled in, and its sales representatives should be neither tempted to alter the cooling-off period nor burdened with an additional liability." (Statement of Field Enterprises Educational Corp., R. 2240.)

[164] This objection was made by several consumer representatives: Jerome Shuman, Professor of Law, Georgetown University, Tr. 171; and White, supra note 162 at Tr. 324.

[165] R. 792.

[166] R. 790. This is in accord with section 2.504(2) of the UCC which provides in pertinent part: "* * * if the seller fails to tender the goods as provided in this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement."

[167] Fritsch, supra note 32 at Tr. 522; Scott, supra note 61 at Tr. 887. It should be noted that consumer testimony on this provision was limited since the proposed rule did not give the seller the option of returning the value of any goods traded in.

[168] R. 792.

[169] "I have never seen such a one-sided provision attempting to be put into a regulation of law. If you could conceive the instructions being reasonable in all cases, then of course, that could do no harm. But of course, we are talking about unscrupulous sellers whose instructions may provide most anything * * *. I think many of these sellers would try to make the buyer think it would have to be at his expense." (Fritsch, supra note 32 at Tr. 521–522.)

[170] Concern about the possibility of unfair conduct on the part of the buyer was expressed by the industry ad hoc committee "* * * unrealistic to expect all buyers to turn over merchandise or cooperate in its return after downpayment refunded * * *" (R. 797), and by Professor Lemke, "I think there is some possibility of buyer fraud involved in a situation like this * * *." (Tr. 652.)

[171] Cashdan, supra note 96 at Tr. 374, R. 915–916; "I would urge or suggest that perhaps some requirement should be made that the buyer at least make the merchandise * * * reasonably available to the seller for pickup purposes." (Lemke, supra note 108 at Tr. 651–652.)

[172] This thought was best expressed by Mr. Kass who said, "We are concerned that this will place too great a temptation on consumers—especially low-income ones—to use product, thus jeopardizing their right to cancel" (Tr. 141); For statements to the same effect, see Tr. 352, 374, 457.

[173] Encyclopedia Britannica wrote: "There are a number of major difficulties with this statement of the obligations of the parties in the event of cancellation. First, requiring the purchaser to make goods available at the 'place of delivery' could place an unreasonable burden upon him were a seller to make shipments F.O.B. at his warehouse (which would then become the 'place of delivery' as far as the purchaser is concerned). Second, there is no hint of what the purchaser must do to 'make (goods) available' for return. A much more definite statement of the purchaser's obligation is necessary. The only feasible way to deal with this problem is to require the purchaser to comply with the reasonable instructions of the seller as to the return of goods, all at the seller's sole risk and expense. This would also eliminate the option given the purchaser under the present formulation to comply with the seller's instructions concerning return of goods ('if you wish'). The purchaser has signed the contract which he is now permitted to rescind, and he should have a continuing duty to cooperate in returning to the status quo ante.

"The formulation of the fourth paragraph of the Notice also presents particular problems. First, it begins by stating to the purchaser that 'if you do not return the goods to the seller', or they are not picked up within a specified period, he may retain or dispose of them without further obligation. Although certainly not intended, this would appear to give the purchaser the absolute right to retain goods even though he may have failed to comply with the seller's timely instructions for return. Indeed, under the present formulation, since the purchaser has an option to comply with the seller's instructions for return of goods, without being under duty to inform the seller that he will not comply, operation of paragraph four could lead to substantial abuse and loss of valuable goods by a seller without any fault on his part. It must be kept in mind that while the purchaser will be granted a new right under this rule, its purpose is not punitive, and is not intended to require companies to forfeit their goods." (R. 2255–2256.)

will be giving notice of intent to repossess or abandon, and gives the buyer an unlimited right to retain or resell the goods if the seller does not actually physically 'pick them up' in 20 days, a right that appears to exist regardless of what seller and buyer may have said to each other by the end of that period. Thus, FEEC's timely request to a canceling buyer that he return by mail at our expense the cartons he received by mail could under this Proposed Rule be ignored, and the goods resold shortly thereafter before we had any way of knowing whether the customer intended to cooperate; or our request could be answered by the buyer falsely signifying his intention to mail the books back at our expense and then selling them when we did not 'pick them up.'" (R. 2243.)

On this point the ad hoc committee said: "In the Rule as presently worded, the Notice tells the buyer: 'You may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods.' If the buyer decides not to comply, the goods become his if the seller has not picked them up within 20 days of the date of the buyer's notice of cancellation. The 20 days may expire before the goods arrive, so they cannot be picked up within 20 days. Under such circumstances, according to the Rule, they will belong to the buyer without obligation. The seller has 10 business days from receipt of the cancellation notice to tell the buyer that he wants the goods back. The 20 days can easily expire before the buyer even hears from the seller as to whether he would like the buyer to comply with instructions as to return." (R. 2269–2270.)

Under some circumstances it may be unreasonable to allow the seller 20 business days to pick up the goods; on the other hand, if the seller does not have any agents in the locality, such a period of time is not unreasonable. However, under the proposed rule, the buyer would not know until the expiration of 20 days whether the seller desired to have the goods returned. Accordingly, paragraph (i) was added to the final rule to require the seller to notify the buyer within 10 days of receipt of the notice of cancellation if he intends to reclaim the goods or abandon them. In addition this change makes it clear that a failure to pickup the goods is not an unfair trade practice.[174] This has been carried forward in the final rule.

Industry also did not believe that it should be required to refund the downpayment until after it had recaptured the goods [175] and said that withholding the refund was its only weapon available against the unscrupulous buyer.[176] One industry member said that the 10-day refund provision was unreasonable because its experience under its own cooling-off provision had demonstrated that the canceling buyer also stopped payment on any checks given as a downpayment, and that the seller would not ascertain that the check would not be honored before it was required to mail its own refund check.[177] This line of reasoning is apparently based on the assumption that the check will not be put in channels for collection until it is received at a distant main office, and that the cancellation notice will be received immediately after this has occurred. In such circumstances, it would indeed be difficult for the industry member to comply with the rule, unless it established the practice of holding the check sufficiently long to insure that a cancellation notice would not be received. However, it is equally likely that the cancellation notice would be received several days after the check had been placed in channels for collection. In this situation the 10 additional days should be sufficient for the seller to ascertain whether it was safe to make the refund. The record reflects that many transactions do not follow either of these courses for the salesman may cash the check immediately after he gets it. Here again, the seller would have sufficient time to ascertain whether the check was good.[178]

The Commission believes that the rule properly places the burden on industry to adopt procedures which will enable it to make a timely refund in the event it chooses to accept a downpayment. Nothing presented in the record justifies a change in this belief.

In order to put these industry complaints in the proper perspective it should be noted that those members who have operated under cooling-off provisions estimate that the cancellation rate will work out to something on the order of 3 to 5 percent.[179]

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[174] "Since, in effect, the seller must pick up the goods within 20 days or donate them to the buyer, why should failure to pickup the goods be an unfair trade practice?" (Letter, Henry L. Young, Esq., R. 4.)

[175] "A further inequity is caused by the fact that the seller must return any down payment within 10 business days whether or not he gets his goods back from the buyer. This is not fair. In our Alternative Rule submitted March 4, 1971, we included a proviso that where a seller has shipped or delivered goods prior to receipt of a notice of cancellation, or is unable reasonably to stop shipment or delivery upon receipt of a notice of cancellation, and where the seller seeks return of the goods, the seller may defer refund of any down payment until such goods have been picked up or returned. Under such circumstances the seller, according to our Alternative Rule, would have to refund the down payment within 10 business days after the pick-up or return of the goods. We recommend again, in an effort to preserve the equities, the incorporation of this concept to the Notice of Cancellation. Paragraphs 2, 3 and 4 should be re-worded as follows:

"If you cancel, any property traded in and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled. Any payments made by you under the contract or sale will be refunded within that time or, if any goods have already been shipped or delivered to you, within 10 business days after they have been returned, in substantially as good condition as when received, pursuant to any reasonable instructions from the seller regarding their return at the seller's expense and risk. If you have not received, within 20 business days of the date of your notice of cancellation, notification by the seller whether he intends within the following 20 business days to repossess and by what method, you may retain or dispose of the goods without any further obligation.

The above change would also require the addition of the following to sec. (g):

"*Provided*, that where a seller has shipped or delivered goods prior to receipt of a notice of cancellation, or is unable reasonably to stop shipment or delivery upon receipt of a notice of cancellation, and where the seller seeks return of the goods, the seller may defer refund of any down payment until such goods have been returned. In such a circumstance, the seller shall refund the down payment within 10 business days after the return of the goods." (Ad Hoc Committee, R. 2270–2271.)

[176] "There is, unfortunately, a small minority of greedy and unprincipled consumers just as there is a small minority of greedy and unprincipled businessmen, but the latter are subject to FTC orders and penalties while the former are not.

"With these two facts in mind, we believe it would be a mistake to notify every prospective buyer who has received delivery, as the Rule now proposes, that he need not return the goods in order to recover his down payment and can in fact sell or retain them if the seller has not picked them up within a short period after the buyer sends off his notice of cancellation, even if the seller has in the meantime asked the buyer to return the goods at the seller's expense. We urge instead the practice long followed at FEEC with the consistent support, cooperation and compliance of our customers—namely, prompt notification to the buyer, after our receipt of his cancellation notice, of our intention to repossess the goods with his reasonable cooperation (mailing them back at our expense), and then prompt repayment to him of his down payment once the goods have been returned." (Statement of Field Enterprises Educational Corp., R. 2241–2242.)

[177] Comments on behalf of Crowell, Collier and Macmillan, Inc., R. 2414.

[178] The 10-day provision was originally suggested by the ad hoc committee, which evidently believed that, except in those instances in which the seller had delivered or shipped goods, such a period of time would be proper (see R. 790).

[179] Publishers Productions, Inc., wrote: "Expensive. Current contracts require an original and a copy of a sales contract. Your proposed procedure requires twice as much paper on every order, which is ultimately paid for by the consumer. 95% who don't cancel paying, of course, for the 5% who are presumably aided." (R. 2316.)

"For these reasons, FEEC (and no doubt all similarly situated sellers of items too costly to forfeit) are required by experience to make a basic choice on all orders received: either (a) delay the shipment of goods to that 97% of our customers who do not cancel for a period long enough to receive the notices of that 3% who do cancel, regardless of where in the country they live; or (b) ship promptly to all customers when orders accompanied by downpayments are received, stopping shipments where possible when a cancellation notice arrives, and notifying those to whom shipment went forward that their downpayments will be returned as soon as our cartons are returned, by their either simply refusing delivery or mailing them back at our expense. In view of its own oft-expressed concern over slow delivery, the FTC should not require us—as the Proposed Rule would—to impose the first route of delay upon the 97% who do not cancel.

"Thus the amendments contained in the new Sherwood submission on behalf of the Ad Hoc Industry Committee are required in the interest of that 97%. These amendments fully protect the buyer against the wrongful retention of his downpayment and against any prolonged uncertainty over how long he must hold on to the goods, but they accomplish this without requiring direct sales companies to hold up shipments in order to protect themselves against fraud." (Statement, Field Enterprises Educational Corp., R. 2244–2245.)

While industry members say that the complexities of the rule impose hardship on the overwhelming majority of their customers who do not cancel to provide protection to the small minority who do exercise the right, they overlook the fact that of this small minority who do cancel, it is probable that an even smaller number would take advantage of the rule to deprive the seller of its goods. It appears to the Commission that industry has overstated its objections and is simply seeking the requested protection in order to permit it to continue to deliver, or to place the goods in channels for delivery before the expiration of the cooling-off period without risk in the hope and belief that the buyer will not be so likely to cancel once he has received the goods.

It was for this reason that the Commission believes that the rule should be worded so as to discourage prompt delivery of the goods even though this might result in some inconvenience to buyers who would not want to cancel and to industry members as well. This same approach was taken by Congress in the District of Columbia Consumer Protection Act.[180] Accordingly, it does not appear that the rule should be changed in the manner suggested by industry members, even though they may encounter some difficulty in regaining possession of the goods within the allotted time. It appears to the staff that the industry member who desires to deliver goods at the risk of the contract being canceled can institute procedures for recovery which are sophisticated enough to avoid the difficulties it foresees. After all, the seller was able to sell the goods in points far removed from its headquarters. There seems to be no reason why it could not arrange to collect the goods through the same agents.

In recognition of the possibility that an unscrupulous consumer might attempt to mislead a seller as to his intention to return the goods until after expiration of the 20-day period allowed for recapture, a minor change has been made in the fourth paragraph of the notice by inserting the words "agree to" in the first line so in the final rule it reads as follows:

> If you do not *agree* to return the goods to the seller or if the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. (Italics supplied.)

The possibility expressed by Encyclopaedia Britannica that the place of delivery of f.o.b. shipments to the buyer might be considered to the shipping point rather than the buyer's home [181] was dealt with in the District of Columbia Consumer Protection Act by a provision to the effect that the buyer was not obligated to tender the goods at any place other than his residence.[182] E. B. also stated a similar provision could be incorporated in the third paragraph of the proposed "Notice of Cancellation" by deleting the words "the place of delivery" in the phrase, "if you cancel, you must make available to the seller at the place of delivery" and substituting therefor, "your residence." This suggested change has been incorporated in the rule.

F. *Effect of rule on notes of indebtedness.* The proposed rule contained two provisions respecting notes or other evidence of indebtedness given by the buyer in connection with the contract or sale. One of these provisions required the seller to return such documents to the buyer within 10 business days, paragraph (h)(1), and the other, paragraph (i), prohibited the negotiation or other assignment of the financial paper to a third party prior to midnight of the fifth business day following the date of the sale.

Both provisions were the subject of objections by industry members who said that it would require them to increase their capitalization because they could do nothing with the note during the cooling-off period.[183] As a means of avoiding some of the undesirable effects of the provision prohibiting the transfer of paper within 5 days, the ad hoc committee recommended the addition of the phrase, "unless the seller shall have arranged to relieve the buyer of all liability on such note or evidence of indebtedness in the event of timely exercise of the cancellation rights granted under the contract." [184] Another suggestion made was that the seller be allowed to transfer the paper if he refunded the amount necessary to redeem it to the buyer.[185] To impose, as these recommendations suggest, the burden of redeeming the note on the buyer is not justified. The seller should know that if he chooses to negotiate the paper redemption might become necessary and the responsibility should not be shifted to the consumer. Even if the seller has made arrangements to relieve the buyer of any obligation the seller should still answer the responsibility of reacquiring the note if he had negotiated or otherwise assigned the note to a third party.

Consumer representatives urged the addition of language providing that the holder of the note takes it subject to all defenses of any party which would be available in an action under a simple contract. This in effect would abolish the holder-in-due course status of anyone to whom the paper was subsequently sold or assigned.[186]

This suggestion that the seller be required to place an endorsement or other notice on the note preserving the maker's defenses goes beyond the scope of the rule. Such a provision applicable to consumer sales generally is presently under consideration in the form of the proposed trade regulation rule concerning the Preservation of Buyers' Claims and Defenses in Consumer Installment Sales.

To insure protection for the buyer in case the seller had taken a security interest in property other than that being sold, it was recommended that the seller be required to cancel any security interest arising out of the transaction.[187] This recommendation has been adopted.

G. *Confession of judgment provision.* The prohibition against the inclusion in a door-to-door sales contract of a confession of judgment or waiver of any of the buyer's rights was endorsed by consumer representatives.[188] It was said that this provision was essential in those States which still permitted the use of cognovit notes.[189] The ad hoc industry committee also approved of this provision.[190] Some industry members said that the phrase, "waivers of any of the rights to which a buyer is entitled" was vague and might be construed to prohibit the use in the contract of any provisions aimed at protecting the seller. They suggested the addition to the phrase of the words, "under this Rule".[191] This suggestion is valid and the recommended words have been added to the rule. In addition, the words "or receipt" have been added after the word "contract" in recognition of the fact that there may not be a written contract.

H. *Provision prohibiting misrepresentation.* The prohibition in paragraph (f)

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[180] Sec. 3811(i)(3) of Title 28, District of Columbia Code (Supp. V, 1972) provides: "If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation."

[181] See Note 173, supra, R. 2255.

[182] District of Columbia Code, supra, § 28-3812(i)(1).

[183] Brief, National Association of Trade and Technical Schools, R. 1202; Comment, United Business Schools Association, R. 1600.

[184] Sherwood, supra note 37 at Tr. 69. See also the committee report which stated in pertinent part, "No change in protection afforded buyer; automatic 5-day freeze would harm companies too small to be their own bankers." (R. 797.)

[185] Brief, National Association of Trade and Technical Schools, R. 1203.

[186] Kass, supra note 41 at Tr. 142; Fritsch, supra note 32, R. 1369.

[187] Young, supra note 58 at R. 3. Section 226.9(d) of Regulation Z contains such a provision.

[188] Kass, supra note 41 at Tr. 142; Jerome Shuman, supra note 164 at Tr. 172; Richard F. Halliburton, Attorney, Legal Aid and Defender Society of Greater Kansas City, Inc., Tr. 564. The need for this provision is obvious, as the inclusion of such provisions would frustrate the cancellation privilege given to the buyer.

[189] "While cognovit notes are not being used as extensively as they were before the Wisconsin Legislature made them unavailable for use in garnishment actions, cognovit notes are still used in limited circumstances in Wisconsin." (Joseph F. Preloznik, Director, Wisconsin Judicare Program, Tr. 699.) "Ohio is one of the few States that allows almost unrestricted use of confessions of judgment. This regulation will at least mitigate the use in some door-to-door sales." (Memorandum, Ohio State Legal Services Association, R. 379.)

[190] R. 795.

[191] "Unless this modification is made, however, this section will be susceptible to subjective interpretations which could classify any contract term seeking to protect the seller, regardless of its reasonableness, as a waiver of the buyer's rights." (Comments of the General Electric Corp., R. 367.) See also R. 329.

against misrepresentation of the buyer's right to cancel was generally conceded to be necessary by both industry and consumer representatives.

I. *"Initial contact" provision.* The provision of the proposed rule which attracted the most unfavorable comment from industry representatives and the most favorable comment from consumer representatives was paragraph (g). This required the seller at the time of the initial contact with the buyer and before saying anything else, to inform the buyer that the purpose of the contact was to effect a sale and to identify the goods and services he had to offer. Its purpose was to curb the use of deceptive door openers.

This provision was almost uniformly condemned by industry representatives on the grounds that it placed the salesman in a strait jacket by forcing him to use canned language rather than a normal introduction followed by a disclosure of his identity and the purpose of his call. This group evinced no objection to a requirement that the salesman promptly introduce himself and state his purpose; they said their objection was to the specific language requirement and the abrupt and precipitant nature of the disclosure.[192] Other representatives said that the requirement was neither fair nor practical and would be impossible to enforce.[193]

As a substitute for paragraph (g), the industry ad hoc committee recommended a provision which would prohibit the use of any plan, scheme, or ruse which misrepresents the true status or mission of the salesman in order to gain admission to a home, office, or other establishment for the purpose of making a sale.[194]

Consumer representatives gave strong support for inclusion of this provision in the final rule and said that they considered it to be a necessary and desirable provision.[195]

At the time it released the revised proposed rule for comment, the Commission announced that the door opener provision had been eliminated and that it had taken this action pending development of more information about "door opener" provisions.[196] Insofar as consumers were concerned, this was the feature of the revised proposed rule which attracted the most comment.

The objections of consumers and consumer representatives to the elimination of the door opener can be placed in two broad categories. First are those who object on the grounds that the failure of the salesman to disclose his identity and purpose at the door constitutes a nuisance and wastes the time of the consumer who is not interested in buying anything, much less the merchandise or services which the particular salesman has to offer.[197] Second are those objections that the door opener provision would substantially increase the effectiveness and impact of the rule by lessening the likelihood that the consumer would subject himself to the practiced sales pitch which might result in his making a purchase which was unwanted or unwise.[198]

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[192] "As a matter of fact, some form of identification and statement of purpose * * * is necessary. I just object to setting yourself up within the framework of reference which 4(g) has, before you can open your mouth to say, 'Boy, it is cold.'" (Sheridan, supra note 141 at Tr. 158.) "I object to giving him specific words. As long as he uses no deception, no gimmicks, that would be the way I would treat it. But trying to give him specific words, and then if he misstates one word he is breaking the law * * *." (Richard F. Goodman, supra note 149 at Tr. 187–188.)

[193] See for example, the testimony of Sard, supra note 26 at Tr. 227, 228, 230, Heal, supra note 149 at Tr. 258, 259; and Frase, supra note 59 at Tr. 281, 282. One industry representative said that in many cases such a statement would be untrue because the salesman really didn't know whether he would attempt to sell the prospect anything until he had qualified him as a probable purchaser of the goods or services offered. (Sherwood, supra note 37 at Tr. 434.) This same representative went on to say:

"In my experience as a sales representative, I would say that this would have imposed an impossible handicap on me in going to these homes. I could not have gone to those doors and said I am here to sell you something when I had not the slightest idea whether this was a family of two elderly people, a family with no children, a family that had just bought my product the day before or had bought a competitor's product of perhaps similar quality and size * * *. It would be a tremendous handicap. I would say an impossible one * * *." (Id. at Tr. 437.)

Another representative emphasized the importance of establishing some rapport with the prospect,

"* * * if you tell the person that you are there to sell them a product that they have no reason to think at that time they want, the obvious result is going to be a door close."

In referring to a rather innocuous door opener he said, "* * * I don't call that concealing. That is the first stage of a salesman's approach, he must convince the person that this is something he can use, something that is legitimately valuable in his home. Then he can say—and let's make it clear, I think within a very short time it is obvious why he is there after he gets into the home—but at least it is a method by which the customer can be educated into the use of the product before he says hello, I am here to sell you (an encyclopedia)." (Peter Ward, Esq. on behalf of Grolier, Inc., Tr. 410.)

Harold M. Ross of Field Enterprises Educational Corp. contended that this requirement for an affirmative disclosure would tempt some salesmen to obscure the meaning of those statements by adding others which would be more likely to confuse the prospective buyer than to help him understand the purpose of his visit. (Tr. 873, 874.)

[194] R. 793.

[195] Mrs. Theresa H. Clark of the United Planning Organization in Washington, D.C., after praising the inclusion of paragraph (g) in the proposed rule, said that the prospective buyer who knows the man on the doorstep is a salesman is in a much better position to deal with him (Tr. 351). Other expressions of the need for this provision were made by Givens, supra note 22 at Tr. 100; Kass, supra note 41 at Tr. 146; White, supra note 162 at Tr. 326; Haney, supra note 61 at Tr. 511; McKaig, supra note 42 at Tr. 624; Milan, supra note 141 at Tr. 717; Rosenberg, supra note 155 at Tr. 815; Wilbur C. Leatherberry, Legal Aid Society of Cleveland, Ohio, Tr. 852; and Scott, supra note 61 at Tr. 890.

[196] Federal Trade Commission News Release, Feb. 17, 1972.

[197] Typical of the comments of individual consumers were the following: "I strongly support the current efforts to persuade the FTC to make a ruling requiring door-to-door salesmen to state frankly and openly that their purpose is to sell merchandise or services. The endless parade of peddlers with 'gimmick' lines and 'door openers' constitute a tiresome nuisance that I feel most people would like eliminated. The primary objection most people have to such techniques is that they waste the prospective customer's time. It is very maddening to have from 5 to 30 minutes of one's time taken up by some disguised salesman before one is even given the opportunity to say no * * *. These salesmen certainly have a right to sell their products, but they do not have a right to take up inordinate portions of my time with their devious antics." (R. 1980.)

"I wish to strenuously object to the deletion of the requirement of the so-called door opener provision.

"As a consumer, and a fairly frequent target of door-to-door salesmen, I can think of nothing more annoying, and misleading to the unwary, than the almost universal technique of the salesman representing himself as anything but a salesman. He comes to one's door as a government official, a survey taker, a friendly neighbor, a community representative to 'welcome' one to the community—his (and her) guises are both legion and obnoxious.

"I can see no reason to eliminate this provision * * *." (R. 2026.)

"If you really knew how severely aggravating it is to have to listen to a heart warming story of public service poll taking * * * only to be blasted with the fast curve when the sales pitch gets thrown, you would not have relaxed this rule—you would have tightened it * * *. As a taxpayer I demand that you make them declare their sales intent * * * right from the beginning." (R. 2423.)

[198] In its statement the National Consumer Law Center said:

"We strongly object to the omission of the 'door-opener' provision which was included in the original proposed rule. This provision made it an unfair and deceptive act or practice to fail to '* * * expressly reveal, at the time the seller initially contacts the buyer or prospective buyer and before making any other statement or asking the buyer any question, that the purpose of the contract is to effect a sale, stating the goods or services which the seller has to offer.'

"Omission of this provision will substantially weaken the impact of this rule. Important as the right of cancellation is, it is far better to avoid an unwanted sale in the first instance. A standard sales practice among many door-to-door businesses is to gain entrance to the buyer's home through deception. Typically, the salesman falsely represents that the consumer has won a prize or that he is taking a survey or giving away free merchandise. Once he is inside the door, the customer is at the mercy of the

salesman's high pressure tactics. The consumer often agrees to sign the contract primarily because it is the only available means of getting the salesman out of the house.

"The FTC has recognized the abuses rampant in sales of this kind by proposing a cooling-off period. However, even if persons would take the initiative necessary to cancel under the proposed rule, they still will have suffered the aggravation, inconvenience and invasion of privacy which results when the salesman enters the house under false pretenses. By reinstating the 'door-opener' provision, the Commission will be merely requiring the salesman to be honest. In addition, the salesman's posture will be more equivalent to that of the salesman in a store. The benefit to the buyer will be the opportunity to tell the salesman before he gets into the house: 'I don't want any.'" (R. 2401–2402.)

Donna L. Deaner, Director, Allegheny County Bureau of Consumer Protection stated in her letter: "We question the deletion of the 'door-opener' provision to require salesmen to identify themselves and their product immediately. Typical comments filed here are:

" 'I thought he was from the Veterans Administration. An hour later I found out that he was selling cemetery lots.'

" 'The young man said he was taking a survey. He said he wasn't selling anything, but he finally tried to sell me subscriptions.'

" 'He said he was from the gas company to inspect my furnace. Then he tried to sell me a new one.'

"Without the 'door-opener' provision, a commonly used deceptive practice is left unregulated. Consumers shopping for goods and services in the marketplace know that they are in a position to be sold. In dealing with salesmen at the door, a consumer has the right to also know his position. Since door-to-door sales transactions are usually riskier ventures than other methods of buying, the consumer needs more protection and information to make rational economic choices in this situation." (R. 2426–2427.)

Mr. Robert Porterfield, Coordinator, Consumer Protection Office in the Seattle mayor's office reported that a recent study of door-to-door magazine solicitors had disclosed the use of a number of deceptive door openers including: "* * * the standard line of earning points for competition in anything ranging from trips to Europe to college scholarships." (R. 2432.)

The attorney general of Wisconsin wrote: "We simply want to take this opportunity to express our displeasure with the elimination of the 'door-opener' provision. It is our feeling that such a provision would be of great value in equalizing to some extent the relative positions of the salesman and the consumer during the bargaining process. It is simply one step toward disclosing to the consumer all of the information which should be available to him when he is contemplating an investment. Although it is true that this provision places an affirmative burden upon the seller, it is our position that the burden is a small one compared to the possible benefits." (R. 2435.)

Similar objections were voiced by the Chicago Area Consumer Advisory Board to the Federal Trade Commission (R. 2465), and by Martha L. Dinerstein of the New York State Consumer Protection Board (R. 2429).

The Opinion Research Corp. objected to elimination of the door-opener provision on other grounds. They said this action would once again open the way for salesmen to represent themselves at the door as being engaged in survey research rather than in the sale of products or services. It added that this was not only unfair and deceptive but also caused considerable difficulty to those actually engaged in legitimate survey work.[199]

The Direct Selling Association also expressed the need for a general door-opener provision in the rule which would prohibit deception at the door. It rejected as inadequate a narrow requirement for the mechanical recitation of specific words in the manner provided in the proposed rule,[200] and reiterated the alternative proposed by the ad hoc committee that the Commission include in the rule a prohibition of the use of any plan or ruse to gain admission to a prospective buyer's home or to disguise the purpose of any call at the door.[201]

Despite the record support for the establishment of a requirement for salesmen to disclose their identity and purpose when they first appear on the doorstep, and while there is certainly no reason to condone the employment of the described ruses and various forms of deceit used by door-to-door salesmen to gain entrance into the home, the Commission views the cooling-off rule as intended to give the consumer a self-executing defense against high-pressure salesmanship by enabling him to cancel a purchase which, upon reflection, he believes to be unwise. In keeping with this premise it is believed that the rule should contain only those provisions which are necessary to make it effective. It should not be treated or used as a piecemeal effort to correct a few of the more flagrantly objectionable practices of direct sellers. If additional regulation of this industry is necessary, the Commission will address itself to the problem of identifying the commonly used illegal practices and devise measures necessary to eliminate them. Such practices might include, in addition to deception at the door, misrepresentations as to the quality and nature of the consumer goods and services sold, deceptive pricing, and misuse of the word "free".

Although the Commission has determined that a door-opener provision should not be included in the rule, direct sellers should note that door-opener provisions are appearing with increasing frequency in proposed orders against door-to-door sellers, and that these may be more stringent than the provisions included in the proposed rule.[202]

J. *Arbitration clause.* In paragraph (c) of the proposed rule, the seller is required to include in every door-to-door sales contract a provision whereby he agrees to arbitrate any dispute arising under the contract at the buyer's option and also to submit to the jurisdiction of the buyer's place of resident. This proposal that the seller agree to submit to arbitration at the option of the buyer was enthusiastically received by some consumer representatives who said that it would provide the consumer with a means of avoiding the large costs inherent in legal proceedings.[203]

Mr. Robert Coulson, executive vice-president of the American Arbitration Association, said that the arbitration provision in the proposed rule was incomplete since it did not require the seller to include an enforceable arbitration provision in the contract. An agreement to arbitrate, standing alone, forces the moving party into court to obtain an order directing arbitration. He suggested, therefore, that the rule be amended to require the designation of an impartial agency, such as the American Arbitration Assoication as arbitrator. This would require the dissatisfied buyer only to file with the local regional office "an intention to arbitrate." He expected that the minimum filing fee of $50 could be drastically reduced if an appreciable number of cases involving small amounts of money were filed.[204]

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[199] R. 2413.
[200] R. 2227.
[201] R. 793.

[202] See for example, *Time Inc., et al.*, Docket C–1919; *Subscription Bureau Ltd., et al.*, Docket C–2150.
[203] Kass, supra note 41 at Tr. 143; White, supra note 162, at Tr. 325, 334, 335.
[204] Tr. 784–785.

Mr. Coulson advised that the procedure might also be used to resolve disputes which arise out of a cancellation by the buyer, such as the condition of the goods returned and whether he had made them available for pickup by the seller.[205] Mr. Coulson believed the Association could find and make available arbitrators who would be able to understand the legal nuances of the door-to-door sales transaction. He cited the fact that the Association's initial efforts in bringing arbitration to the consumer had been successful. By way of illustration he pointed to the widespread use of arbitration in automobile accident cases involving uninsured motorist coverage, domestic relations cases, rug cleaning contracts in New York City, and various disputes in the black communities of Philadelphia and Washington.[206] Mr. Coulson also said that while attorneys were used in 95 percent of the commercial arbitration cases where the issues were relatively complex, he saw no need for the use of attorneys on the part of consumers who were capable of representing themselves adequately.[207] In response to a question as to how long it would take to establish procedures necessary to provide arbitration in door-to-door sales transactions, Mr. Coulson said the Association could go to work immediately.[208]

Contrary to the picture painted by Mr. Coulson, the record reflects some misunderstanding of the nature of arbitration,[209] and doubt as to whether the consumer would understand it and be able to make effective use of the procedure particularly if he sought to do so without an attorney.[210] In addition, there is the problem of costs. The Chairman of the Advisory Council for Chicago of the American Arbitration Association said it would be impossible for the Association to handle and provide arbitrators for a substantial number of cases without receiving some sort of minimum charge.[211]

[205] Tr. 786.

[206] Tr. 789–791.

[207] Tr. 793.

[208] Tr. 794.

[209] Some consumer representatives thought that it was a completely informal procedure: "* * * the attorney * * * arbitrated both between my client and the seller for what seemed to be reasonable settlement." (McCarthy, supra note 155 at Tr. 680.) "As to the paragraph on arbitration I would have this question: Does this preclude the buyer from bringing a law suit for damages. In other words, is this an estoppel so to speak?" (Milan, supra note 141 at Tr. 716.)

[210] "I think that maybe more protection can be accorded to unsophisticated buyers and low-income consumers if this paragraph were left out, because I think that the arbitration in this context can put the unsophisticated consumer in an environment where he may feel intimidated." (Shuman, supra note 164 at Tr. 171–172.) "The consumer who can afford no lawyer or supporting witness will still feel at a disadvantage in an arbitration proceeding against a company which has both." (Ross, supra note 156 at Tr. 880.) Mr. Kass, supra note 41 at Tr. 150 and Mr. Halliburton supra note 188 at Tr. 566 also expressed doubt as to the practicability of the provision.

[211] Harry D. Green, Tr. 596.

The Chairman of the Committee on Arbitration of the Federal Bar Association, while praising the provision for arbitration in the proposed rule, also indicated that it would be unfair to expect a permanent arrangement whereby individual arbitrators would serve without fee. He thought that arrangements could be made to minimize these costs if a central place and scheduled times could be made available for this purpose.[212] It was also suggested that if the seller were required to pay the costs of arbitration regardless of the outcome he could spread these costs among all consumers by raising the price of his product or services.[213]

The record in the proceeding has established that consumers are frequently misled by door-to-door salesmen with respect to the nature of the goods and services being sold and as to the terms of the sale. Granting them the right to seek arbitration as a means of redress might in many instances be of benefit to them. Resort to arbitration, however, would not be a panacea; it would still require some initiative on the part of the buyer to invoke this process and competent presentation of the buyer's case if a favorable decision is to be expected. The record does not indicate that a buyer would be more likely to resort to the arbitration process than he would to small claims courts, or that he would be more successful in the former forum than in the latter.

The possibility of using arbitration to resolve issues between consumers and those from whom they buy is worthy of serious exploration and study. However, an attempt to adopt such a procedure before the plans for its use have been formulated, the necessary administrative support provided, and the costs ascertained is certain to fail. In view of these considerations the rule does not contain the arbitration provision.

The second requirement in this paragraph that the seller submit to the jurisdiction of the buyer's place of residence was not the subject of very much comment. Perhaps this was because under normal circumstances the long-arm statutes of most States would result in the seller being subject to the jurisdiction of the courts of the State in which the contract or the sale was made.[214] Although this provision of the proposed rule was approved by consumer representatives,[215] it was not the subject of comprehensive comment in which the various procedural complexities which might arise were considered or addressed. Suffice it to say, in those States which do not have long-arm statutes, procedural devices to make the provision effective would have to be included in the rule.[216] It should also be remembered that as was the case with respect to arbitration, a lack of data and more specific information would make the inclusion of such a provision in the final rule premature at this time. For these reasons this provision was omitted from both the revised proposed rule and the final rule.

[212] David Shipman, Tr. 734.

[213] Joan E. Gestrin, a student at the Northwestern University School of Law, Tr. 577.

[214] "The proposed requirement that the seller must submit to the buyer's jurisdiction is in most States a foregone conclusion under normal circumstances * * * because of the * * * long-arm statutes. We believe it is unwise to attempt to codify in Federal agency regulatory proceedings * * * State law, or court interpretations thereof * * *." (Letter, National Retail Merchants Association, R. 1331.)

[215] Shuman, supra note 164 at Tr. 172.

K. *Lengthening the cooling-off period.* There were many suggestions that the length of the cooling-off period established in the proposed rule was too short. The most common suggestion was that the cancellation period be extended to 5 days, in order to permit the consumer more time to gather information respecting the wisdom of the purchase, to allow for the possible absence of the husband on a business trip, or for consultation with a more knowledgeable member of the family or friend who did not live in the home.[217] It is undeniable that a longer cooling-off period would be of benefit to the buyer. However, sellers must be able to operate their businesses with some degree of certainty; and in the light of the adoption of the 3-day period by 19 of the States and in the Uniform Consumer Credit Code, the record does not justify the extension of the period.

Another suggestion was that the period should not begin to run until after the goods or a substantial part of them had been delivered or the services performed.[218] This would permit the consumer to determine whether there had been any misrepresentation with respect to the nature, quality, or other characteristics of the goods or services. While misrepresentation of the characteristics of the merchandise or service can be detected only after delivery or performance, an extension of the cooling-off period to insure detection of misrepresentation by the buyer would introduce an intolerable degree of uncertainty into the finality of

[216] "* * * neither the fact of that inchoate jurisdiction nor the provision of a contract can make an absent party subject to the personal jurisdiction of a court without implementing procedural devices * * *." (Views and Argument of Crowell, Collier and Macmillan, Inc., R. 1861.)

[217] In urging the adoption of a 5-day cooling-off period Senator Moss said, "But, it seems to me there are three interests which have to be balanced * * * one is the buyer's interest in rescinding undesirable purchases and, second, the legitimate businessman's interest in finalizing a financed sale and the buyer's interest in receiving goods which he still wants and which he ordered." (Tr. 32.) Donald Elberson, executive director Consumer Assembly of Greater New York agreed, "We are also concerned wtih the 3-day period thinking it too short for the consumer to gather information for real decisionmaking" (Tr. 58); as did Mrs. Theresa Clark, a spokesman for the United Planning Organization, "A 5-day cooling-off period would be more desirable." (Tr. 348.) See also Tr. 635–636.

[218] "In many cases he doesn't know what a rotten deal he has got until he actually

the transaction. It can be argued, of course, that any cooling-off period which delays the finality of a door-to-door sale presents bookkeeping problems for sellers. If the goods are delivered a day or two after the contract is signed, the extension of the cooling-off period would not appear to be a significant added burden. However, there may be direct sellers who, by the nature of their business, may not be able to deliver goods sold door-to-door for a month or more and indeed some contracts may envision partial deliveries, or the performance of services over an extended period of time. A provision extending the cooling-off period until after delivery of the goods may have a severe impact on them. In short, while such a provision would be of obvious benefit to consumers in some transactions involving unscrupulous sellers, the probability and degree of disruption of industry transactions, and the legal complexities which might arise, appear to be of such a magnitude that adoption of the provision is not warranted.

L. *The proposal for affirmative approval.* A spokesman for the National Consumer Law Center of Boston College Law School recommended the proposed rule be changed to provide that a door-to-door sale would not be final and binding upon the buyer until he had affirmed his desire to purchase by mailing a notice to that effect to the seller.[219] He pointed out that in many transactions in which the buyer signifies his acceptance by signing a contract, the contract is not legally binding because the seller has executed it subject to approval in order to give him time to make a credit check on the buyer. He said that because of this, as well as because the buyer in the home is at such an obvious disadvantage that his ability to make a knowing and conscious choice is seriously impaired, no violence would be done to the accepted principles of contract law.[220] This proposal was supported by a number of consumer representatives.[221]

The requirement for affirmative approval rather than affirmative cancellation would lessen the likelihood of the consumers making an unwise purchase from a door-to-door salesman. On the other hand industry representatives said that such a provision would inject a large element of uncertainty, delay, and confusion into the transaction.[222] Until it is proven that the more moderate relief of a cooling-off period is ineffective, we have concluded that this extension of the proposed rule is not justified.

M. *Proposal for penalizing seller for noncompliance.* In its comments on the revised proposed rule, the National Consumer Law Center recommended an amendment to the rule which would provide that the cooling-off period would not commence until the consumer had been given the required notice.[223]

While this proposal has merit, it should be remembered that this is a trade regulation rule and not a statute. The failure to deliver the required notices at the specified time would constitute a violation of the rule. The incorporation of a remedy or punishment in the rule for a prospective violation does not appear either appropriate or necessary. To make the requested amendment would have the effect of telling the seller that if you don't comply with the rule now you may have to do so at a later time and under more onerous circumstances. This could lead logically to not one but two violations of the rule, i.e., one for failing to give the notice at the proper time, and two for failing to accord the right of cancellation for 3 days following the actual giving of the notice. In any event enforcement of the rule would depend upon the corrective processes available to the Commission and the fashioning of an appropriate order to insure that future violations did not occur. It would appear that an extension of the cooling-off period in the manner suggested might well be placed in the order against one who had violated the rule. The necessity for including such an anticipatory remedial provision in the rule is not established in the record.

N. *Preemption of State law.* In support of its view that the rule promulgated by the Commission should occupy the field and make it unnecessary for the direct seller to comply with State laws, the industry ad hoc committee proposed in paragraph 4 of its alternative rule the following provision:

> 4. Preemption:
> This Trade Regulation Rule shall supersede any provision of law, regulation, or ordinance of the States and political subdivisions thereof which differs from the provisions hereof.[224]

The reasons for the very serious concern of industry members about the preemptive effect of the trade regulation rule were set forth by Ira Millstein, Esq., who spoke on behalf of the Association of American Publishers, Inc.[225] This concern is based upon the difficulty of complying with the differing provisions of State cooling-off laws and of the expected problems of determining whether compliance with the rule in transactions to which it is thought applicable would make it unnecessary to comply with a conflicting or different State law.[226]

In a separate memorandum submitted on behalf of the Association of American Publishers,[227] a comparison of the 25 State statutes regulating door-to-door or home solicitation sales is set forth. It was accompanied by an outline showing the provisions of State laws with respect to:

1. Time within which the buyer may cancel.
2. The type of sales covered.
3. The notice of rights and format.
4. Method of cancellation.
5. Return of payment provisions.
6. Penalty or service charge for cancellation.
7. Procedure for the return of the seller's goods.
8. Cost of returning sellers' goods.
9. Sellers' obligations respecting traded-in goods.
10. Forfeiture of sellers' goods.
11. Exempted transactions.

The memorandum and outline show striking differences and inconsistencies in the State laws, ranging from the length of cooling-off periods to the types of sales covered and methods of cancellation. The differences are so great that it is doubtful, except perhaps in the States which have adopted the Uniform Consumer Credit Code, whether a contract or procedure used in one State could be used in another. Additionally,

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receives the goods and sees exactly what it is he has purchased. This is especially true in the case of services where the services are never rendered or rendered in a very very slipshod manner." (Fritsch, supra note 32 at Tr. 526.) Senator Moss said, "Finally, let me touch on a problem area that is not at all affected by the current proposal. It is the door-to-door sales order where the contract is signed, but the merchandise delivered at a later date. By then the cooling-off period may have run out. If the merchandise is defective, if it doesn't measure up to the salesman's claims, or if it is unsatisfactory in any other way, the consumer is no longer protected. If the debt has been assigned to a finance company, the holder in due course doctrine will prevent the customer from any effective remedy. Fortunately, the Commission has recognized this latter problem and proposed a regulation governing holder in due course * * *." (Tr. 41.)

[219] The National Consumer Law Center is the national backup center for OEO's Legal Service Projects in the area of consumer protection. See R. 841, 844.

[220] Tr. 203, 211.

[221] Elberson, supra note 61 at Tr. 58; Halliburton, supra note 188 at Tr. 561–562; McKaig, supra note 42 at Tr. 621; Preloznik, supra note 189 at Tr. 698–699.

[222] Ross, supra note 156 at Tr. 872.

[223] "A final suggested revision of the provisions relating to cancellation concerns the running of the 3-day period. The proposed rule should adopt the procedure used in the cancellation provisions of Truth-in-Lending. Under that statute, the 3-day period does not start to run until the consumer has received all of the material disclosures required by the Act (15 U.S.C. 1635)." (R. 2403.)

[224] R. 794.

[225] Tr. 284–303; R. 858–877.

[226] "To say that chaos and hopeless confusion will exist is to understate the results. No one really knows * * * whether the rule rescinds the State laws or whether the State laws are superior to the rule * * *. Since the conflicting terms of the State statute make it impossible for an interstate seller to comply with both the statute and the rule, he is forced to operate at his peril no matter which he chooses to follow * * *." (Views and Argument of Crowell Collier and Macmillan, Inc., R. 1855.)

[227] R. 1789–1811.

it is unlikely that compliance with the proposed rule would result in the seller being fully in compliance with the law of the State in which the sale was made.

Certain industry spokesmen say that the advantages of uniform Federal regulation in this area are clear and cite the following as the most significant:

1. The consumer would be aware of his rights on a national basis; if he moved from one State to another, his rights of cancellation would not be changed.

2. Members of the industry could devise a contract and cancellation procedure which would be applicable throughout the country and hereby avoid a considerable expense.

3. A uniform rule would make it much easier to train and to retain salesmen.

4. Internal administrative controls necessary to insure compliance with the cooling-off procedure would be greatly simplified.

5. The reduced cost of compliance could be expected to encourage industry members to comply fully with the law and at the same time lessen the distribution costs which are ultimately passed along to the consumer.[228]

Despite their doubts as to the authority of the Commission to promulgate this rule, industry representatives are most insistent that if it is promulgated, the Commission must include a specific provision as to the preemptive effect of the rule. They go on to say that harmonization of requirements is one of the principal responsibilities of the Commission and that if such a provision is not included, it will pose extreme difficulties for the industry, particularly with respect to the smaller companies operating in more than one State. In accomplishing this preemption industry wants the Commission to state clearly and specifically that it intends to occupy the field and thus leave no room for State regulation.[229] As a precedent for this approach industry cites the action of the Federal Reserve Board in promulgating Regulation Z under the Consumer Credit Protection Act, 15 U.S.C. section 1601, wherein it provided in section 226.6(b) of that regulation, among other things that State law will be inconsistent to the extent that it requires disclosures "different from" the requirements of Regulation Z with respect to form, content, terminology, or time of delivery.[230]

Industry urges that if the Commission does not believe that it has the authority to occupy the field, and prescribe uniform cooling-off procedures of nationwide applicability that it should so inform Congress and recommend that appropriate legislation be enacted for this purpose, including language such as that used in S. 1599 of the 90th Congress.[231] In this connection it should be noted that section 7 of the bill stated:

> This Act shall not be construed to annul, or exempt any seller from complying with, the laws of any State or municipality regulating door-to-door selling, except to the extent that such laws, if they permit such selling, are directly inconsistent with the provisions of this Act.

The foregoing provision would indicate that in the opinion of its drafters the bill pertained to matters which were subject to both Federal and State regulation. In this area the decisions preclude State legislation only where there is a direct and positive conflict between the statutes to the extent that they cannot be reconciled and stand together, or where there is thought to be a congressional intent to occupy the field to the exclusion of State law on the same subject matter.[232]

It has also been held that the laws of a State must yield if they are incompatible with Federal legislation or with rules and regulations issued pursuant to authority delegated by Congress.[233] However, the mere grant of authority to a Federal agency of power with respect to a certain subject matter does not, in itself, supersede State law or prevent a State from making and enforcing regulations on the same subject matter.[234] It is only after the agency has acted and issued regulations which conflict with State law that the latter would be superseded, and then only to the extent that they conflict.[235]

It is apparently in recognition of these principles that the industry is so insistent upon a clear expression of an intent by the Commission to occupy the field. Thus the question becomes not so much whether the Commission has the power to supersede State laws and regulations, but whether it should.

In the past the Commission has recommended and encouraged the enactment of State and local laws, patterned after the Federal Trade Commission Act, in order to enlist the resources of the States in the constant battle to protect the consumer from unfair and deceptive trade practices. This policy was premised on the hope that the States would have the weapons they needed to combat business practices which were beyond the reach of Commission jurisdiction, and perhaps to exercise greater powers with respect to businesses which might be subject to the jurisdiction of both the Commission and the States. However, apparent inconsistency between State and Federal regulation does not always result in the former being struck down. Thus in Swift & Co. v. Wickham, 364 F. 2d 241 (2d Cir. 1966), the court held that a Federal poultry labeling regulation did not preempt a more detailed and stringent New York State regulation prescribing the manner in which poultry products in that State should be weighed, measured, and labeled.

It would seem that the Commission should not abandon its policy of cooperative and complimentary actions with the States in the matters covered by this rule in the absence of cogent and compelling reasons for doing so. If the State cooling-off laws give the consumer greater benefit and protection in regard to notice, time for election of the cancellation remedy, or in transactions exempted from this rule, there seems to be no reason to deprive the affected consumers of these additional benefits. On the other hand in those States which do not have cooling-off laws, or which have laws which do not accord the consumer protection and benefits provided in this rule, the rule would supply the needed protection or be construed to supersede the weak statute to the extent necessary to give the consumer the desired protection.

It would also seem that a relatively clear expression of the Commission's intent with respect to preemption would be helpful and better define the issues for judicial review should this be forthcoming.

Accordingly, note 2 to the revised proposed rule contained a statement expressing the Commission's view of the effect of the rule upon State statutes. Simply stated, note 2 provided that, with respect to transactions subject to the rule, the seller should accord the consumer the greater of the benefits provided by the rule or by the law of a State or political subdivision thereof which may also be applicable to that particular transaction.

The additional comments submitted on the revised proposed rule again reflected the serious concern of industry members as to the effect of the rule in the light of State statutes and municipal ordinances which contain cooling-off provisions. The most recent compilation of the Direct Selling Association shows that 31 States, the District of Columbia, and nine cities have such legislation.[236]

Industry members did not believe that the statements in note 2 provided solutions to the problems they anticipated would arise under State laws which imposed different requirements from those

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[228] Tr. 290–291.

[229] Id. at 286,297, citing Pennsylvania v. Nelson, 359 U.S. 497 (1956).

[230] Tr. 299.

[231] Tr. 302.

[232] Southern Pacific Co. v. Arizona, 325 U.S. 761, 766 (1945; Head v. New Mexico Board, 374 U.S. 424, 431 (1963).

[233] Free v. Bland, 369 U.S. 663, 668 (1962).

[234] Southern Pacific Co. v. Arizona, supra, note 232 at 765; Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 141, 143–144 (1963).

[235] Sperry v. Florida, 373, U.S. 379, 385 (1963); Free v. Bland, supra, note 233 at 668.

[236] R. 2229–2237.

set forth in the rule.[237] One suggested solution was for the Commission to make the rule applicable only in those States which did not have a cooling-off law.[238] Another was that the Commission follow the procedure of Regulation Z and permit those States which had requirements substantially the same as those embodied in the rule to apply for exemption.[239]

Again, industry urged that it was the duty of the Commission to prempt State laws and municipal ordinances in order to achieve uniformity.[240] The proposal most strongly supported by industry members was that the Commission should, in the Notes accompanying rule, state clearly and explicitly that it intended the rule to preempt as to the form of the notice to be given the consumer and as to the method and manner of the exercise of the cancellation right.[241]

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[237] "There is one final area of concern to Sears and other large companies which do business in interstate commerce. That concern is the problem of complying with a Federal regulation of door-to-door sales as well as with 22 different State requirements and numerous other local ordinances on this same subject. As presently drafted note 2 of the rule would not alleviate this problem, but rather would add to the burden. Note 2(b) states that the Commission's rule will not preempt State and local requirements unless 'directly inconsistent' with the Commission's rule. This subsection then lists three types of provisions which would be considered 'directly inconsistent,' i.e., not providing a 'substantially the same or greater' right to cancel than provided in the rule; permitting a cancellation fee or penalty, and not requiring a notice to the buyer 'in substantially the same form and manner' as required in the rule. As a result it would appear that only State or local provisions which require less than 3 days 'cooling off' or permit a cancellation fee would be preempted." (Letter, Sears, Roebuck & Co., R. 2130.)

"We very much regret the Commission's decision (to) issue a rule which does not preempt the field of regulation of door-to-door sales. If the Commission's rule is adequate protection in States with no regulation of such sales, the rule is also adequate protection in States with stricter regulation. The addition of an FTC rule to the plethora of existing State regulations will merely confuse both buyers and sellers, and increases the cost of doing business without providing buyers with any additional important protection." (Statement on behalf of the Water Conditioning Foundation, R. 2287.)

"Another area of great concern is the extensive, wordy, involved and confusing clauses where it would appear necessary to have precise wording as required by the Federal Trade Regulation Rule and an almost exactly similar meaning but differently worded State requirement, as per the enclosed California clause. This State requirement, being not inconsistent with the T.R.R. requirement only different in the precise wording required. We will end up with a contract so long and involved that the customer probably won't read any of it. We urge strongly that compliance with the T.R.R. provide exemption from the need for duplicate clauses meaning the same thing. Where State requirements exceed the T.R.R. then require the additional wording only covering the excess point(s)." (Letter, Publishers Productions, Inc., R. 2317–2319.)

"We are very disappointed to find that the revised proposed rule does not seem to preempt State and municipal cooling-off requirements. If the Federal cooling-off requirement does not supercede those established at other levels of government, and sellers must simultaneously comply with several such similar but differing requirements, great confusion, and many complications will result. We strongly recommend that the proposed cooling-off trade rule provide for the preemption of all State and municipal cooling-off requirements." (Letter, National Institute of Locker & Freezer Provisioners, R. 2279.)

"Note 2 of the proposed rule discusses the problem of preemption, but does nothing to solve the problem. The rule should contain an affirmative statement that compliance with this rule will exempt any seller from complying with the laws of any State or any political subdivision which legislates in the same area." (Letter, National Association of Installment Cos., Inc., R. 2336.)

"We are not at all certain of the exact meaning of the two 'preemption' paragraphs which appear on page 5 of the proposed rule. In paragraph (a) the Commission states that it is aware of the burden imposed by inconsistent statutes but that it believes that this disadvantage is outweighed by the need to have 'joint and coordinated efforts of both the Commission and State and local officials.' Then, in paragraph (b), the Commission purports to 'annul' laws or ordinances which 'are directly inconsistent with the provisions of this rule.' The paragraph then goes on to describe several ways in which a State statute will be considered inconsistent." (Letter on Behalf of Crowell Collier and Macmillan, Inc., R. 2417–2418.)

[238] If the Federal Trade Commission believes it is not justified in preempting this field of regulation (which action would simplify matters for sellers) then we suggest that, to avoid the confusion of duplicate and different NOTICES, the Federal Trade Commission modify the applicability of its proposed Rule, so that the Rule applies only in those States (as determined by the Commission) whose own regulations on the subject are less stringent than the proposed Rule, or nonexistent." (Letter, International Telephone & Telegraph Corp., R. 2345.)

[239] Letter, American Credit Corp., R. 2343–2344.

[240] "Dart Industries has gone on public record in support of the Commission's proposed trade regulation rules on cooling-off and franchising because we believe both the consumer and business benefit from clearly defined rules of fair methods of competition which are applicable to all businesses in an industry. We are deeply disappointed, therefore, to learn that the Commission will refuse to preempt conflicting State and local news.

"The principal justification for the Commission to have rulemaking authority is to provide certainty and uniformity in the application of its policies. But without preemption, trade regulation rules have neither certainty nor uniformity. We believe both the consumer and business deserve a Commission willing to exercise the full limit of its authority—in preemption of conflicting laws, as well as in rule-making." (Letter, Dart Industries, Inc., R. 2135.) See also, letter, Miller Stormguard Corp., R. 2168.

In its statement Field Enterprises Educational Corp. said: "We strongly urge the Commission not to abandon its Federal responsibility in the area of form, even if it is intent upon permitting continued State and local regulation on all matters of substance. We urgently request deletion of the word 'substantially' from Note 2, Paragraph (b) if that is necessary to avoid this confusion, and the deletion of the word 'substantially' from the Revised Proposed TRR's opening paragraph (a) as well if that will further this objective." (R. 2247.)

[241] "We are specifically troubled by the statement with respect to the form of notice to the buyer of his rights. To the best of our knowledge there is not one form required in any of the 22 States which now have door-to-door sale laws which could be classified 'substantially the same.' The practical effect of such a provision is that interstate businesses will have to provide two forms of notice in these 22 States, and in some municipalities in those States the buyer will be given three forms of notice. This is obviously inimical to the concept of providing consumers with useful information as to their rights. This can only lead to confusion.

"We suggest, therefore, that either the Commission preempt all State and local door-to-door sale requirements except those which provide greater protection, such as requiring more than 3 days 'cooling off' or applying the requirement to sales amounting to less than $25, or, at the least, amend the phrase in Note 2(b) dealing with the form of notice to the buyer to read:

> * * * or which do not provide for giving the buyer notice of his right to cancel the transaction in exactly the same form and manner provided for in this section * * *

"The effect of such an amendment with respect to the form of notice would be to assure that only one form of notice will be given to consumers. This will not only reduce administrative problems and expense on the part of door-to-door sellers, but will reduce confusion on the part of consumers and thus make this rule a much more valuable consumer protection regulation." (Letter, Sears, Roebuck and Co., R. 2130–2131.)

Field Enterprises Educational Corp., concurred in this recommendation: "FEEC's other major concern relates to the question of preemption. We recognize that the Commission has decided against total preemption of all State and local action in this area, however logical and desirable the resulting economies and ease of enforcement might be from the consumer point of view. Thus State and local governments will still be free to license or ban door-to-door salesmen, to regulate their statements at the door, to impose a cooling-off period of more than 3 days, to apply the right of cancellation to sales under $25, and to promulgate other substantive regulations in this area. But nothing can be accomplished except needless expense and confusion by the Commission's failing to preempt as to form.

"Whatever the Commission finally decides on the questions raised earlier in this statement, it should promulgate the best possible requirements as to form that give the consumer all possible protection. Once that is done, what is to be gained by requiring a seller to print another separate notice for Hawaii stating that cancellation must be by certified mail, return receipt requested, another one for Indiana which words the caption differently, still another for New Hampshire, which requires 12 point type, and another for Arizona, if it passes the pending bill requiring a different colored notice, and another for New York, where the notice must be on a perforated card, and still another for Connecticut, with its far wordier notice, and another for Columbus, Ohio, where goods must be picked up 10

The Commission remains of the view that it is essential to have State cooperation and assistance in insuring that consumers were provided with a cooling-off period in door-to-door sales by State legislation and enforcement and that the preemptive effect of the rule should be limited to the provisions of State laws which do not accord the consumer protection and benefits equal to or greater than those provided in the rule. Critical industry examination of this concept shows that it may well result in almost every case in the consumer being furnished with duplicate notices of his right to cancel the sale—one in compliance with the applicable State law, the other meeting the criteria expressed in the rule.[242]

While this may be considered unwise by some, outright preemption of State laws, assuming for the moment that the Commission has the authority to do so, would in effect take the States out of the business of enforcing cooling-off provisions except in those transactions not subject to the Commission's jurisdiction. This solution would not be satisfactory.

The suggestion that the Commission exempt from the requirements of the rule transactions in those States which have laws substantially the same as the rule, would on its face appear to provide some relief. However, it is doubtful whether any State could satisfy this criterion.

The suggestion that the Commission preempt as to the form of notice to be given the consumer and as to the method and manner of the exercise of the cancellation right is equally unacceptable. Its adoption would in fact result in a preemption of virtually all of the provisions of State laws as these laws largely require that the sales contracts include specific language designed to inform the consumer of his rights and obligations under the applicable State law. Without such provisions the State laws would become hollow shells and virtually ineffective.

At the time this proceeding was initiated only 14 States had enacted cooling-off laws. Now, as pointed out above, over two-thirds of the States have such laws. Based on their experiences under their respective laws, State legislatures have shown little hesitation in adopting amendments for the purpose of refining the initial enactments to provide the consumer with greater protection.[243] While a number of these statutes do not afford the consumer the same degree of protection as the rule, they are consistent in that they accord the consumer the unilateral right to cancel the transaction—which is the principal purpose of the rule. While the mechanics of the rule, i.e., those provisions which are designed to insure that the consumer is informed of the cancellation right, told how to exercise it, and advised of the rights and obligations of the parties following cancellation are not of paramount importance, it is in this area that the dual compliance with the requirements with the rule and the various State statutes becomes most difficult. For example, there would be little difficulty in harmonizing the varying lengths of the cooling-off period provided by State laws with that of the rule. If the State law authorized a 5-day cooling-off period, sellers would be required to comply. If the State law offered only 2 days, sellers would be required to comply with the 3-day period provided by the rule. However, conforming the mechanics of the rule with the mechanics of the numerous State statutes, which authorize the imposition of a fee or penalty upon the consumer who cancels, and which provide for such things as different forms of notices, different methods of cancellation, and different procedures for the recapture of delivered goods, would require the use of so many variables that consistency would become an almost unattainable objective.

It should be recognized that the essential provisions of a cooling-off rule or statute are those which give the consumer a unilateral right to cancel a sale within 3 days, without penalty or fee, and which require that he be informed of this right both orally and in writing. All of the other provisions are ancillary, and it is in this area that the most troublesome differences occur. In the interest of both the consumer and industry it appears that the Commission should seek uniformity in cooling-off procedures at the Federal and State level and encourage the various States to eliminate or change those requirements of their respective laws which are inconsistent with this rule. Accordingly, specific actions designed to promote and foster uniformity will be advised and implemented by the Federal-State Cooperation Unit in the Office of the Director of the Bureau of Consumer Protection.

CHAPTER XII. EFFECTIVE DATE OF THE RULE

Industry representatives originally stated they would need 9 months following promulgation of the rule to change contracts, train sales personnel, adjust computers, and take the other actions necessary to implement the rule following its promulgation.[244]

In the notice which included the revised proposed rule when it was released for comment, industry members and other knowledgeable persons were specifically invited to provide information relative to the length of time industry members would need to make the necessary arrangements to comply with the

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days after their return is tendered, and so on and on and on?

"No single form could possibly harmonize all of these conflicting requirements. Thus a multiplicity of forms will be required, most likely a separate one for every State and locale with a cooling-off statute. In many instances the State or local form may not be capable of even substantial harmonization with the Federal form, and the prudent seller will feel compelled to give the buyer to conflicting forms." (R. 2245–2246.)

Encyclopaedia Britannica concurred and said: "Indeed, as to matters of form, EB believes that there is an affirmative constitutional mandate that there must be preemption in this case. It has long been a settled principle of constitutional law that there are certain areas of commerce which demand uniformity of regulation and that the lack of uniformity which would result from efforts by local bodies to regulate such areas, even without specific preemptive action at the Federal level, would impose an undue burden on interstate commerce. *E.g.*, Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945); Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959). The decision whether to permit local regulation in such cases is to be resolved by weighing and balancing the competing Federal interest in the unimpeded flow of commerce with the local interests in the subject of regulation (325 U.S. at 770–71). Here it cannot be disputed that the need to comply with a host of conflicting regulations as to the form in which the consumer is advised of his right to rescind a contract in light of the host of actual and potential local cooling-off laws would substantially impede the operation in commerce of the companies who would be subject to the proposed Trade Regulation Rule * * *." (R. 2252–2253.)

[242] Ibid. See also statement submitted on behalf of Crowell, Collier and Macmillan, Inc., wherein it is stated: "We assume that the Commission has adopted this strange position in the belief that by so doing it will gain the enforcement muscle of the State and local authorities. This seems unlikely. Local prosecutors certainly do not have the power to prosecute violators of Federal statutes or even trade regulations rules promulgated by the Federal Trade Commission. If the inconsistent State statute has been 'annulled' (a consequence we seriously doubt), there is nothing left for the local officials to enforce against an interstate seller.

"What happens in the States in which only part of the State statute is inconsistent with the Commission rule? For example, the State of Hawaii permits a cancellation fee. Is the entire State statute annulled or only the cancellation fee? What happens if a State requires notice of cancellation by certified mail, return receipt requested? Is such a statute entirely annulled simply because of this provision?

"The legal problems created by this Commission approach stagger the imagination. The Commission should either 'bite the bullet' and preempt all State legislation or make its rule operative in only those States which do not have cancellation statutes. National sellers are able to cope with a multiplicity of State statutes, but they cannot operate when the Federal and State requirements overlap and no one is certain as to which must be followed. The very least the Commission can do is to analyze all State statutes and local ordinances and publicly announce which are annulled and which remain in full force. The public interest requires no less.

"In closing on this point, we believe that the Commission's fears that complete preemption of all State statutes by the rule would create an enforcement hiatus are unfounded. All sellers big enough to conduct a substantial interstate business will make the required changes in their contracts and procedures. After all, enforcement of this type of rule is inexpensive and uncomplicated. Moreover, this approach has the advantage of leaving the State statutes in full force and effect with respect to intrastate sellers. The jurisdictional lines between State and Federal authorities are preserved, and the entire legal picture is much clearer." (R. 2418.)

[243] Hawaii, Massachusetts, Illinois, and the city of New York are among the jurisdictions which have revised previous enactments.

[244] Tr. 881, R. 794.

rule following its promulgation in final form. Industry recommendations on this point ranged from a low of 60 days to a high of 2 years, with perhaps the majority agreeing that 6 months should be sufficient.[245]

Among the factors which it was said should be considered were time to design and print the revised contract forms and notices, distribution of these to the various offices in the field, training of sales personnel in the use of the new forms, and finally a reasonable period to permit exhaustion of the existing stocks on hand.[246]

Encyclopaedia Britannica recommended that the rule be made effective upon promulgation with the understanding that companies who are unable to comply with its provisions be granted a 6- to 9-month grace period.[247]

The view of the Commission which is shared by at least one consumer group [248] is that the rule should become effective as soon as possible but that the practical obstacles to prompt action on the part of most industry members should be recognized by allowing them a maximum of 6 months to comply with the rule.

The Commission has carefully considered whether it would be best to issue the rule in the form of a policy statement or guide, or to issue it in its present form and to defer its effective date. The affirmative requirements of this rule do not lend themselves to either a guide or a policy statement format. Moreover publication of either a guide or a policy statement would not reduce the enforcement problems or enhance the possibility of industry compliance in the interim period. Accordingly, the Commission has decided to promulgate the rule.

In view of pending litigation regarding the Commission's rulemaking authority, the Commission has decided to defer the announcement of an effective date for this rule. It should be noted, however, that this rule constitutes an expression of the Commission's view of what should be the application of section 5 of the Federal Trade Commission Act to door-to-door transactions. The Commission will encourage all States and localities with cooling-off legislation to begin immediately to remove inconsistencies between their cooling-off requirements and the provisions of this rule, in order to remove the burden of compliance with differing requirements at the State and Federal level.

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[245] Airline Schools Pacific of Van Nuys (R. 2182); National Pest Control Association, Inc. (R. 2284); Direct Selling Association (R. 2225); Ad Hoc Committee (R. 2263); Crowell, Collier and Macmillan, Inc. (R. 2419).

[246] "An effective date, 6 months after promulgation of the Rule, would allow sufficient time to prepare new contract forms, have them printed, and distributed to all sales representatives. It would also enable most companies effectively to reach and train all sales and administrative personnel in the mechanics of operation, as well as the imperative for compliance with the spirit as well as the letter of the Rule." (Stephen Sheridan, vice-president, Electrolux, R. 2180.)

[247] R. 2254.

[248] Virginia Citizens Consumer Council, Inc. (R. 2406).

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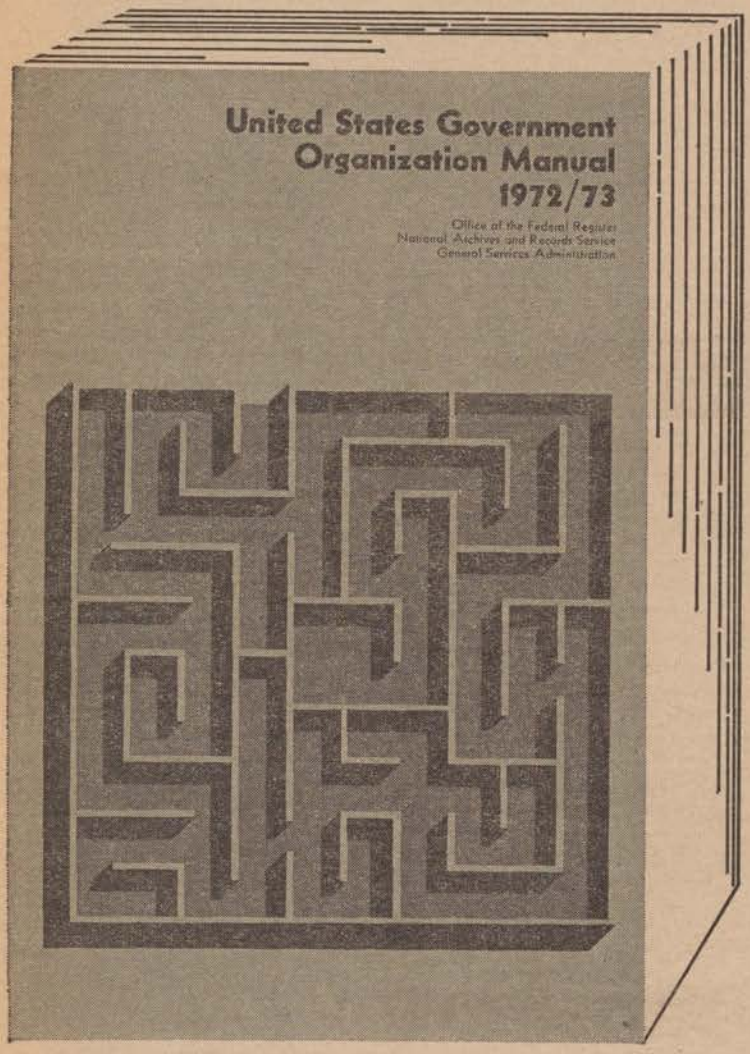

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