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Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

U.S. Civil Service Commission

Section 213.3170 is amended to show that the position of Chairman, Federal Prevailing Rate Advisory Committee is excepted under Schedule A.

Effective November 27, 1972, paragraph (b) is added to § 213.3170 as set out below.

§ 213.3170 U.S. Civil Service Commission.

* * * * *

(b) Chairman, Federal Prevailing Rate Advisory Committee.

(5 U.S.C. 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.72–20660 Filed 11–29–72;8:52 am]

PART 213—EXCEPTED SERVICE

Treasury Department

Section 213.3305 of Schedule C is amended to reflect the following title change: From Confidential Assistant to the Under Secretary to Confidential Assistant to the Deputy Secretary.

Effective on publication in the FEDERAL REGISTER (11–30–72), § 213.3305(a)(15) is amended as set out below.

§ 213.3305 Treasury Department.

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

(15) One Confidential Assistant to the Deputy Secretary.

* * * * *

(5 U.S.C. 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.72–20572 Filed 11–29–72;8:50 am]

PART 213—EXCEPTED SERVICE

Department of the Interior

Section 213.3312 of Schedule C is amended to reflect the following title change: From Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks to Deputy Assistant Secretary for Fish and Wildlife and Parks.

Effective on publication in the FEDERAL REGISTER (11–30–72), subparagraph (5) is amended and subparagraph (41) is added to paragraph (a) of § 213.3312 as set out below.

§ 213.3312 Department of the Interior.

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

(5) Three Special Assistants to the Assistant Secretary for Fish and Wildlife and Parks and one Confidential Assistant (Administrative Assistant) to each of the four Assistant Secretaries for Mineral Resources, Public Land Management, Water and Power Development, and Fish and Wildlife and Parks.

* * * * *

(41) One Deputy Assistant Secretary for Fish and Wildlife and Parks.

* * * * *

(5 U.S.C. 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.72–20570 Filed 11–29–72;8:49 am]

PART 213—EXCEPTED SERVICE

Small Business Administration

Section 213.3332 of Schedule C is amended to reflect the following title changes: From Principal Special Assistant to the Administrator to Executive Assistant to the Administrator and from Confidential Assistant to the Principal Special Assistant to the Administrator to Confidential Assistant to the Executive Assistant to the Administrator.

Effective on publication in the FEDERAL REGISTER (11–30–72), paragraphs (m) and (n) of § 213.3332 are amended as set out below.

§ 213.3332 Small Business Administration.

* * * * *

(m) One Executive Assistant to the Administrator.

(n) One Confidential Assistant to the Executive Assistant to the Administrator.

* * * * *

(5 U.S.C. 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.72–20571 Filed 11–29–72;8:50 am]

PART 213—EXCEPTED SERVICE

Office of Economic Opportunity

Section 213.3373 of Schedule C is amended to reflect the following title changes: From one Special Assistant and two Confidential Assistants to the Assistant Director for Research, Plans, Programs, and Evaluation to one Special Assistant and two Confidential Assistants to the Assistant Director for Planning, Research, and Evaluation.

Effective on publication in the FEDERAL REGISTER (11–30–72), subparagraphs (8) and (16) of paragraph (a) of § 213.3373 are amended as set out below.

§ 213.3373 Office of Economic Opportunity.

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

(8) One Special Assistant to the Assistant Director for Planning, Research, and Evaluation.

* * * * *

(16) Two Confidential Assistants to the Assistant Director for Planning, Research, and Evaluation.

* * * * *

(5 U.S.C. 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.72–20573 Filed 11–29–72;8:50 am]

Title 7—AGRICULTURE

Chapter II—Food and Nutrition Service, Department of Agriculture

FOOD STAMP PROGRAM

Miscellaneous Amendments

Notice of proposed rule making was published in the FEDERAL REGISTER on August 25, 1972. The notice set forth a proposal to amend the regulations governing the food stamp program to (1) provide that the salary and travel costs of the person who prepares the official record of hearings held at the request of households may, in part, be paid to the State agency by the Food and Nutrition Service, (2) allow State agencies to make direct refunds to any recipients overcharged for their coupon allotment, (3) allow State agencies to cooperate with Federal, State, and local investigative agencies which are investigating suspected violations of the Food Stamp Act or program regulations; and (4) provide that court-ordered support and alimony payments will be deducted from income

in determining eligibility and basis of issuance.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed amendments. The great weight of the responses favored adoption of the proposed amendments.

After consideration of all responses, the Department has decided to adopt the proposed amendment published in the FEDERAL REGISTER of August 25, 1972.

In addition, the address of the office of the FNS Southeast Region has changed and requires correction so that mail may be properly addressed by persons or agencies desiring information concerning the program.

Also a nonsubstantive single-word change is required in § 272.2, paragraph (e)(3) in the interest of clarity and to most accurately reflect the intent of the sentence.

The amendments are set forth below:

PART 270—GENERAL INFORMATION AND DEFINITIONS

1. In § 270.2, paragraph (ii) is revised to read as follows:

§ 270.2 Definitions.

* * * * *

(ii) "Hearing Official" means a person or persons designated by the Agency to act in its behalf in the conducting of hearings under § 271.1(o) of this subchapter. Such persons shall not have been involved in the action in question. Medically qualified persons who make medical determinations or provide testimony on medical issues in hearing proceedings and the person who prepares the official hearing record may also be considered hearing officials.

* * * * *

2. In § 270.5, paragraph (b)(2) is revised to read as follows:

§ 270.5 Miscellaneous provisions.

* * * * *

(b) * * *

(2) For project areas in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands, Virginia: U.S. Department of Agriculture, Food and Nutrition Service, Southeast Region, 1100 Spring Street NW., Room 200, Atlanta, GA 30309.

* * * * *

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

3. In § 271.1, paragraph (q) is revised to read as follows:

§ 271.1 General terms and conditions for State agencies.

* * * * *

(q) *Refunds to households.* A household shall be entitled to a cash refund for any amount that it has been overcharged for its coupon allotment as a result of an error by the State agency in the administration of the food stamp program: *Provided,* That, if the household owes a balance on a claim under § 271.7(d), the State agency shall offset the amount due under this paragraph against such balance. The State agency shall make such refunds from funds collected in payment of the purchase requirement or from its own funds or those of the project area, or, if no such funds are available for this purpose, the State agency shall request FNS to make such refunds directly to the households. If State agency or project area funds are used to make refunds, FNS will credit or reimburse the State agency or project area therefor.

* * * * *

4. Section 271.3(c)(1)(iii) is amended by deleting the word "and" from (*e*), by relettering (*f*) to become (*g*), and by adding a new (*f*) so that (*e*), (*f*), and (*g*) will read as follows:

§ 271.3 Household eligibility.

* * * * *

(c) Income and resource eligibility standards of other households. * * *

(1) Definition of income. * * *

(iii) Deductions for the following household expenses shall be made:

* * * * *

(*e*) Educational expenses which are for tuition and mandatory school fees, including such expenses which are covered by scholarships, educational grants, loans, fellowships, and veterans' educational benefits;

(*f*) Court-ordered support and alimony payments; and

(*g*) Shelter costs in excess of 30 percentum of the household's income after the above deductions.

* * * * *

5. The relettering of the items in § 271.3(c)(1)(iii) requires amendment of any reference to such subdivisions elsewhere in that section. Accordingly, the following amendment is hereby made in § 271.3(c): In § 271.3(c)(1)(i)(*b*)(*1*), the reference to "subdivision (iii)(*f*)" is amended to read "subdivision (iii)(*g*)".

6. In § 272.2, paragraph (e)(3) is amended to read as follows:

§ 272.2 Participation of retail food stores, and non-profit meal delivery services.

* * * * *

(e) * * *

(3) Credit slips or tokens shall bear language similar to the following: "Redeemable only in eligible food and only at (insert the name of the issuing store or chain) store(s)".

* * * * *

PART 272—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS, NONPROFIT MEAL DELIVERY SERVICES, AND BANKS

7. In § 272.5, the second sentence of paragraph (d) is revised and a new paragraph (f) is added to read as follows:

§ 272.5 Participation of banks.

* * * * *

(d) * * * Such coupons which have been so issued and used, as well as any coupons which have been issued under paragraph (f) of this section, or which FNS believes may have been issued, transferred, negotiated, used, or received in violation of any provisions of this subchapter or of any applicable statute, shall at the request of any person acting on behalf of FNS and on issuance of a receipt therefor by such person, be released and turned over to FNS by the bank receiving such coupons, or by any other person to whom such request is addressed, together with the certificate(s) of redemption accompanying such coupons, if any. * * *

* * * * *

(f) Upon the written request of Federal, State, or local governmental agencies which have authority to investigate, and are investigating, suspected violations of Federal or State statutes relating to the enforcement of the Food Stamp Act or the regulations issued thereunder, the State agency may allow households which it believes are or may be ineligible for the program to continue program participation and to receive and use ATP cards and food coupons. The State agency may allow such households to continue participation in the program until the earlier of (1) expiration of the period of 90 days after such request is received or of such longer period as FNS, upon request of the State agency, may for good cause approve in a particular case, or (2) receipt of notification from the investigative agency that such participation may be terminated or that the investigation has been completed. Notwithstanding any other provisions of this subchapter, the State agency shall not be liable to FNS for the bonus value of any coupons issued to households which the State agency allows to continue participation in the program in conformity with the provisions of this paragraph.

(78 Stat. 703, as amended, 7 U.S.C. 2011-2025)

Implementation will be effected by the States in accordance with § 271.1(s).

Effective date. This amendment shall be effective on the date of its publication in the FEDERAL REGISTER (11-30-72).

RICHARD LYNG,
Assistant Secretary.

NOVEMBER 24, 1972.

[FR Doc.72-20587 Filed 11-29-72;8:51 am]

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

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Docket No. SH-295, Amdt. 1]

PART 864—SUGARCANE: LOUISIANA

Fair and Reasonable Wage Rates

Pursuant to the provisions of the Sugar Act of 1948, as amended, Part 864

of Title 7 of the Code of Federal Regulations, published December 28, 1971 (36 F.R. 24983) (effective January 10, 1972), is amended by revising paragraph (a) of § 864.23 to read as follows:

§ 864.23 Requirements.

A producer of sugarcane in Louisiana shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm in production, cultivation, or harvesting work, as provided in § 864.24, shall have been paid in accordance with the following:

(a) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefore at rates required by existing legal obligations, regardless of whether those obligations resulted from an agreement (such as a labor union agreement) or were created by State or Federal legislative action, or at rates as agreed upon between the producer and worker, whichever is higher, but not less than the following:

(1) *Work performed on a time basis.* (i) Effective October 1, 1971 and remaining in effect through December 31, 1971:

Class of worker	*Rate per hour*
Harvest work:	
Harvester and loader operators	$1.65
Tractor drivers, truck drivers, harvester bottom blade operators, and hoist operators	1.60
All other harvesting workers	1.50

(ii) Effective January 1, 1972 and remaining in effect, through October 22, 1972:[1]

Class of worker	*Rate per hour*
Production and cultivation work:	
Tractor drivers	$1.65
All other production and cultivation workers	1.60
Harvest Work:	
Harvester and loader operators	1.75
Tractor drivers, truck drivers, harvester bottom blade operators and hoist operators	1.70
All other harvesting workers	1.60

* * * * *

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

STATEMENT OF BASES AND CONSIDERATIONS

The redetermined wage rates contained herein are issued in compliance with the October 26, 1972, Order of the United States District Court for the District of Columbia in the case of Huey Freeman, et al. v. the United States Department of Agriculture, et al., Civil Action No. 1490–72 and shall apply retroactively to all labor performed on or after October 1, 1971, in the harvest of the 1971 Louisiana sugarcane crop and the planting and cultivation of the 1972 sugarcane crop unless the aforesaid order of the district court is overturned on appeal thereof.

Section 301(c)(1) of the Sugar Act requires producers to pay wages at rates not less than those determined by the Secretary to be fair and reasonable. In making such determinations, the Secretary is directed to take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and byproducts, income from sugarcane, and cost of production), and the differences in conditions among the various sugar producing areas.

In accordance with the court's order, the Department has redetermined the wage requirements applicable to the harvest of the 1971 Louisiana sugarcane crop and the planting and cultivation of the 1972 crop. Consideration has been given to the returns, costs, and profits of producing sugarcane for the 1969, 1970, and 1971 crops, which were obtained through a field survey conducted in Louisiana during the spring of 1972; and to other generally related standards normally considered in wage determinations, including the cost of living and producers' ability to pay. Analysis of all such data and appropriate factors demonstrates that the minimum wage rates established in this determination are fair and reasonable.

The risk of crop damage or failure is greater in connection with Louisiana sugarcane than is the case in other domestic sugar-producing areas. The Louisiana sugarcane crop has had substantial late-season damage from freeze and/or hurricanes in 4 of the last 7 years (1965 through 1971). Such late-season production hazards have severely limited returns for producers in recent years, and, during those years in which their crops were damaged, most producers suffered financial losses. For Louisiana sugarcane producers, then, the statistical probability of financial loss is greater than the probability of profit in any given year.

On September 16, 1971, prior to the beginning of the 1971 harvest, a hurricane struck the sugarcane belt in Louisiana. It was estimated shortly afterwards that 25 percent of expected sugar production had been lost. When production was completed about the turn of the year, slightly more than 571,000 tons of sugar had been produced. Although growers had cultivated almost 15 percent more sugarcane acreage than for the 1970 crop, sugar production was 5.2 percent smaller. Thus, it is clear that the hurricane did reduce average production per acre from the 1971 crop by almost 20 percent.

Not only were cultivation costs higher in 1971 because of the greater acreage under cultivation, but harvesting costs were greatly increased because of the tangled condition of the cane and the very wet fields due to several weeks of excessive rainfall following the hurricane. Many producers had to resort to the unusual and expensive practice of using large numbers of hand scrapers in the harvesting operation to salvage as much cane as possible. The cost study conducted earlier this year in Louisiana indicates that cultivation costs per ton of sugar for producers who annually harvest in excess of 100 acres of cane for sugar were 10 percent more in 1971 than in 1970, while harvesting costs per ton of sugar were 22 percent greater. The field survey also revealed that the total man-hours of labor, excluding services to personnel and administration, required to produce a ton of sugar was over 7 percent greater in 1971 than in 1970. The single greatest increase in man-hour requirements per ton of sugar occurred in the cutting, loading, and handling of sugarcane, which increased 20 percent.

All of these factors contributed significantly toward reducing the ability of Louisiana sugarcane producers to pay higher wages for 1971 harvest work than those which became effective October 12, 1970. The cost survey revealed that 1971-crop direct labor costs actually consumed 88.5 percent of the producers' margin available for labor, income taxes, and profit. The fact that producers realized a net profit after income taxes, but before any consideration for return on capital investment, averaging only $3.66 per ton of sugar indicates that the producers' ability to pay was severely limited. If a modest return of 5 percent on capital investment is included in total production costs, the producers suffered an average net loss of $1.06 per ton of sugar produced from the 1971 crop.

During the 3-year period included in the most recent study of returns, costs and profits of sugarcane production in Louisiana, the season's average prices of raw sugar and blackstrap molasses, the principal byproduct of sugar production, generally increased. The price of raw sugar increased by 2.9 percent in 1969, 4.0 percent in 1970, and 8.4 percent in 1971 above the average price for the immediately preceding crop year. The price of blackstrap molasses showed a markedly different trend. Although the average price of molasses increased a significant 32 percent from 1968 to 1969, such price decreased in 1970 by 6.2 percent but in 1971 nearly recovered to the 1969 level with a 4.8 percent increase. The average income per ton of sugar received by Louisiana producers from the sale of sugarcane to processors and from conditional payments under the Sugar Act increased only 2.1 percent in 1969 above 1968 but increased an additional 4.5 percent in 1970 and 8.5 percent in 1971. The field survey revealed that the average costs of production per ton of sugar, including rent and interest paid and taxes on income, increased in 1969 by 6.7 percent above the estimated 1968 costs, by 1.6 percent in 1970 above 1969, and by 11 percent in 1971 over 1970. Therefore, despite the increases realized in income during the 3-year period, producers earned very small profits because of the continuous increases in costs of production and hazardous weather conditions. Producers' profits (after taxes but before provision for return on equity capital) averaged 2.0, 7.0, and 3.9 percent of net worth, respectively, for the 1969, 1970, and 1971 crops. This clearly

[1] New rates for the harvest of the 1972 crop became effective Oct. 23, 1972 (37 F.R. 21795).

indicates: (a) That profits during that period averaged less than the 5 percent return considered as a reasonable return on investment, and (b) that producers received no return at all for their managerial labor (entrepreneurship). In fact, they suffered financial loss during that period.

The cost of living, like production costs, has increased significantly in recent years. Living costs increased 5.4 percent in calendar year 1969, 6.0 percent in 1970, and 4.2 percent in 1971. The increases in wage rates effective January 1, 1972, under this determination which range from 6.1 percent for the highest skilled worker to 6.7 percent for the lowest skilled worker more than offset the increase that occurred in living costs from calendar year 1970 to calendar year 1971.

On the basis of application of the statutory factors (cost of living, income from sugarcane, cost of production, etc.), the wage rates that were in effect for the harvest of the 1970 crop continued to be fair and reasonable for the harvest of the 1971 crop, and this determination so provides.

With respect to work performed in connection with the planting and cultivation of the 1972 crop, the Department believes that under a strict application of the statutory factors, a continuation of the 1971 planting and cultivation wage rates could be justified. However, giving greater weight to increases in the cost of living and considering the favorable outlook for the 1972 harvest, the Department believes that an increase in the wages as provided herein is fair and reasonable.

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

Effective date. This amendment shall become effective on the date of filing with the Director, Office of the Federal Register.

Signed at Washington, D.C., on November 27, 1972.

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

[FR Doc.72-20563 Filed 11-27-72;2:41 pm]

SUBCHAPTER I—DETERMINATION OF PRICES

[Docket No. SH-301]

PART 871—SUGAR BEETS

Fair and Reasonable Prices for 1972 Crop

Pursuant to the provisions of section 301(c)(2) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation, due notice of public hearings, and consideration of evidence presented at hearings held during December 1971, the following determination is hereby issued. The regulations previously appearing in these sections under "Determination of Prices; Sugar Beets" remain in full force and effect as to the crops to which they were applicable.

Sec.
871.24 General requirements.
871.25 Purchase agreements.
871.26 Reporting requirements.
871.27 Applicability.
871.28 Subterfuge.

AUTHORITY: Sections 871.24 to 871.28 issued under secs. 301, 403, 61 Stat. 929, as amended, 932; 7 U.S.C. 1131, 1153.

§ 871.24 General requirements.

A producer of sugar beets who is also a processor of sugar beets (herein referred to as "processor") shall have paid, or contracted to pay for all sugar beets of the 1972 crop grown by other producers and processed by him, in accordance with the following requirements:

§ 871.25 Purchase agreements.

(a) The price for all 1972-crop sugar beets delivered by a producer and processed by a processor, shall be not less than that required to be paid pursuant to the 1972 crop sugar beet purchase contract between the processor and the producer, subject to the provisions of paragraphs (b), (c), and (d) of this section.

(b) If the processor, in determining the net proceeds pursuant to the contract, makes a deduction from the gross sales price of sugar for factorysite bulk sugar storage facilities owned by the processor, or for factorysite bulk pulp storage facilities owned by the processor in those districts where producers share directly in the total net returns from the sales of sugar, pulp, and molasses, such deduction shall be limited to amortization of such facilities, including improvements, over a reasonable period, interest at prevailing rates on the unrecovered cost, taxes, insurance, maintenance, and operating costs properly applicable thereto. After the costs of the facilities, including improvements, have been fully recovered such deductions shall be limited to taxes, insurance, maintenance, and operating costs properly applicable thereto: *Provided*, That if there is an agreement between the processor and producers such deductions for factorysite storage facilities owned by the processor shall be as agreed upon if less than that provided above.

(c)(1) In factory districts using a scale-type sugar beet purchase contract where the processor has constructed tanks for the storage of concentrated juice, has stored such juice for a period of not less than 30 days after the end of the slicing campaign and has processed such juice into granulated sugar, and there is agreement between the processor and producers for the processor to make a charge for the storage of concentrated juice, a charge representing the additional costs incurred as a result of factory cleanup and startup in connection with the juice processing campaign may be deducted from the gross sales price of sugar: *Provided*, That such charge shall not exceed 2 cents per month (based on the length of time such juice is stored between the end of the slicing campaign and the startup of the juice processing campaign, such period not to exceed 6 months) per 100 pounds granulated sugar equivalent of the juice so stored.

(2) In those factory districts in Michigan and Ohio using a percentage-type sugar beet purchase contract, wherein growers share with the processor in factory extraction efficiency, and where the processor has constructed and is operating tanks for the storage of concentrated juice, a deduction from the gross sales price of sugar and byproducts may be made for the amortization of such tanks as provided in the processor's 1972-crop sugar beet purchase contract.

(d) In determining the net proceeds pursuant to the contract, the gross sales price per 100 pounds to be applicable to sugar sold to an affiliate company or other affiliate business entity, or to sugar used by the processor during the settlement period, shall be not less than the weighted average quoted basis price, less customary allowance, and plus appropriate prepays and package differentials which would have been applicable to such sugar had it been marketed to nonaffiliated purchasers.

§ 871.26 Reporting requirements.

The processor shall submit to the Director, Sugar Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, within 60 days after the close of the sales period specified in the sugar beet purchase contract, an itemized statement for each settlement district, certified by an independent accountant, showing the computation of "net proceeds" or "net returns" as provided in such contract, such statement to be in substantially the form as that contained in Schedule A attached hereto and made a part hereof: *Provided*, That, if the processor markets sugar to an affiliate company or other affiliate business entity or if the processor uses any beet sugar, the weighted average gross sales price for each category, the marketing expenses applicable to each, and the net proceeds derived thereform shall be reported in substantially the form shown on Schedule A–1 attached hereto and made a part hereof, to supplement the information submitted in accordance with Schedule A: *Provided further*, That if the processor in determining net proceeds makes a deduction for factorysite bulk sugar, bulk pulp, or concentrated juice storage facilities owned by the processor, the total cost of such facilities, including improvements, the amount of the deduction and the expenses used in determining such deduction shall be reported in substantially the form shown on Schedule A–2 attached hereto and made

a part hereof, to supplement the information submitted in accordance with Schedule A.

§ 871.27 Applicability.

The requirements of this part are applicable to all sugar beets purchased from other producers and processed by a processor who produces sugar beets (a processor-producer is defined in § 821.1 of this chapter).

§ 871.28 Subterfuge.

The processor shall not reduce returns to producers below those determined in accordance with the requirements of this part through any subterfuge or device whatsoever.

STATEMENT OF BASES AND CONSIDERATIONS

General. The foregoing determination establishes the fair and reasonable price requirements which must be met, as one of the conditions for payment under the Act, by a producer who processes sugar beets of the 1972 crop grown by other producers.

Requirements of the act. Section 301 (c)(2) of the Act provides that the producer on the farm who is also, directly or indirectly, a processor of sugar beets or sugar cane, as may be determined by the Secretary, shall have paid, or contracted to pay under either purchase or toll agreements, for any sugar beets, or sugar cane grown by other producers and processed by him at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing.

1972-crop fair price determination. This determination provides that a processor shall be deemed to have complied with the fair price provisions of the Act if he has paid, or contracted to pay, prices for all sugar beets processed that are not less than those determined pursuant to the applicable 1972 crop purchase contract with producers. The provision of the 1971 crop determination that the processor in determining net proceeds is permitted to make a deduction for the cost of constructing or operating tanks for the storage of concentrated juice if the processor has stored such juice and provision for such deduction has been agreed upon is continued in this determination. No testimony concerning the 1972 price determination was presented at the sugar beet price hearings held in December 1971.

Examination of the 1972 crop purchase contracts, which have been negotiated by producers and processors and submitted to the Department subsequent to the hearings, indicates few major changes from 1971 relating to payments for sugar beets. One company changed its schedule of payments to provide a higher range of net selling prices in all its contracts, and to provide for an increase in payment for beets in one area. Two companies increased the initial payment for beets in California at higher net selling prices. One company instituted a freight charge on tare above 4 percent in one contract, required growers to share a higher percentage of the freight costs in two other contracts, and provided authorization in another contract for the company to deduct the grower's share of costs incurred by the growers association in the capital improvement of piling ground facilities. Another company changed one district's method of payment from a district average sugar content basis to a modified individual content basis. One processor increased its premium for early delivery of beets and changed its basis of payment to the net basic price per ton of beets modified by the ratio that the average recoverable white sugar per ton of the grower's beets is of the average for all beets accepted by the company. Previously, the net basic price per ton was modified by the sugar test. Finally, one processor initiated a deduction of 2 cents per hundredweight, per month from the gross sales price in computing the net return for sugar stored in company facilities constructed prior to 1968, while the charge for storage in facilities constructed after January 1, 1968, shall include an amortization charge, interest on the unrecovered cost, and other costs including taxes, insurance, and maintenance. That processor also included a provision in their contracts that if price controls are removed after having been in effect, then the New York raw guarantee shall apply to subsequent sales, the guarantee to become effective on a date dependent on when the price controls are removed within the sales quarter.

Consideration has been given to the provisions of the purchase contracts, to the comparative average costs of producers and processors obtained by field survey for a prior crop and recast in terms of prospective price and production conditions for the 1972 crop, and to other pertinent factors. Analysis of the comparative average operating results of producers and processors indicates that the producers' share of returns, on average, continue to be favorable as compared to their sharing of total costs, and that the payments provided in the 1972 crop purchase contracts are fair and reasonable at the levels of sugar prices and net returns which may be expected during the pricing period.

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

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

Effective date. This determination shall become effective upon publication in the FEDERAL REGISTER (11-30-72) and is applicable to 1972-crop sugar beets.

Signed at Washington, D.C., on November 22, 1972.

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

SCHEDULE A—STATEMENT OF AVERAGE NET RETURN OR NET PROCEEDS FROM SALES OF SUGAR [1]

Company _____
Settlement area _____
Settlement period _____

	Per hundredweight sugar (dollars)
Gross sales price	
Less sales and marketing expenses (applicable to sugar only):	
Federal excise tax	
Freight on sugar to destination	
Cash discount	
Allowances	
Public storage (actually paid)	
Offsite storage owned by the processor (amount charged)	
Onsite storage (computed charge) [2]	
Loading and handling	
Cost of packing in excess of basis pack	
Taxes	
Insurance	
Brokerage and commissions	
Advertising	
Sales department expenses:	
Salaries	
Travel	
Miscellaneous	
Other (specify)	
Total expense	
Net return or net proceeds	

[1] Where the purchase contract provides that the proceeds from the sales of molasses and beet pulp are to be included in calculating the net return or net proceeds, show separately the gross price and the marketing expenses applicable to each.

[2] Obtain from Schedule A-2.

(Data will be held confidential and will not be published in any manner as would disclose the operations of any company.)

SCHEDULE A-1—STATEMENT OF GROSS SALES PRICES APPLICABLE TO SUGAR SOLD TO AFFILIATED COMPANIES OR ENTITIES AND USED BY THE PROCESSOR, AS COMPARED TO SALES TO NONAFFILIATED PURCHASERS

Item	Affiliated purchasers	Used by processor	Non-affiliated purchasers
Sugar Sold or Used—cwt.			
		Dollars per cwt.	
Quoted basis price			
Customary allowances: (Itemize)			
Open competitive			
Other		XXXX	
		XXXX	
		XXXX	
Basis price-less allowances			
Prepay		XXXX	
Package differential		XXXX	
Gross sales price	$	$	$
Marketing expenses		(1)	
Net proceeds			

[1] If any marketing expenses are deducted from the gross sales price by the processor in computing net return for this particular sugar, such expenses shall be itemized separately.

(Data will be held confidential and will not be published in any manner as would disclose the operations of any company.)

SCHEDULE A-2—STATEMENT RELATING TO CHARGES FOR COMPANY-OWNED FACTORYSITE BULK SUGAR, BULK PULP, AND CONCENTRATED JUICE STORAGE IN COMPUTING NET PROCEEDS, 1972-CROP (SUBMIT SEPARATE SCHEDULE FOR EACH FACILITY)

Company _____
Location of bulk sugar, pulp, or juice storage facility _____
Settlement areas included _____
Settlement period _____
Sugar sold during settlement period—cwt. _____

	Total dollars
Original cost of facility (year first used____)	
Improvements (item and date):	
_____	
_____	
_____	
_____	
Total cost of facility including improvements	
Total amount recovered prior to 1972-crop	
Total unrecovered cost of facility	
Operating costs or charges for 1972-crop:	
Interest on unrecovered cost	
Taxes	
Insurance	
Maintenance and operating itemize):	
_____	
_____	
_____	
_____	
Total operating costs for 1972-crop	
Amount applied against 1972-crop to amortize cost of facility	
Total amount charged for facility in computing net proceeds—1972-crop—(to be carried to Schedule A as amount of deduction)	
Unamortized cost of facility at end of 1972-crop	

(Data will be held confidential and will not be published in any manner as would disclose the operations of any company.)

[FR Doc.72-20466 Filed 11-29-72;8:45 am]

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

[Navel Orange Reg. 277]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.577 Navel Orange Regulation 277.

(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 November 28, 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 December 1, 1972, through December 7, 1972, are hereby fixed as follows:

(i) District 1: 1,319,000 cartons.

(ii) District 2: 93,000 cartons.

(iii) District 3: 131,000 cartons.

(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: November 29, 1972.

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

[FR Doc.72-20725 Filed 11-29-72;11:11 am]

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

[Milk Order 36; Docket No. AO 179-A36]

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

Order Amending Order

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the eastern Ohio-western Pennsylvania marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

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

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means

pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the entire order is reprinted as follows:

GENERAL PROVISIONS

Sec.
1036.1 General provisions.

DEFINITIONS

1036.2 Eastern Ohio-Western Pennsylvania marketing area.
1036.3 Route disposition.
1036.4 [Reserved]
1036.5 Distributing plant.
1036.6 Supply plant.
1036.7 Pool plant.
1036.8 Nonpool plant.
1036.9 Handler.
1036.10 Producer-handler.
1036.11 [Reserved]
1036.12 Producer.
1036.13 Producer milk.
1036.14 Other source milk.
1036.15 Fluid milk product.
1036.16 Fluid cream product.
1036.17 Filled milk.
1036.18 Cooperative association.
1036.19 Reload point.

HANDLER REPORTS

1036.30 Reports of receipts and utilization.
1036.31 Payroll reports.
1036.32 Other reports.

CLASSIFICATION OF MILK

1036.40 Classes of utilization.
1036.41 Shrinkage.
1036.42 Classification of transfers and diversions.
1036.43 General classification rules.
1036.44 Classification of producer milk.
1036.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1036.50 Class prices.
1036.51 Basic formula price.
1036.52 Plant location adjustments for handlers.
1036.53 Announcement of class prices.
1036.54 Equivalent price.

UNIFORM PRICE

1036.60 Handler's value of milk for computing uniform price.
1036.61 Computation of uniform price.
1036.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1036.70 Producer-settlement fund.
1036.71 Payments to the producer-settlement fund.
1036.72 Payments from the producer-settlement fund.
1036.73 Payments to producers and to cooperative associations.
1036.74 Butterfat differential.
1036.75 Plant location adjustments for producers and on nonpool milk.
1036.76 Payments by handler operating a partially regulated distributing plant.
1036.77 Adjustment of accounts.
1036.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1036.85 Assessment for order administration.
1036.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1036 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1036.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1036.2 Eastern Ohio-Western Pennsylvania marketing area.

The "Eastern Ohio-Western Pennsylvania marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the following geographical units, including all waterfront facilities connected therewith and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within the listed geographical units:

(a) "Zone 1" includes:

(1) In Ohio:

(i) The following counties in their entirety:

Ashtabula.	Monroe.
Carroll.	Portage.
Geauga.	Tuscarawas.
Harrison.	Wayne.
Holmes.	

(ii) Ashland County (except the townships of Ruggles, Sullivan, and Troy).

(iii) In Guernsey County: the townships of Londonderry, Millwood, and Oxford.

(iv) In Stark County: Sugar Creek Township.

(v) In Trumbull County: the townships of Bazetta, Bloomfield, Bristol, Champion, Farmington, Fowler, Greene, Gustavus, Hartford, Johnston, Kinsman, Mecca, Mesopotamia, Southington, and Vernon.

(2) In Pennsylvania:

(i) The following counties in their entirety:

Crawford.	Venango.
Erie.	

(ii) In Clarion County: the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby.

(b) "Zone 2" includes:

(1) In Ohio:

(i) The following counties in their entirety:

Belmont.	Mahoning.
Columbiana.	Summit.
Jefferson.	

(ii) In Lorain County: the townships of Amherst, Avon, Avon Lake, Black River, Carlisle, Columbia, Eaton, Elyria, Grafton, Ridgeville, and Sheffield.

(iii) Medina County (except the townships of Chatham, Homer, Litchfield, and Spencer).

(iv) Stark County (except Sugar Creek Township).

(v) In Trumbull County: the townships of Braceville, Brookfield, Howland, Hubbard, Liberty, Lordstown, Newton, Warren, Weathersfield, and Vienna.

(2) In Pennsylvania:

(i) The following counties in their entirety:

Armstrong.	Greene.
Beaver.	Lawrence.
Butler.	Mercer.
Fayette.	Washington.

(ii) Westmoreland County (except the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward and the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair).

(3) In West Virginia, the following counties in their entirety:

Barbour.	Ohio.
Brooke.	Preston.
Doddridge.	Randolph.
Hancock.	Taylor.
Harrison.	Tucker.
Lewis.	Tyler.
Marion.	Upshur.
Marshall.	Wetzel.
Monongalia.	

(c) "Zone 3" includes Cuyahoga and Lake counties, Ohio, in their entirety.

(d) "Zone 4" includes Allegheny County, Pa., in its entirety.

§ 1036.3 Route disposition.

"Route disposition" means a delivery (except to a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine), of a fluid milk product classified as Class I pursuant to § 1036.40(a)(1).

§ 1036.4 [Reserved]

§ 1036.5 Distributing plant.

"Distributing plant" means a plant in which fluid milk products approved by a duly constituted health authority for fluid consumption, or filled milk, are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1036.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority, or filled milk, is transferred or diverted during the month to a pool plant.

§ 1036.7 Pool plant.

Except as provided in paragraph (e) of this section, "pool plant" means:

(a) A distributing pool plant that has:

(1) Route disposition, except filled milk, during the month of not less than 50 percent (40 percent for each month of April through August) of the total receipts of fluid milk products, except filled milk, that are approved by a duly

constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk pursuant to § 1036.13 to plants other than those qualified as pool plants pursuant to this paragraph; and

(2) Route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of the receipts described in subparagraph (1) of this paragraph.

(b) A supply plant from which during the months of September, October, and November, not less than 50 percent, and in all other months not less than 40 percent, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received (excluding that diverted from other plants) at such plant from dairy farmers and handlers defined in § 1036.9(c) or diverted as producer milk pursuant to § 1036.13 to pool plants and nonpool plants is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area.

(c) A plant that qualified as a pool plant under paragraph (b) of this section on the basis of its transfers and diversions to pool plants (exclusive of its route disposition in the marketing area) in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant.

(d) A plant(s) that is approved by a duly constituted health authority to handle milk for fluid consumption, that is operated by a cooperative association, and from which during the month the quantity of fluid milk products (except filled milk) shipped to pool plants qualified pursuant to paragraph (a) of this section plus the milk physically received at such plants by direct delivery from the farms of producer members of the cooperative association is not less than 65 percent in any month of September through April and not less than 50 percent in any other month of the cooperative association members' producer milk. If the cooperative association operating a plant qualified as a pool plant pursuant to this paragraph files with the market administrator prior to the first day of any month a written request for nonpool status for such plant, the plant shall be a nonpool plant for such month and for each of the next 11 months in which it does not qualify as a pool plant pursuant to paragraph (a), (b), or (c) of this section.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

§ 1036.8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means:

(1) A nonpool plant that is a distributing plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to its route disposition in the marketing area that is not priced and pooled pursuant to any order issued pursuant to the Act.

(d) "Unregulated supply plant" means:

(1) A nonpool plant that is a supply plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to fluid milk products which were received at a pool plant from such a plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.

§ 1036.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted for its account from a pool plant of another handler to a nonpool plant;

(c) Any cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) Any producer-handler; and

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1036.10 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1036.11 [Reserved]

§ 1036.12 Producer.

(a) "Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk for fluid consumption in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1036.13 from a pool plant to a nonpool plant or another pool plant.

(b) "Producer" shall not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II or Class III classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

§ 1036.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) With respect to a handler defined in § 1036.9(a):

(1) Received at the handler's pool plant directly from the producer, excluding receipts of milk diverted from another pool plant;

(2) Received at the handler's pool plant from a handler defined in § 1036.9(c) that does not operate a pool plant;

(3) Diverted for the handler's account from his pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in paragraph (e) of this section; or

(4) Diverted for the handler's account from his pool plant to another pool plant, subject to the conditions set forth in paragraph (f) of this section;

(b) With respect to a handler defined in § 1036.9(b), diverted for the handler's

account from a pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in paragraph (e) of this section;

(c) With respect to a handler defined in § 1036.9(c) that does not operate a pool plant, received by the handler from the producer's farm in excess of the producer's milk that is received by a pool plant operator pursuant to paragraph (a)(2) of this section; and

(d) With respect to a handler defined in § 1036.9(c) that also operates a pool plant, received by the handler from the producer's farm.

(e) The following conditions shall apply to milk diverted from a pool plant to a nonpool plant that is not a producer-handler plant:

(1) Such milk shall be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted;

(2) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(3) In any month of August through March, the quantity of milk of any producer diverted to nonpool plants that exceeds that physically received at pool plants shall be deemed to have not been received by the diverting handler and shall not be producer milk;

(4) The diverting handler shall designate the dairy farmers' deliveries that are not producer milk pursuant to this paragraph. If the handler fails to make such designation, no milk diverted by him to a nonpool plant shall be producer milk;

(5) In determining if the diversion limitations specified in this paragraph have been exceeded, the quantity of milk diverted to nonpool plants or physically received at pool plants shall be considered in terms of days of production of the producer; and

(6) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of another order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

(f) Milk diverted from a pool plant to another pool plant shall be deemed to have been received by the diverting handler at the location of the pool plant to which diverted.

§ 1036.14 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk fluid cream products from any source except producer milk, fluid milk products and bulk fluid cream products from pool plants, and fluid milk products and bulk fluid cream products in inventory at the beginning of the month;

(b) Receipts of packaged fluid cream products from other plants;

(c) Products, other than fluid milk products, bulk fluid cream products and Class II products listed in § 1036.40(b)(3), from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.

§ 1036.15 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 12 percent total milk solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include those products and mixtures listed in § 1036.40(b)(1) and (3), and (c)(1).

§ 1036.16 Fluid cream product.

"Fluid cream product" means cream (including aerated cream and sterilized cream) or a mixture of cream and milk or skim milk containing 10.5 percent or more butterfat.

§ 1036.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1036.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members; and

(c) To have all of its activities under the control of its members.

§ 1036.19 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload operation on the premises of a plant shall be considered a part of the plant operation.

HANDLER REPORTS

§ 1036.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, reports of receipts and utilization for such month shall be made to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler operating a pool plant shall report for each of his pool plants:

(1) Receipts of skim milk and butterfat contained in or represented by:

(i) Producer milk, showing in the case of milk received directly from each producer the pounds and butterfat test and the number of days of production involved for each producer;

(ii) Fluid milk products and fluid cream products from other pool plants and from a handler defined in § 1036.9(c) that also operates a pool plant; and

(iii) Other source milk;

(2) Inventories at the beginning and end of the month of the following products:

(i) Fluid milk products; and

(ii) Fluid cream products, showing separately such inventories in bulk form and in packaged form;

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route disposition and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants; and

(4) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk and butterfat contained in milk from producers for which it is the handler pursuant to § 1036.9 (b) and (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds and butterfat test of the milk and the number of days of production involved;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to subparagraph (1) of this paragraph, except that contained in producer milk described in § 1036.13(a)(2); and

(3) Such other information with respect to its receipts and utilization of skim milk and butterfat as the market administrator may prescribe; and

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of bottling grade milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing the

amount of reconstituted skim milk in route disposition in the marketing area.

§ 1036.31 Payroll reports.

(a) Each handler defined in § 1036.9 (a), (b), and (c) shall report to the market administrator on or before the 25th day after the end of the month, in the detail and on forms prescribed by the market administrator, his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1036.76(b) shall report to the market administrator on or before the 25th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering milk that is approved by a duly constituted health authority for fluid consumption shall be reported in lieu of payments to producers.

§ 1036.32 Other reports.

(a) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

CLASSIFICATION OF MILK

§ 1036.40 Classes of utilization.

Except as provided in § 1036.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1036.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as provided in paragraphs (b) and (c) of this section; and

(2) Not accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product;

(2) In inventory at the end of the month of packaged fluid cream products;

(3) Used to produce yogurt, sour cream, sour cream products (e.g., dips), cottage cheese, and cottage cheese curd; and

(4) Disposed of in bulk as fluid milk products or fluid cream products to any commercial food processing establishment (other than a milk or filled milk plant) for the manufacture of packaged food products (other than milk products and filled milk) for consumption off the premises.

(c) *Class III milk.* Class III milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts and frozen dessert mixes, eggnog, frozen cream, butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, any product containing 6 percent or more nonmilk fat (or oil), milk shake mixes containing 12 percent or more total milk solids, and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

(2) Skim milk and butterfat in fluid milk products, fluid cream products and products listed in paragraph (b)(3) of this section that are disposed of by a handler for livestock feed;

(3) Skim milk and butterfat in fluid milk products, fluid cream products and products listed in paragraph (b)(3) of this section that are dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(4) Skim milk and butterfat in inventory of fluid milk products and bulk fluid cream products at the end of the month;

(5) Skim milk represented by the nonfat milk solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(6) Skim milk and butterfat, respectively, in each pool plant's shrinkage, but not in excess of:

(i) Two percent of producer milk physically received at the plant (except that received from a handler defined in § 1036.9(c));

(ii) Plus 1.5 percent of milk received from a handler defined in § 1036.9(c) and of milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(iii) Plus 0.5 percent of producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no percentage shall apply;

(iv) Plus 1.5 percent of bulk fluid milk products received by transfer from other pool plants;

(v) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II or Class III classification was requested by the operators of both plants;

(vi) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II or Class III classification is requested by the handler; and

(vii) Less 1.5 percent of the quantity of bulk fluid milk products transferred to other plants that does not exceed such quantity to which percentages were applied pursuant to subdivisions (i), (ii), (iv), (v), and (vi) of this subparagraph;

(7) Skim milk and butterfat, respectively, in shrinkage of other source milk assigned pursuant to § 1036.41(b)(2); and

(8) Skim milk and butterfat, respectively, in shrinkage of milk from producers that is diverted from a pool plant to a nonpool plant by a cooperative association acting as a handler pursuant to § 1036.9(b) or in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1036.9(c), but not in excess of 0.5 percent of the receipts of milk from producers, exclusive of such receipts for which farm weights are used as the basis of receipt at the plant to which delivered.

§ 1036.41 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each pool plant; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat, respectively, in:

(1) The net quantity of producer milk and other fluid milk products specified in § 1036.40(c)(6); and

(2) Other source milk in the form of bulk fluid milk products exclusive of that specified in § 1036.40(c)(6).

§ 1036.42 Classification of transfers and diversions.

Skim milk or butterfat in the form of a fluid milk product or a bulk fluid cream product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after the computations pursuant to § 1036.44(a)(13) and the corresponding step of § 1036.44(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1036.44(a)(7) and the corresponding step of § 1036.44(b), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor plant received during the month other source milk to be allocated pursuant to § 1036.44(a)(12) or (13) and the corresponding steps of § 1036.44(b), the skim milk and butterfat so transferred or diverted up to the

total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler plant;

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraph (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification as Class II or Class III in his report submitted pursuant to § 1036.30;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of milk (approved by a duly constituted health authority for fluid consumption) for such nonpool plant;

(ii) Any route disposition in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of milk (approved by a duly constituted health authority for fluid consumption) for such nonpool plant;

(iii) Class I utilization (exclusive of that resulting from transfers of fluid milk products to pool plants and other order plants) in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute regular sources of supply of milk (approved by a duly constituted health authority for fluid consumption) for such nonpool plant and any remaining Class I utilization (including that resulting from transfers of fluid milk products to pool plants and other order plants) shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool plants and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class III milk to the extent Class III utilization is available and the remainder as Class II milk; and

(d) As follows, if transferred to another order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, movements in bulk form shall be classified as Class III milk to the extent of the Class III utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk and butterfat allocated to the other class shall be classified as Class III milk; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1036.40.

§ 1036.43 General classification rules.

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1036.30 and shall compute for each handler the total pounds of skim milk and butterfat in each class: *Provided*, That the skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1036.44 Classification of producer milk.

After making the computations pursuant to § 1036.43, the market administrator shall determine the classification of producer milk for each handler as follows: *Provided*, That the classification of producer milk for which a cooperative association is the handler pursuant to § 1036.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III milk pursuant to § 1036.40(c)(6);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (7)(v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III milk pursuant to § 1034.40(c)(5) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products received from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products that are in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is added to, or used to produce, any product specified in § 1036.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product or a fluid cream product) that was

not subtracted pursuant to subparagraphs (4) and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) and bulk fluid cream products for which appropriate health approval is not established and receipts of fluid milk products and bulk fluid cream products, from unidentified sources;

(iii) Receipts of fluid milk products and bulk fluid cream products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(8) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in bulk fluid cream products received from nonpool plants that were not subtracted pursuant to subparagraph (7)(iii) of this paragraph and in packaged fluid cream products in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(9) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II and Class III (beginning with Class III), but not in excess of such quantities:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) and (7)(iv) of this paragraph:

(*a*) For which the handler requests Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (7)(v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (7)(v) of this paragraph, in excess of similar transfers to such plant, if Class III classification was requested by the operator of such plant and the handler;

(10) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of fluid milk products and bulk fluid cream products;

(11) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(12) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (2), (7)(iv), and (9)(i) of this paragraph;

(13) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that are in excess of similar transfers to the same plant and that were not subtracted pursuant to subparagraphs (7)(v) and (9)(ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1036.45(a) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products received from pool plants of other handlers according to the classification of such products pursuant to § 1036.42(a);

(15) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of milk from a handler defined in § 1036.9(c) that also operates a pool plant;

(16) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b).

§ 1036.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1036.44(a)(13) and the corresponding step of § 1036.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the classification to which such receipts are allocated pursuant to § 1036.44 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products and bulk fluid cream products to an other order plant the classification to which the skim milk and butterfat in such fluid milk products and bulk fluid cream products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

(d) On or before the 20th day of each month, report to each cooperative association that so requests the class utilization of milk received during the preceding month by each handler from producers who are members of such association, prorating to such receipts the class utilization of all producer receipts of such handler.

Class Prices

§ 1036.50 Class prices.

Subject to the provisions of § 1036.52, the class prices per hundredweight for milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.85.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows:

(1) Multiply by 4.2 the simple average of the wholesale prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

§ 1036.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported

by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1036.52 Plant location adjustments for handlers.

(a) At a plant in the marketing area and outside Zone 1, the Class I price for producer milk shall be adjusted as follows:

(1) At a plant in Zone 2, the Class I price shall be increased 5 cents;

(2) At a plant in Zone 3, the Class I price shall be increased 8 cents; and

(3) At a plant in Zone 4, the Class I price shall be increased 10 cents.

(b) At a plant outside the marketing area, the Class I price shall be that applicable pursuant to paragraph (a) of this section at the location of the nearest of the cities here listed (Canton and Cleveland, Ohio; Erie, Pittsburgh, and Uniontown, Pa.; and Clarksburg, W. Va.) to such plant. Such Class I price shall be further adjusted by a reduction of 1.5 cents for each 10 miles or fraction thereof that such plant is from the city hall of the nearest of the above named cities. Distances applied pursuant to this paragraph shall be the shortest hard-surfaced highway distances as determined by the market administrator.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

(d) For the purpose of computing location adjustments pursuant to paragraph (b) of this section, fluid milk products physically received at a pool plant from other pool plants shall be assigned any remainder of Class I milk at such plant that is in excess of 92.5 percent of the sum of producer milk receipts at the plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made in sequence beginning with receipts from the plant(s) at which the highest Class I price is applicable.

§ 1036.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1036.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1036.60 Handler's value of milk for computing uniform price.

The net pool obligation of each handler defined in § 1036.9 (a), (b), and (c) for each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1036.44(c) by the applicable class price, adjusted pursuant to § 1036.52;

(b) Add the amounts obtained from multiplying the overage deducted from each class pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44 (b) by the applicable class price adjusted pursuant to §§ 1036.52 and 1036.74;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I or Class II price for the current month, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1036.44(a)(10) and the corresponding step of § 1036.44 (b);

(d) Add the amount obtained from multiplying the difference between the Class I price at the pool plant and the Class III price, both for the current month, by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a) (7) and (8) and the corresponding steps of § 1036.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1036.44(a)(7) (iv) and (v) and the corresponding steps of § 1036.44(b) the Class I price shall be adjusted to the location of the transferor plant; and

(e) Add the amount obtained from multiplying the Class I price adjusted for the location of the nearest nonpool plants from which an equivalent volume was received by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(12) and the corresponding step of § 1036.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order.

§ 1036.61 Computation of uniform price.

For each month, the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1036.60 for all handlers who filed the reports pursuant to § 1036.30 for the month, except those in default of payments required pursuant to § 1036.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments applicable pursuant to § 1036.75;

(c) Subtract an amount equal to the total value of the plus location adjustments applicable pursuant to § 1036.75;

(d) Add an amount equal to one-half the unobligated balance in the producer settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(e);

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e)(2) of this section by the weighted average price;

(h) Subtract for each of the months of April, May, June, and July the amount obtained by multiplying the hundredweight of producer milk specified in paragraph (e)(1) of this section by a rate that is equal to 6 percent of the average basic formula price (computed to the nearest cent) for the preceding calendar year but not to exceed 25 cents;

(i) Add for each of the months of September, October, and November one-fourth of the total amount subtracted pursuant to paragraph (h) of this section for the preceding period of April through July, and add for the month of December the remainder of such total amount plus any interest earned on such total amount;

(j) Divide the amount resulting from the computations pursuant to paragraphs (g), (h), and (i) of this section by the hundredweight of producer milk specified in paragraph (e)(1) of this section; and

(k) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1036.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce on or before:

(a) The fifth day of each month, the butterfat differential for the preceding month; and

(b) The 14th day of each month, the uniform price for the preceding month.

PAYMENTS FOR MILK

§ 1036.70 Producer-settlement fund.

(a) The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which

he shall deposit all payments pursuant to §§ 1036.71 and 1036.76 and out of which he shall make all payments pursuant to § 1036.72: *Provided*, That the market administrator shall offset the payments due to a handler against payments due from such handler.

(b) All amounts subtracted pursuant to § 1036.61(h) shall be deposited in the producer-settlement fund and set aside as an obligated balance until withdrawn for the purpose of effectuating § 1036.61(i).

§ 1036.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in subparagraph (1) of this paragraph exceeds the amount specified in subparagraph (2) of this paragraph:

(1) The net pool obligation pursuant to § 1036.60 for such handler; and

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1036.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plants from which received of other source milk for which a value is computed pursuant to § 1036.60(e).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in subparagraph (1) of this paragraph to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1036.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1036.71(a)(2) exceeds the amount computed pursuant to § 1036.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1036.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the last day of the month, to each producer who has not discontinued delivery of milk to such handler, not less than the amount determined by multiplying the pounds of producer milk received from such producer during the first 15 days of the month by the Class III price for the preceding month, without adjustment for butterfat content, less proper deductions authorized by the producer; and

(2) On or before the 18th day after the end of the month, to each producer not less than the amount determined by multiplying the pounds of producer milk received from such producer during the month by the uniform price as adjusted pursuant to §§ 1036.74 and 1036.75, less the following amounts:

(i) The payment made pursuant to subparagraph (1) of this paragraph for such month;

(ii) Proper deductions authorized by the producer;

(iii) Any marketing service deduction pursuant to § 1036.86; and

(iv) If before such date the handler has not received full payment from the market administrator pursuant to § 1036.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this subparagraph next following after receipt of the balance due from the market administrator.

(b) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall pay to the cooperative association for producer milk received from such members an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to subparagraph (1) or (2), as the case may be, of paragraph (a) of this section. Such payment shall be made on or before the second day prior to the date specified in such applicable subparagraph. Payments under this paragraph shall be subject to the following conditions:

(1) Each handler shall submit to the cooperative association with such payments written information which shows for each such producer:

(i) The total pounds of milk received from him during the period for which the payment applies;

(ii) With respect to the payment described in paragraph (a)(2) only of this section, the total pounds of butterfat contained in such milk;

(iii) The number of days on which milk was received; and

(iv) The amount of any deductions authorized by the producer;

(2) Payments to a cooperative association and the submission of information by handlers pursuant to this paragraph shall be made with respect to that milk of each producer whom the cooperative association certifies is a member which is received on and after the first day of the calendar month next following the receipt of such certification through the last day of the month next preceding the receipt of a notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(3) A copy of each such request, promise to reimburse, and certified list, of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(c) On or before the 15th day after the end of each month, each handler shall pay a cooperative association at not less than the class prices adjusted pursuant to §§ 1036.52 and 1036.74 for milk which he receives:

(1) By transfer or diversion from a pool plant operated by such cooperative association; or

(2) From such cooperative association in its capacity as a handler pursuant to § 1036.9(c), if such cooperative association also operates a pool plant.

§ 1036.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent at a rate (rounded to the nearest one-tenth cent) determined by multiplying the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month by 0.115.

§ 1036.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a plant shall be adjusted according to the location of such plant at the rates set forth in § 1036.52.

(b) The weighted average price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price, except that the weighted average price shall not be less than the Class III price.

§ 1036.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the pro-

ducer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1036.30 and 1036.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1036.60 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant;

(ii) Transfers from such nonpool plants to a pool plant or other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1036.60(e) and a credit in the amount specified in § 1036.-71(a)(2)(ii) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in subdivision (iii) of this subparagraph;

(iii) If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1036.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1036.7 (b) and (c), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler for milk (adjusted to a 3.5-percent butterfat basis pursuant to § 1036.74) received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat in the plant's route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the plant;

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

§ 1036.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in moneys due the market administrator from such handler, due such handler from the market administrator, or due any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

§ 1036.78 Charges on overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1036.71, 1036.72, 1036.77, 1036.85, and 1036.86 shall be increased one-half of 1 percent on the first day of the calendar month next following the due date of such obligation, and on the first day of each calendar month thereafter until such obligation is paid.

Administrative Assessment and Marketing Service Deduction

§ 1036.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 16th day after the end of the month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1036.44(a) (7) and (12) and the corresponding steps of § 1036.44(b), except such other source milk on which no handler obligation applies pursuant to § 1036.60(e); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1036.76(b)(2).

§ 1036.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 16th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 16th day after the end of each month, pay over such deductions to the association rendering such services.

Effective date: January 1, 1973.

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

Richard E. Lyng,
Acting Secretary.

[FR Doc.72-20553 Filed 11-29-72;8:48 am]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program

There was published in the FEDERAL REGISTER (37 F.R. 21956, October 17, 1972; 37 F.R. 22883, October 26, 1972; 37 F.R. 23456, November 3, 1972) a notice of proposed rule making setting forth the proposed price support advance rates for 1972 crop fire-cured, dark air-cured, and Virginia sun-cured tobacco. The proposed schedule of advance rates for dark air-cured tobacco, due to an inadvertent omission in the footnote, failed to provide advance rates for tobacco of 47 length. In past years, the footnote has included a provision that the advance rates for grades of 47 length shall be the same as those for such grades of 46 length. A level of support at the same rate was intended for the 1972 crop.

Interested parties were given the opportunity to submit within 30 days data, views, and recommendations regarding the proposed advance rates. No unfavorable comments have been received, and the proposed schedules of advance rates, with correction of the footnote for the dark air-cured schedule, are hereby adopted and are set forth below. The material previously appearing under the section numbers shown below remains applicable to the crop to which each refers.

Effective date: Date of filing with the Office of the Federal Register.

Signed at Washington, D.C. on November 22, 1972.

KENNETH E. FRICK,
Executive Vice President, Commodity Credit Corporation.

Sec.

1464.17 1972 Crop—Virginia Fire-cured tobacco, Type 21, advance schedule.
1464.18 1972 Crop—Kentucky-Tennessee Fire-cured tobacco, Types 22 and 23, advance schedule.
1464.19 1972 Crop—Dark air-cured tobacco, Types 35 and 36, advance schedule.
1464.20 1972 Crop—Virginia Sun-cured, Type 37, advance schedule.

AUTHORITY: The provisions of §§ 1464.17–1464.20 issued under sec. 4, 62 Stat. 1070, as amended, sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054, 74 Stat. 6; 7 U.S.C. 1441, 1445, 1421, 1423, 15 U.S.C. 714b, 714c.

§ 1464.17 1972 crop—Virginia Fire-cured tobacco, Type 21—advance schedule.[1]

[Dollars per hundred pounds, farm sales weight]

Grade	Length 47	Length 46	Length 45	Length 44	Length 43
A1F	69.25	69.25	69.25		
V2F	65.25	65.25	66.25		
A1D	69.25	69.25	69.25		
A2D	65.25	65.25	65.25		
B1F	68.25	68.25	68.25		
B2F	62.25	62.25	63.25	58.25	
B3F	55.25	55.25	56.25	55.25	46.25
B4F	51.25	51.25	52.25	50.25	44.25
B5F	46.25	46.25	47.25	46.25	41.25
B1D	68.25	68.25	68.25		
B5D	61.25	61.25	62.25	57.25	
B2D	53.25	53.25	54.25	52.25	46.25
B3D	49.25	49.25	50.25	49.25	44.25
B2D	44.25	44.25	45.25	44.25	41.25
B5M	50.25	50.25	51.25	50.25	46.25
B3M	47.25	47.25	48.25	47.25	44.25
B4M	44.25	44.25	45.25	44.25	39.25
B5G	47.25	47.25	48.25	47.25	43.25
B3G	45.25	45.25	46.25	45.25	42.25
B4G	42.25	42.25	43.25	42.25	38.25
C4L	73.25	73.25	74.25		
C4L	69.25	69.25	70.25	62.25	
C5L	60.25	60.25	61.25	59.25	
C1L	53.25	53.25	54.25	53.25	
C3L	48.25	48.25	49.25	47.25	
C1F	72.25	72.25	73.25		
C2F	68.25	68.25	69.25	62.25	
C3F	59.25	59.25	60.25	56.25	
C4F	53.25	53.25	54.25	53.25	
C5F	48.25	48.25	50.25	48.25	

Grade	Length 47	Length 46	Length 45	Length 44
C2D	48.25	48.25	49.25	47.25
C3D	46.25	46.25	47.25	46.25
C4D	43.25	43.25	44.25	43.25
C5D	39.25	39.25	40.25	39.25
C3M	50.25	50.25	51.25	50.25
C4M	48.25	48.25	49.25	48.25
C5M	44.25	44.25	45.25	44.25
C3G	45.25	45.25	46.25	44.25
C4G	43.25	43.25	44.25	43.25
C5G	40.25	40.25	41.25	40.25

Grade	Proposed price	Grade	Proposed price
X1L	54.25	X3M 45	47.25
X2L	53.25	X4M	47.25
X3L	52.25	X4M 45	44.25
X4L	50.25	X5M	44.25
X5L	47.25	X5M 45	42.25
X1F	54.25	X3G	48.25
X2F	53.25	X3G 45	45.25
X3F	52.25	X4G	45.25
X4F	49.25	X4G 45	43.25
X5F	46.25	X5G	41.25
X1D	50.25	X5G 45	39.25
X2D	48.25	N1L	38.25
X3D	47.25	N1D	37.25
X4D	45.25	N1G	36.25
X5D	41.25	N2	27.25
X3M	49.25		

[1] Only the original producer is eligible to receive advances. Tobacco graded "W" (doubtful keeping order), "No-G" (no grade), "U" (unsound), "D" (damaged), or scrap will not be accepted. The association is authorized to deduct 25 cents per hundred pounds to apply against overhead cost.

§ 1464.18 1972 crop—Kentucky-Tennessee Fire-cured tobacco, Types 22 and 23—advance schedule.[2]

[Dollars per hundred pounds, farm sales weight]

Grade	Length 47	Length 46	Length 45
A1F	72	72	72
A2F	67	67	67
A3F	59	59	59

Grade	Length 47	Length 46	Length 45	Length 44	Length 43
A1D	72	72	72		
A2D	67	67	67		
A3D	59	59	59		
B1F	63	63	63	58	
B2F	60	60	60	56	
B3F	57	57	57	54	48
B4F	53	53	53	50	43
B5F	49	49	49	46	40
B1D	62	62	62	57	
B2D	59	59	59	55	
B3D	58	58	58	54	48
B4D	52	52	52	49	42
B5D	48	48	48	44	38
B3M	53	53	53	49	44
B4M	49	49	49	45	38
B5M	44	44	44	39	34
B3VF	53	53	53	49	42
B4VF	51	51	51	48	41
B5VF	47	47	47	44	37
B3G	53	53	53	49	41
B4G	48	48	48	44	38
B5G	44	44	44	39	34
C1L	62	62	62	58	
C2L	59	59	59	56	
C3L	58	58	58	54	48
C4L	55	55	55	52	46
C5L	52	52	52	50	43
C1F	62	62	62	58	

[2] Only the original producer is eligible to receive advances. Tobacco graded "No-G" (no grade), "U" (unsound), "D" (damaged), or scrap will not be accepted. Tobacco graded "W" (doubtful keeping order) will be accepted at advance rates 20 percent below the advance rates otherwise applicable.

Grade	Length 47	Length 46	Length 45	Length 44	Length 43
C2F	59	59	59	56	
C3F	58	58	58	55	48
C4F	55	55	55	52	45
C5F	53	53	53	49	42
C1D	63	63	63	58	
C2D	55	55	56	52	
C3D	52	52	52	49	43
C4D	47	47	47	45	39
C5D	46	46	46	44	37
C3M	53	53	53	50	44
C4M	49	49	49	48	42
C5M	47	47	47	45	37
C3VF	54	54	54	51	45
C4VF	51	51	51	49	43
C5VF	49	49	49	47	38
C3G	49	49	49	46	41
C4G	46	46	46	42	37
C5G	42	42	42	39	36

Grade	Proposed price	Grade	Proposed price
X1L	54	X5D	42
X2L	52	X3M	47
X3L	51	X4M	45
X4L	48	X5M	42
X5L	46	X3VF	49
X1F	53	X4VF	47
X2F	51	X5VF	44
X3F	50	X3G	47
X4F	48	X4G	43
X5F	46	X5G	40
X1D	52	N1L	42
X2D	50	N1D	38
X3D	47	N1G	37
X4D	45	N2	33

§ 1464.19 1972 crop—Dark air-cured tobacco, Types 35 and 36—advance schedule.[3]

[Dollars per hundred pounds, farm sales weight]

Grade	Length 46	Length 45	Length 44
A1F	63	63	
A1R	63	63	
A2F	59	59	
A2R	59	59	
A3F	54	54	
A3R	54	54	56
B1F	59	59	56
B1R	58	58	56
B1D	58	58	54
B2F	55	55	53
B2R	54	54	53
B2D	54	54	51
B3F	53	53	

Grade	Length 46	Length 45	Length 44
B3R	51	51	50
B3D	51	51	50
B3M	50	50	49
B3G	49	49	48
B4F	50	50	49
B4R	49	49	48
B4D	50	50	49
B4M	46	46	45
B4G	46	46	45
B5F	46	46	45
B5R	46	46	45
B5D	45	45	44
B5M	42	42	41
B5G	42	42	41
C1L	59	59	58
C1F	59	59	58
C1R	57	57	56
C2L	58	58	57
C2F	57	57	56
C2R	55	55	54
C3L	56	56	55
C3F	55	55	53
C3R	52	52	50
C3M	50	50	49
C3G	51	51	49
C4L	52	52	51
C4F	52	52	51
C4R	47	47	46
C4M	44	44	43
C4G	45	45	44
C5L	45	45	43
C5F	46	46	45
C5R	42	42	41
C5M	41	41	40
C5G	41	41	40

Grade	Proposed Loan Rate Prices	Grade	Proposed Loan Rate Prices
T3F	46	X3R	48
T3R	46	X3D	49
T3D	46	X3M	46
T3M	45	X3G	45
T3G	44	X4L	50
T4F	41	X4F	49
T4R	42	X4R	44
T4D	42	X4D	44
T4M	40	X4M	43
T4G	39	X4G	41
T5F	34	X5L	47
T5R	34	X5F	47
T5D	34	X5R	42
T5M	33	X5D	42
T5G	33	X5M	40
X1L	55	X5G	36
X1F	55	N1L	41
X1R	55	N2L	35
X2L	53	N1R	35
X2F	53	N2R	32
X2R	52	N1G	33
X3L	52	N2G	31
X3F	50		

[1] Only the original producer is eligible to receive advances. Tobacco graded "No-G" (no grade), "U" (unsound), "D" (damaged), or scrap will not be accepted. Tobacco graded "W" (doubtful keeping order) will be accepted at advance rates 20 percent below the advance rates otherwise applicable. Grades marked with the special factor "BH" shall have an advance rate 20 percent below the advance rate otherwise applicable without such special factor. Type 35 grades marked with the special factor "BL" shall have an advance rate 20 percent below the advance rate otherwise applicable without such special factor. The advance rate for grades of 47 length shall be the same as those for such grades of 46 length.

§ 1464.20 1972 crop—Virginia Sun-cured tobacco, Type 37—advance schedule.[1]

[Dollars per hundred pounds, farm sales weight]

Grade	Length 46	Length 45	Length 44
A1F	67.25	67.25	65.25
A2F	63.25	63.25	60.25
A3F	60.25	60.25	57.25
A1R	67.25	67.25	64.25
A2R	63.25	63.25	60.25
A3R	60.25	60.25	57.25
B1F	66.25	67.25	59.25
B2F	63.25	65.25	60.25
B3F	56.25	59.25	56.25
B4F	50.25	54.25	52.25
B5F	45.25	46.25	45.25
B1R	66.25	67.25	60.25
B2R	63.25	65.25	60.25
B3R	57.25	59.25	56.25
B4R	50.25	53.25	51.25
B5R	47.25	48.25	45.25
B1D	66.25	66.25	61.25
B2D	65.25	65.25	60.25
B3D	55.25	56.25	54.25
B4D	49.25	50.25	49.25
B5D	44.25	46.25	44.25
B3M	49.25	51.25	48.25
B4M	47.25	50.25	47.25
B5M	42.25	45.25	44.25
B3G	48.25	52.25	49.25
B4G	45.25	48.25	47.25
B5G	43.25	44.25	42.25
C1L	65.25	66.25	58.25
C2L	59.25	60.25	55.25
C3L	57.25	58.25	55.25
C4L	49.25	52.25	50.25
C5L	43.25	44.25	43.25
C1F	65.25	66.25	58.25
C2F	59.25	60.25	57.25
C3F	55.25	57.25	55.25
C4F	49.25	53.25	50.25
C5F	42.25	45.25	44.25
C1R	62.25	62.25	56.25
C2R	56.25	56.25	52.25
C3R	49.25	50.25	48.25
C4R	44.25	46.25	44.25
C5R	39.25	40.25	39.25
C3M	45.25	48.25	47.25
C4M	42.25	46.25	43.25
C5M	40.25	43.25	41.25
C3G	40.25	43.25	40.25
C4G	38.25	42.25	40.25
C5G	33.25	35.25	34.25

Grade	Loan rate	Grade	Loan rate
T3F	46.25	X4F	46.25
T4F	44.25	X5F	42.25
T5F	38.25	X1R	51.25
T3R	46.25	X2R	48.25
T4R	44.25	X3R	44.25
T5R	39.25	X4R	42.25
T3D	44.25	X5R	35.25
T4D	42.25	X3D	40.25
T5D	36.25	X4D	38.25
T3M	43.25	X5D	32.25
T4M	41.25	X3M	46.25
T5M	35.25	X4M	43.25
T3G	46.25	X5M	41.25
T4G	44.25	X3G	44.25
T5G	38.25	X4G	41.25
X1L	53.25	X5G	37.25
X2L	51.25	N1L	28.25
X3L	48.25	N2L	20.25
X4L	46.25	N1R	30.25
X5L	41.25	N2R	22.25
X1F	53.25	N1G	30.25
X2F	52.25	N2G	22.25
X3F	49.25		

[1] Only the original producer is eligible to receive advances. Tobacco graded "W" (doubtful keeping order), "No-G" (no grade), "U" (unsound), "D" (damaged), or scrap will not be accepted. The association is authorized to deduct 25 cents per hundred pounds to apply against overhead cost.

[FR Doc.72-20586 Filed 11-29-72;8:51 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 EXTRAORDINARY EMERGENCY REGULATION OF INTRASTATE ACTIVITIES

PART 71—GENERAL PROVISIONS

Cleaning and Disinfecting Requirements

Pursuant to the 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 and the Act of July 2, 1962 (21 U.S.C. 111–113, 114, 114a–1, 115–117, 120–126, 134b), § 71.6(a) of Part 71, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

That portion of the text of § 71.6(a) preceding the colon is amended to read as follows:

§ 71.6 Carrier responsible for cleaning and disinfecting of railroad cars, trucks, boats, aircraft or other means of conveyance.

(a) Railroad cars, trucks, boats, aircraft, and other means of conveyance which have been used in the interstate transportation of cattle, sheep, swine, poultry, or other animals affected with, or carrying the infection of, any contagious, infectious, or communicable disease of livestock or poultry, other than slight unopened cases of actinomycosis or actinobacillosis (or both), atrophic rhinitis, bovine foot rot, ram epididymitis, ringworm, infectious keratitis, and arthritis (simple lesions only), shall be cleaned and disinfected under Veterinary Services supervision in accordance with §§ 71.7 and 71.10–71.12 at the point where the animals are unloaded and the final carrier shall be responsible for such cleaning and disinfecting:

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791, as amended; secs 1–4, 33 Stat. 1264, 41 Stat. 699, as amended; sec. 11, 58 Stat. 734, as amended, sec. 13, 65 Stat. 693, as amended; sec. 3, 76 Stat. 130; 21 U.S.C. 111–114, 114a, 114a–1, 114g, 115–117, 120, 121–126, 134b; 29 F.R. 16210, as amended, 36 F.R. 20707, 21529, 21530, 37 F.R. 6327, 6505)

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER (11–30–72).

The amendment deletes the condition in § 71.6 of the regulations that means of conveyance be "again used for animals" before the cleaning and disinfecting requirements of § 71.6 are applicable. This

condition imposes a restriction upon the enforceability of these requirements that is detrimental to efforts to prevent the interstate spread of livestock diseases, and should be deleted as soon as possible for protection of the livestock industry. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and public participation in connection with this amendment are impracticable and contrary to the public interest and good cause is found for making the amendment effective less than 30 days after its publication in the FEDERAL REGISTER.

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

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

[FR Doc.72-20589 Filed 11-29-72;8:51 am]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Regs. G, T, U]

MAXIMUM LOAN VALUE OF STOCKS

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

Parts 207, 220, and 221 of Title 12 are amended as follows:

1. Effective November 24, 1972, § 207.5 (a) (the Supplement to Regulation G) is amended to read as follows:

§ 207.5 Supplement.

(a) *Maximum loan value of margin securities.* For the purpose of § 207.1, the maximum loan value of any margin security, except convertible securities subject to § 207.1(d), shall be 35 percent of its current market value, as determined by any reasonable method.

* * * * *

PART 220—CREDIT BY BROKERS AND DEALERS

2. Effective November 24, 1972, § 220.8 (a)(1) and (d) (the Supplement to Regulation T) is amended to read as follows:

§ 220.8 Supplement.

(a) *Maximum loan value for general accounts.* The maximum loan value of securities in a general account subject to § 220.3 shall be:

(1) Of a registered nonequity security held in the account on March 11, 1968, and continuously thereafter, and of a margin equity security (except as provided in § 220.3(c) and paragraphs (b) and (c) of this section), 35 percent of the current market value of such securities.

* * * * *

(d) *Margin required for short sales.* The amount to be included in the adjusted debit balance of a general account, pursuant to § 220.3(d)(3), as margin required for short sales of securities (other than exempted securities) shall be 65 percent of the current market value of each security.

* * * * *

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

3. Effective November 24, 1972, § 221.4 (a) (the Supplement to Regulation U) is amended to read as follows:

§ 221.4 Supplement.

(a) *Maximum loan value of stocks.* For the purpose of § 221.1, the maximum loan value of any stock, whether or not registered on a national securities exchange, shall be 35 percent of its current market value, as determined by any reasonable method.

* * * * *

4a. These amendments are issued pursuant to section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g). The changes are to raise the margin requirements for purchasing or carrying stocks, and for short sales, from 55 to 65 percent.

b. The requirements of section 553 of Title 5, United States Code, with respect to notice, public participation, and deferred effective date were not followed in connection with these amendments because following such requirements would have prevented the Board's action from becoming effective as promptly as necessary in the public interest.

By order of the Board of Governors, November 22, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-20602 Filed 11-29-72;8.52 am]

Chapter VII—National Credit Union Administration

PART 749—RECORDS PRESERVATION PROGRAM

On pages 19387-19388 of the September 20, 1972, edition of the FEDERAL REGISTER, there was published a notice of proposed rule making to establish a new Part 749 (12 CFR Part 749).

After reviewing and considering comments received from interested parties, the proposed regulations, subject to the following changes, are hereby adopted as set forth below.

1. In § 749.0(a), line 10, after the word "any" insert "federally insured".

2. In § 749.0(b), line 4, after the word "which" insert "federally".

3. In § 749.1(g), line 2, after the word "location" insert "selected by the board of directors".

4. In § 749.2(a), line 7, add the following sentence: "However, the responsibility for an off-site records preservation program may be delegated by the treasurer, subject to the approval of the board of directors, to the person who manages the day-to-day operations of the credit union."

5. In § 749.2(c), line 17, change "monthly" to "quarterly".

6. In § 749.2(c), lines 18 and 25, change "15th" to "30th".

7. In § 749.2(d), lines 10-11, change "board of directors" to "supervisory committee".

8. In § 749.3(a)(1), line 7, after the word "number" insert "is".

9. In § 749.3(a)(3)(i), line 2, change "included" to "include".

10. In § 749.3(b), lines 11-12, delete the words "a detailed listing of all investments".

11. In § 749.3(b), line 17, add the following sentences: "There shall be attached to the financial and statistical report a detailed listing of all investments. Should a majority of the listed investments remain constant, it will not be necessary for a new list to be included with each financial and statistical report. An update of the initial list will suffice: *Provided*, Such update accurately reflects the status of the credit union's investments."

12. In § 749.4(f)(4), line 4, and in § 749.4(h)(3), line 2, change "Huchinson" to "Hutchinson".

Effective date. This regulation is effective January 1, 1973.

HERMAN NICKERSON, Jr.,
Administrator.

NOVEMBER 22, 1972.

Sec.
749.0 Scope.
749.1 Definitions.
749.2 Implementation.
749.3 Vital records to be stored.
749.4 Storage service provided by Administration.

AUTHORITY: The provisions of this Part 749 issued under sec. 120, 73 Stat. 635, 12 U.S.C. 1766; sec. 209, 84 Stat. 1015, 12 U.S.C. 1789.

§ 749.0 Scope.

(a) This part establishes the minimum requirements with which all federally insured credit unions shall comply in a records preservation program of off-site storage for duplicate vital records which will be used for reconstruction purposes in the event of a catastrophe. Storage of duplicate vital records above the minimums set forth below may be undertaken by any federally insured credit union.

(b) This regulation prescribes the duplicate vital records which shall be stored, the frequency of storage, and sets time limits within which federally insured credit unions shall comply.

§ 749.1 Definitions.

(a) "Catastrophe" means any act which incapacitates a credit union's ability to operate because vital records have been destroyed or made useless, making it impossible to carry on operations.

(b) "Credit Union" means a Federal or State credit union whose members' shares and deposits are insured by the Administrator of the National Credit Union Administration.

(c) "EDP" means an electronic data processing system which is used to maintain the members' share and loan ledgers.

(d) "Hard copy" means any duplicate records other than those which are on microfilm or magnetic tape.

(e) "Magnetic tape" means a thin plastic tape mounted on reels which receives and stores magnetic impressions of information.

(f) "Microfilm" means a film containing photographs of data from vital records.

(g) "Sufficiently removed" means an off-site location selected by the board of directors far enough from the credit union to avoid a simultaneous loss of both the credit union records and the records it stores at the Vital Records Center from a single catastrophe such as a flood, hurricane, earthquake, etc.

(h) "Quarterly" means any 3-month period.

(i) "Reconstruction" means rebuilding the credit union's books and records utilizing information from duplicate vital records stored in an off-site location.

(j) "Records preservation program" means a program for identifying vital records, storing duplicate copies thereof in an off-site facility, and making them available for reconstruction in the event of a catastrophe.

(k) "Vital Records Center" is the off-site location where the credit union's duplicate vital records are stored.

(l) "Record date" means the effective date of the vital records that will be stored.

§ 749.2 Implementation.

(a) The treasurer of the credit union, subject to the general direction and control of the board of directors, is responsible for developing, maintaining, and operating an off-site records preservation program which equals or exceeds the requirements of this regulation. However, the responsibility for an off-site records preservation program may be delegated by the treasurer, subject to the approval of the board of directors, to the person who manages the day-to-day operations of the credit union.

(b) Any storage center may be selected as a Vital Records Center provided the center is sufficiently removed from the location of the credit union.

(c) The records preservation program must be developed within 4 months of the effective date of this regulation or 4 months after the effective date of the credit union's share insurance certificate, whichever is later. The treasurer shall have the initial set of duplicate vital records at the Vital Records Center not later than 6 months from the effective date of this regulation, or not later than 6 months after the effective date of the credit union's share insurance certificate, whichever is later. Thereafter, the treasurer of a credit union using EDP facilities shall prepare and send duplicate vital records to the Vital Records Center on a quarterly basis to be mailed no later than the 30th day of the following month. The treasurer of each credit union which is not using EDP facilities to maintain its members' share and/or deposit and loan balances shall prepare and send duplicate vital records to the Vital Records Center on a quarterly basis to be mailed by the 30th day of the following month.

(d) The treasurer shall maintain a record, to be known as the records preservation log, of the duplicate vital records sent to the Vital Records Center. The log shall contain a description of the records sent to the center, the date they were sent, and the address of the center. The treasurer should sign and date the log each time the records have been sent to the center. The supervisory committee shall review this log at least quarterly.

§ 749.3 Vital records to be stored.

Duplicates of at least the records described in this section will be prepared and sent to the Vital Records Center in accordance with the schedule described in this regulation. Duplicates of the most recent monthend records will be used to commence the program. A magnetic tape or microfilm which contains at least the same information as the vital records may be substituted for any of the following records:

(a) A listing of the members' share and/or deposit and loan balances as of the record date. This list shall be handwritten or typewritten and in columnar form.

(1) Member's Account Number: That is, the number assigned by the credit union to the account. If the credit union uses another number (payroll number, badge number, etc.) for day-to-day operations, the credit union may choose which number is to be used.

(2) Share and/or Deposit Balance: This will include balances of regular and special share and deposit accounts, and balances of installment payments on U.S. bonds.

(3) Loan Balance: If more than one loan for a borrower is outstanding, each balance shall be listed separately.

(i) Credit unions are encouraged to also include in columnar form the account name and address of all owners, trustees, and/or beneficiaries, etc. Because of the possible workload involved, listing of account names and addresses is optional.

(ii) Instead of a handwritten or typewritten listing of members' share and/or deposit and loan balances, an adding machine or accounting machine tape, showing the balances, identified by account numbers, may be stored.

(b) A financial and statistical report as of the record date. The report shall include at least a list of all asset and liability accounts as of the record date. The reverse side of the form will be used to record significant data about the credit union. This data will include the names and addresses of the credit union's banks, location of safe-deposit boxes and other places where records are stored, a detailed listing of all investments, breakdown of pertinent other asset accounts, and a list of insurance policies such as fire, casualty, life savings and borrowers protection, surety bond, etc., with the names and addresses of the insurers. There shall be attached to the financial and statistical report a detailed listing of all investments. Should a majority of the listed investments remain constant, it will not be necessary for a new list to be included with each financial and statistical report. An update of the initial list will suffice, *Provided* Such update accurately reflects the status of the credit union's investments.

(c) Credit Union's Utilizing EDP—An insured credit union which maintains its members' share and/or deposit and loan ledgers on a data processing system, if the computer center is sufficiently removed from the credit union, shall be deemed to have met the requirements of this regulation regarding the storage of members' share and/or deposit and loan balances.

§ 749.4 Storage service provided by Administration.

In order to comply with this regulation, insured credit unions may choose to participate in the Administration's records preservation program at no cost for storage. To participate in this program, insured credit unions shall follow the instructions outlined below:

(a) Credit unions may store hard copy, magnetic tape, and microfilm records.

(b) Credit unions shall use preprinted envelopes or labels which are provided by the storage facility each time records are received for storage.

(c) Credit unions shall fill out all required information on the appropriate mailing envelope or label. Federal credit unions shall furnish charter number; insured State credit unions shall furnish insurance certificate number.

(d) Credit unions which desire to store records permanently shall so note (in large red letters) on the envelope or mailing label provided. If records are not marked "Permanent," except for magnetic tape, they will be destroyed when replacement records are received. Unmarked magnetic tape will be returned to said credit union annually for reuse.

(e) All duplicate records shall be packaged securely for mailing.

(f) Specific information for:

(1) *Hard copy records.* Material shall be no larger than 8½" x 11" so that envelop will fit into the designated storage drawer. If material is too bulky to fit into the envelope, the material should be wrapped securely with the envelope, address side up, placed on top of the package and tied for mailing. Envelopes will not be opened by the storage center.

(2) *Microfilm.* Place the microfilm inside the container in which the film is returned after developing. Microfilm will be filed in a storage tray with only the top visible; therefore, affix to the top of the container the "Microfilm or Magnetic Tape Records" label furnished.

Fold the label where indicated and affix to the container so that it is positioned on two sides.

(3) *Magnetic tape.* Prepare in same manner as microfilm, affixing label without folding.

(4) *Mailing.* Mail directly to the Administration's storage location at:

Underground Vaults & Storage, Inc., Post Office Box 1723, Hutchinson, KS 67501.

(g) Release of records to credit unions—in the event of a local emergency, records will be released directly from the storage center to the credit union by written request signed by any one of the authorized officials whose signature appears on the envelope or mailing label.

(h) In the event of a national emergency (only) the authorized official's written request for release of records should be addressed to one of the following sources in the order of priority listed:

(1) Regional Office of the National Credit Union Administration.

(2) Washington Office of the National Credit Union Administration.

(3) Underground Vaults & Storage, Inc., Post Office Box 1723, Hutchinson, KS 67501.

[FR Doc.72-20466 Filed 11-29-72;8:45 am]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Rev. 12]

PART 121—SMALL BUSINESS SIZE STANDARDS

Revision 12 of Part 121 rescinds Revision 11, including Amendments 1 through 10, of the Code of Federal Regulations. In addition to incorporating the amendments to Revision 11, this revision revises the Census Classification and/or Industry or subindustry codes contained in Schedule B of §121.3-8 and Schedules A, C, D, and F of § 121.3-10 so that they are in conformity with the current Standard Industrial Classification Manual (1972) which supersedes Standard Industrial Classification Manual (1967). Finally, § 121.3-8(f)(3) and § 121.3-10 (f)(4) have been reworded to clarify the meaning thereof.

Part 121 of Chapter I of Title 13 of the Code of Federal Regulations is hereby revised as follows:

Sec.

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AUTHORITY: The provisions of this Part 121 issued under Public Law 85-536, sec. 5(b)6, 72 Stat. 385, as amended.

§ 121.3 Statutory provisions.

(a) *Small Business Act, as amended.*

SEC. 3. For the purpose of this Act, a small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others. Number of employees and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees which a small business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

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SEC. 8(b). It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

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(6) To determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small business concern." Offices of the Government having procurement or lending powers, or engaged in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small business concerns," as authorized and directed under this paragraph.

(b) *Small Business Investment Act of 1958, as amended.*

SEC. 103. As used in this Act—

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(5) The term "small business concern" shall have the same meaning as in the "Small Business Act."

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§ 121.3-1 Purpose and method of establishing size standards.

(a) *Purpose.* This part defines "small business concerns" and establishes standards, criteria, and procedures to determine which concerns are "small business concerns" within the meaning of the Small Business Act, as amended (hereinafter referred to as the "Act") and the Small Business Investment Act of 1958, as amended (hereinafter referred to as the "Investment Act").

(b) *Method of establishing size standards*—(1) *Use of Standard Industrial Classification Manual.* The Standard Industrial Classification (SIC) Manual, as amended, prepared and published by the Bureau of the Budget (now Office of Management and Budget), Executive Office of the President, will be used by SBA as a guide in defining industries. Its use therefore is advisory and not mandatory.

(2) *Size standards policy.* (i) The fundamental purpose of Small Business Administration assistance is to preserve free competitive enterprise by strengthening the competitive position of small business concerns.

(ii) It is the Small Business Administration's view that, in the absence of proof to the contrary, there is a segment of each industry wherein concerns by reason of their small size are at a competitive disadvantage. Therefore, the definition of small business for each industry should be limited to that segment of the industry struggling to become or remain competitive.

(iii) Smaller concerns often are forced to compete with middle-sized as compared with very large concerns. In consideration of this fact, the standard for each industry should be established as low as reasonably possible. It should be lowered in any case where the SBA determines that a few concerns under the size standard umbrella have, because of their size, gained undue competitive strength as compared with other concerns under the umbrella.

(iv) It is the Small Business Administration's view that concerns which, with or without assistance under the Small Business Act, have grown to a size which exceeds the applicable small business size standard, should compete for Government contracts not reserved for small business concerns or should seek commercial markets in the same or related fields. Under such circumstances small business concerns should not rely on continuing assistance under the Small Business Act from the cradle to the grave, but should plan for the day on which they become other than small business and should be able to compete without assistance.

(3) *Factors in formulating size standards.* The following factors shall be considered in formulating industry size standards:

(i) Concentration of output; that is, the portion of the total output of an industry which is accounted for by a limited number of companies.

(ii) Coverage ratio; that is, the ratio of the industry's shipments of its primary products, to the total shipments by all industries of the primary products of the industry in question.

(iii) Specialization ratio; that is, the ratio of the industry's shipments of its primary products to its total shipments of primary and secondary products.

(iv) The total number of concerns in the industry.

(v) The size of industry leaders.

(vi) The SBA program for which the size standard is established.

In formulating industry size standards for the purpose of Government procurement, the additional factor of Government procurement history shall be used. The use of this additional factor may cause the size standards for the purpose of Government procurement and the size standards for the purpose of financial assistance to differ for the same industry.

(4) *Product classification.* For size standards purposes, a product or service shall be classified into only one industry, even though, for other purposes, it could be classified into more than one industry. In determining the SIC industry into which particular products shall be classified for size standard purposes, consideration shall be given to all appropriate factors including:

(i) Alphabetic indices published by the Office of Management and Budget, Executive Office of the President, Bureau of the Census, and the Business and Defense Services Administration.

(ii) Description of the product under consideration.

(iii) Previous Government procurements for the same or similar products, and

(iv) Published information concerning the nature of companies which manufacture such products.

A product or service shall be classified in the industry whose definition best describes the principal nature of the product or service being procured. The end use of a product does not govern the industry into which it is to be classified. In a borderline situation the product or service shall be classified in the industry whose size standard would best serve to accomplish the purposes of the Small Business Act. When a procurement is for two or more items with different size standards a bidder must qualify as a small business under the definition of a small business applicable to any item on which it bids. If a multi-item procurement requires the successful bidder to deliver all items and/or perform all services being procured the applicable size standard is that for the industry whose products or services account for the greatest proportion of the contract price.

(5) *Products classification decision.* The SBA Regional Director or his delegatee of the SBA region in which the principal office of the applicant, not including its affiliates, is located, shall determine the appropriate SIC classification, except that for procurement purposes the determination shall be made by the official specified in § 121.3–8, and for lease guarantee reinsurance purposes the determination shall be made by the Associate Administrator for Financial Assistance. Such determination shall be subject to appeal in the manner provided in § 121.3–6.

§ 121.3–2 Definition of terms used in this part.

(a) Affiliates: Concerns are affiliates of each other when either directly or indirectly (1) one concern (other than an investment company licensed under the Small Business Investment Act of 1958 or registered under the Investment Company Act of 1940, as amended), controls or has the power to control the other, or (2) a third party or parties (other than an investment company licensed under the Small Business Investment Act of 1958 or registered under the Investment Company Act of 1940, as amended), controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships: *Provided, however,* That restraints imposed on a franchisee by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure. Where a concern is a subcontractor pursuant to section 8(a)(2) of the Small Business Act and, in connection therewith, is the subject of a Divestiture Agreement approved by SBA for the benefit of socially or economically disadvantaged individuals, the receipts, employment, and other factors of the concern attributable to the section 8(a)(2) subcontract shall not be included in determining the size of either concern during the term of such divestiture agreement. Other contracts and business of such subcontractor may also be excluded in determining the size if, in the judgment of SBA, substantial beneficiaries of such other contracts and business will be the socially or economically disadvantaged individuals in question.

(b) "Annual receipts" means the gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes. If a concern has been in business less than a year its annual receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. Except as set forth in § 121.3–10, if a concern has acquired an affiliate during the applicable accounting period it is necessary in computing the applicant's annual receipts, to include the affiliates receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(c) "Appeal" means a written communication addressed to the Size Appeals Board requesting it to review a determination relating to a size matter made by a district director or his delegatee, or by a Contracting Officer.

(d) "Area of substantial unemployment," for the purpose of small business size determination, means a geographical area within the United States which:

(1) Is classified by the Department of Labor either as an "Area of Substantial Unemployment," or an "Area of Substantial and Persistent Unemployment," and such classification has been listed in that Department's publication "Area Labor Market Trends" continuously from September 15, 1961, until a size determination is made; or

(2) Is individually certified by the Department of Labor as an "Area of Substantial Unemployment" and has been eligible for such certification continuously since September 15, 1961. If an area has been removed from the publication, "Area Labor Market Trends," or if an area becomes ineligible for certification at any time, such area is excluded from the above definition and cannot be reinstated for the purpose of size determinations unless it is designated as a Redevelopment Area by the Department of Commerce. (See paragraph (u) of this section.)

(e) "Base maintenance" means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia, three or more services which may include but are not limited to such maintenance activities as janitorial and custodial services, protective guard services, commissary services, base housing maintenance, fire prevention services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air-conditioning and refrigeration maintenance: *Provided, however,* That whenever the contracting officer determines prior to the issuance of bids that the estimated value

of one of the foregoing services constitutes more than 50 percent of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such service is classified.

(f) "Bona fide feed stocks" means crude and any other hydrocarbon material actually charged to refinery processing units, as distinguished from materials used as components in products to be delivered after merely filtering, settling, or blending.

(g) "Crude-oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.

(h) "Certificate of competency" means a certificate issued by SBA pursuant to the authority contained in section 8(b)(7) of the Act stating that the holder of the certificate is competent as to capacity and credit to perform a specific Government procurement or sales contract.

(i) "Concern" means any business entity organized for profit with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see paragraph (a) of this section) any business entity, i.e., any entity located outside the United States, shall be included.

(j) "Contracting officer" means the person executing a particular contract on behalf of the Government and any other employee who is properly designated contracting officer; the term includes the authorized representative of a contracting officer acting within the limits of his authority.

(k) "Convalescent or nursing home" means those facilities for the accommodation of convalescents or other persons who are not acutely ill or not in need of hospital care but who may require nursing care and related medical services, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(l) "Department store" means a concern employing twenty-five (25) or more persons engaged in the retail sale of some items in each of the following merchandise lines: (1) Furniture, home furnishings, appliances, radio and television sets; (2) a general line of apparel for the family; and (3) household linens and dry goods: *Provided, however,* That sales within any one of the preceding merchandise lines do not exceed eighty percent (80%) of the concern's total sales and the aggregate of such merchandise lines account for at least fifty percent (50%) of the concern's total sales.

(m) "Forest products industry" as used in § 121.3–9(b) means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw material.

(n) "Gross leasable area" means the total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines, and upper floors, if any, expressed in square feet measured from the centerline of a joint partition and from outside wall faces.

(o) "Hospital" means a health facility duly licensed as a hospital providing inpatient medical or surgical care of the sick or injured, including obstetrics, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefits of its owner, stockholders, or members.

(p) "Industry" means a grouping of establishments primarily engaged in similar lines of activity as listed and described in the Standard Industrial Classification Manual, as amended (SIC Manual), prepared and published by the Bureau of the Budget (now Office of Management and Budget), Executive Office of the President.

(q) "Medical and dental laboratory" means those facilities which provide services to doctors, dentists, hospitals, and similar health facilities, which facilities are privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(r) "Nonmanufacturer" means any concern which, in connection with a specific Government procurement contract, other than a construction or service contract, does not manufacture or produce the products required to be furnished by such procurement. Nonmanufacturer includes a concern which can manufacture or produce the products referred to in the specific procurement but does not do so in connection with that procurement.

(s) A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(t) "Number of employees" means the average employment of any conecrn, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month. If a concern has acquired an affiliate during the applicable accounting period it is necessary in computing the applicant's number of employees, to include the affiliates number of employees during the entire applicable accounting period rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(u) "Protest" means a statement in writing from any bidder or offeror on a particular procurement or disposal (or from any other party interested therein) alleging that another bidder or offeror on such procurement is not a small business concern. Such statement shall contain the basis for the protest, together with specific detailed evidence in support of the protestant's claim. A protest received after the time limits set forth in § 121.3–5(a) shall be acted on but such determination shall not apply to the procurement in question.

(v) "Redevelopment area" for the purpose of small business size determinations means a geographical area within the United States which has been designated as a "redevelopment area" in accordance with the Public Works and Economic Development Act of 1965 (Public Law 89–136, sec. 401, 75 Stat. 48).

(w) "Shopping center" means a group of commercial establishments planned, developed, owned, and managed as a unit with offstreet parking provided on the property.

(x) "Size determination" means an SBA ruling, in writing, that a concern is or is not, or was or was not, a small business within the meaning of this part. An opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of a formal SBA inquiry, is not a "size determination" as that term is used in this part.

(y) "United States" as used in this regulation includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

§ 121.3–3 Organization—size functions.

The Assistant Administrator for Planning, Research, and Analysis shall:

(a) Develop and recommend small business size standards to the Administrator of SBA for promulgation;

(b) Conduct industry hearings pertaining to size matters;

(c) In concert with the Office of General Counsel, issue interpretations of the Size Standards Regulation;

(d) Consider and take appropriate action on written petitions objecting to or requesting amendments or recision of a published size standard;

(e) Establish procedures for the implementation of all size programs; and

(f) Perform such other related functions as may be appropriate to administer the SBA size program.

§ 121.3–4 Size determinations.

Original size determinations shall be made by the Regional Director, or his delegatee, serving the region in which the principal office of the concern (not including its affiliates) whose size is in question is located, except that for lease guarantee reinsurance purposes such determinations shall be made by the Associate Administrator for Financial Assistance. The Regional Director, or his delegatee, or the Associate Administrator for Financial Assistance, promptly shall notify, in writing by certified mail, return receipt requested, the concern in question and other interested persons of his decision. Such determination shall be final unless appealed in the manner provided in § 121.3–6. For the purpose of Government procurements or sales a size determination shall be made only in the event of a protest pursuant to § 121.3–5, a request for a redetermination pursuant to § 121.3–15(e), a request for a Certificate of Competency, on request by the U.S. General Accounting Office, or if a Regional Director or his delegatee has information which causes him to question the size status of a concern for the purpose of the Small Business Subcontracting Program or Facilities Inventory Program or for any other purpose relating to Government procurement and he concludes that a size determination is necessary; *Provided however*, That a Regional Director or his delegatee may, whenever he deems such action necessary, determine the size status of a concern for the purpose of the Government Timber Sales Program.

§ 121.3–5 Protest of small business status.

(a) How to protest: Any bidder or offeror or other interested party may challenge the small business status of any other bidder or offeror on a particular procurement or disposal. Such challenge shall be made by delivering a protest to the contracting officer responsible for the particular procurement involved. Such protest must be filed prior to the close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening, except that in the case of negotiated procurements, a protest may be filed by any other offeror or other interested party within five (5) days exclusive of Saturdays, Sundays, and legal holidays after receipt from the contracting officer of notification of the identity of the offeror being protested: *Provided, however*, That a protest received after such time shall be deemed to be timely for the purpose of the procurement in question, if, in the case of mailed protest, such protest is sent by registered or certified mail and the postmark thereon indicates that the protest would have been delivered within this time limit but for delays beyond the control of the protestant or, in the case of telegraphed protests, the telegram date and time line indicate that the protest would have been delivered within this time limit but for delays beyond the control of the protestant. Any contracting officer who receives a protest shall promptly forward such protest to the SBA district office serving the geographical area in which the principal office of the protested concern, not including its affiliates, is located. A contracting officer may at any time after bid opening question the small business status of any bidder or offeror for the purpose of a particular procurement by filing a protest with the SBA district office serving the area in which the principal office of the protested concern, not including its affiliates, is located. A protest by a contracting officer shall be timely for the purpose of the procurement in question whether filed before or after award.

(b) Notification of protest: Upon receipt of such protest, the SBA district director or his delegatee shall immediately notify the contracting officer and the protestant of the date such protest has been received and that the size of the concern being protested is being considered by SBA. The district director or his delegatee shall also advise the protested bidder or offeror of the receipt of the protest and shall forward to the protested bidder or offeror a copy of the protest and a blank SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested. Such bidder must, within three (3) working days after receipt of the copy of the protest and SBA Form 355, file the completed form as directed by SBA, and must attach thereto a statement in answer to the allegations of the letter of protest, together with evidence to support such position. If such bidder or offeror does not submit the completed SBA Form 355 within the filing period provided above, or within any additional period of time granted by SBA for cause, SBA will rule the protested concern is other than a small business.

(c) Notification of determination: After receipt of a protest and responses thereto, SBA shall determine the small business status of the protested bidder or offeror and, by certified mail, return receipt requested, notify the contracting officer, the protestant, and the protested bidder or offeror of its decision within 10 working days if possible.

(d) If SBA has determined that a concern is ineligible as a small business for the purpose of a particular procurement, it cannot thereafter become eligible for the purpose of such procurement by taking affirmative acts to constitute itself a small business.

§ 121.3–6 Appeals.

(a) *Organization.* The Size Appeals Board shall review appeals from size determinations made pursuant to §§ 121.3–4 and 121.3–5 and from product classifications made pursuant to §§ 121.3–8 and 121.3–10 and shall make final decisions as to whether such determinations or classifications should be affirmed, reversed, or modified. Size Appeals Board proceedings are essentially factfinding and nonadversary in nature. The Size Appeals Board shall conduct such proceedings as it determines appropriate to enable it to discharge its duties.

(1) The Size Appeals Board shall consist of five members, to wit: The Deputy Administrator (Chairman), the Associate Administrator for Procurement and Management Assistance (Vice Chairman), the Associate Administrator for Planning, Research and Analysis, and the Associate Administrator for Investment.

(2) Each member of the Size Appeals Board shall, in writing, designate one or more alternates to serve in his stead in the event of absence or disability. Each member or his alternate shall have one vote, except that the Chairman, or the Vice Chairman acting in his stead, shall vote only in the event of a tie.

(b) *Method of appeal*—(1) *Who may appeal.* An appeal may be filed by:

(i) Any concern or other interested party which has protested the small business status of another concern pursuant to § 121.3–5 and whose protest has been denied by a Regional Director or his delegatee;

(ii) Any concern or other interested party which has been adversely affected by a decision of a Regional Director or his delegatee or by the Associate Administrator for Financial Assistance pursuant to §§ 121.3–4 and 121.3–5;

(iii) Any concern or other interested party which has been adversely affected by a decision of a contracting officer regarding product classification pursuant to § 121.3–8; and

(iv) The Small Business Administration Associate Administrator for the Small Business Administration program involved.

(2) *Where to appeal.* Written notices of appeal shall be addressed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) *Time for appeal.* (i) An appeal from a size determination or product classification by a Regional Director, or his delegatee, may be taken at any time, except that because of the urgency of pending procurements, appeals concerning the small business status of a bidder or offeror in a pending procurement may be taken within five (5) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision by a Regional Director or his delegatee. Unless written notice of such appeal is received by the Size Appeals Board before the close of business on the fifth day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned.

(ii) An appeal from a product classification determination by a contracting officer may be taken: (*a*) Not less than 10 days, exclusive of Saturdays, Sundays, and legal holidays, before bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations, or (*b*) not less than five (5) days,

exclusive of Saturdays, Sundays, and legal holidays, before the bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations, and

(iii) The timeliness of an appeal under subdivisions (i) and (ii) of this subparagraph shall be determined by the time of receipt of the appeal by the Size Appeals Board: *Provided, however,* That an appeal received after such time limits have expired shall be deemed to be timely and shall be considered if, in the case of mailed appeals, such appeal is sent by registered or certified mail and the postmark thereon indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant, or in the case of telegraphed appeals, the telegram date and time line indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant.

(4) *Notice of appeal.* No particular form is prescribed for the notice of appeal. However, the appellant shall submit to the Board an original and four legible copies of such notice and, to avoid time-consuming correspondence, the notice should include the following information:

(i) Name and address of concern on which the size determination was made;

(ii) The character of the determination from which appeal is taken and its date;

(iii) If applicable, the IFB or contract number and date, and the name and address of the contracting officer;

(iv) A concise and direct statement of the reasons why the decision of a Regional Director, or his delegatee, the Contracting Officer or the Associate Administrator for Financial Assistance is alleged to be erroneous;

(v) Documentary evidence in support of such allegations; and

(vi) Action sought by the appellant.

(c) *Notice to interested parties.* The Size Appeals Board shall promptly acknowledge receipt of the Notice of Appeal and shall send a copy of such Notice of Appeal to the appropriate Regional Director or his delegatee and to the Contracting Officer (if a pending procurement is involved). If the appellant is not the concern whose size status is in question, the Board shall also send a copy of the notice to such concern. The Board shall notify all known interested parties that the appeal has been filed. The Board in its discretion may also provide any of such interested parties with copies of applicant's Notice of Appeal, or parts thereof, when the Board determines that this would be in the interest of fairness or would assist it in the performance of its functions.

(d) *Statement of interested parties.* After an appeal has been filed, any other interested parties may file with the Board a signed statement, together with four legible copies thereof, as to why the appeal should or should not be denied. Such statement shall be accompanied by appropriate evidence. Such statements and supporting evidence shall be mailed or delivered to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416, within five (5) days of the receipt of appropriate notification of appeal or other action in the proceeding unless an extension is for cause granted by the Chairman of the Size Appeals Board. If the appellant is the concern whose size status is in question, the Board will provide copies of such statements and appropriate evidence submitted in connection with the appeal or a reconsideration thereof to such appellant.

(e) *Consideration by the Size Appeals Board.* (1) The Size Appeals Board shall consider the appeal on the written submission of the parties. The Board may also, in its discretion, conduct an oral inquiry. After consideration of all relevant information, the Board shall promptly render a decision which shall state the reason for such decision.

(2) *Procedures in oral inquiries.* In considering size appeals, and in reconsidering size appeals decisions, the Size Appeals Board may hold an oral inquiry to assist it in arriving at facts necessary in deciding the appeal. The following rules shall govern such oral inquiries:

(i) Oral inquiries may be held by the Size Appeals Board upon the request of any party to a size appeal or by the Board on its own motion. The Board will, in its discretion, determine whether an oral inquiry will be of assistance in its determination of a size appeal. The Board shall inform the party making a request for oral inquiry whether its request is granted. If the Board grants the request for an oral inquiry, it will so notify all other interested parties.

(ii) Oral inquiries held by the Board are investigative in nature and not adversary. Such inquiries shall be conducted informally in a manner which will facilitate the Board's factfinding function and insure fairness to all participants.

(iii) Whenever the Board permits the appearance of two or more parties before it in an oral inquiry, cross-examination shall not be permitted between or among such parties; however, any party appearing in such oral inquiry may suggest questions for the Board to direct to other parties which may assist the Board in its determination of relevant facts.

(f) *Decision of the Size Appeals Board.* The decision of the Size Appeals Board shall be predicated upon the entire record, and it shall state in writing the basis for its findings and conclusions. The Chairman shall promptly notify, in writing, the appellant and the other interested parties of the Board's decision together with the reasons therefor.

(g) *Reconsiderations.* (1) Following any decision in a size appeals case, an interested party, within no more than five (5) business days following the decision, may petition the Board for reconsideration upon presentation of appropriate justification therefor. The Petition for reconsideration to the Board may be in any form, with an original and four copies. The Board will notify interested parties that a Petition for reconsideration has been received.

(2) The Board shall consider the Petition for reconsideration upon the statement and other evidence presented by the petitioners and any other evidence the Board, in its discretion, deems necessary.

(3) Grounds for reconsideration: Grounds for reconsideration shall be:

(i) A material error of fact in the original decision; or

(ii) Relevant information not previously considered by the Board or relevant information not previously available to any of the parties involved;

(iii) When a request for reconsideration is made by any of the interested parties, such requesting party must demonstrate to the Board that the grounds for reconsideration involve facts or information which were not previously presented to the Board through no fault or omission of such party.

(4) If the Board denies the request for reconsideration, it shall notify all parties. If the request for reconsideration is granted, the Board shall so notify all interested parties, setting forth a reasonable time within which the interested parties may, if appropriate, submit additional information. The Board may, in its discretion, provide interested parties with copies of appropriate information submitted by other parties where it determines that this is necessary in the interest of fairness or to better assist the Board in performing its fact finding functions.

(5) Following its reconsideration of the matter, the Board will promptly render a decision pursuant to paragraph (f) of this section. The decision of the Board shall constitute the final administrative remedy afforded by this Agency.

§ 121.3–7 Differentials.

(a) *Alaska.* If an applicant for a size determination is a concern which has fifty percent (50%) or more of its annual sales or receipts attributable to business activity within Alaska then, whenever "annual sales or annual receipts" are used in any size definition contained in this part, said dollar limitation is increased by twenty-five percent (25%) of the amount set forth therein.

(b) *Substantial or persistent unemployment areas; areas of concentrated unemployment or underemployment; certified eligible concerns; and redevelopment areas*—(1) *Assistance under sections 7(a) and 8(a) of the Small Business Act.* Notwithstanding any other provision of this part, the applicable size standards for the purposes of assistance under sections 7(a) and 8(a) of the Act are increased by twenty-five percent (25%) whenever the concern maintains or operates a plant, facility, or other business establishment within an Area of

Substantial Unemployment or Underemployment or Redevelopment Area as defined in § 121.3-2(d) and (u) or is designated as a Certified Eligible concern by the Department of Labor and agrees to use the assistance within such area or, if it does not maintain a plant, facility, or other business establishment within such area, agrees to utilize the assistance for the establishment and/or operation of a plant, facility, or other business establishment within such area.

(2) *Small business investment companies and development companies.* Notwithstanding any other provision of this part, the size standard for a small business concern receiving assistance from a small business investment company or receiving assistance from a development company in connection with section 501 or section 502 loan is increased by twenty-five percent (25%) whenever such concern qualifies for a similar differential under subparagraph (1) of this paragraph.

(3) *Government procurement assistance, sales of Government property and Government subcontracting.* Except as is provided in subparagraphs (1) and (2) of this paragraph, this paragraph is not applicable to size determinations for the purpose of Government procurement assistance, sales of Government property or Government subcontracting.

§ 121.3-8 Definition of small business for Government procurement.

A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts and can further qualify under the criteria set forth in this section. When computing the size status of a bidder or offerer, the number of employees, annual receipts, or other applicable standards of the bidder or offerer and all of its affiliates shall be included. In the submission of a bid or proposal on a Government procurement, a concern which meets the criteria provided in this section and which either has not been determined by SBA to be ineligible, or has been determined to be ineligible but subsequently has on the basis of a significant change in ownership, management or contractual relations, applied for recertification and had its application granted, may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the Contracting Officer shall accept the self-certification at face value for the particular procurement involved. If the contracting officer has cause to question the veracity of a self-certification and elects to do so, he shall refer the eligibility issue to SBA by filing a formal protest pursuant to § 121.3-5. If a procurement calls for more than one item and the bidder can bid on any or all items, the bidder must meet the size standard for each item for which it submits a bid. If the procurement calls for more than one item and a bidder is required to bid on all or none of such items, the bidder can qualify as small business for such procurement if it meets the size standard for the item accounting for the greatest percentage of the total contract value. The determination of the appropriate classification of a product or service shall be made by the contracting officer. Both classification and the applicable size standard (number of employees, average annual receipts, etc.) shall be set forth in the solicitation and such determination of the contracting officer shall be final unless appealed in the manner provided in § 121.3-6. If no standard for an industry, field of operation or activity (e.g., animal specialty; fin fish; management-logistics support to be performed outside of the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia) has been set forth in this section, a concern bidding on a Government contract is a small business, if including its affiliates, it is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and has 500 employees or less.

(a) *Construction.* Any concern bidding on a contract for work which is classified in Division C, Contract Construction of the Standard Industrial Classification Manual, as amended, prepared, and published by the Bureau of the Budget (now Office of Management and Budget), Executive Office of the President, is:

(1) Small if its average annual receipts for its preceding three (3) fiscal years do not exceed $7½ million.

(2) Small if it is bidding on a contract for dredging and its average annual receipts for its preceding three (3) fiscal years do not exceed $5 million.

(b) *Manufacturing.* Any concern bidding on a contract for a product it manufactured is classified:

(1) As small if it is bidding on a contract for food canning and preserving and its number of employees does not exceed 500 persons, exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(2) As small if it is bidding on a contract for a product classified within an industry set forth in Schedule B of this part and its number of employees does not exceed the size standard established for that industry.

(3) As small if it is bidding on a contract for a product classified within an industry not set forth in Schedule B of this part and its number of employees does not exceed 500 persons.

(4) As small if it is bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112: *Provided*, That (i) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture, (ii) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than five percent (5%) of the value of all such tires manufactured in the United States during said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than ten percent (10%) of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(5) As small if it is bidding on a contract for passenger cars within Census Classification Code 37171: *Provided*, That (i) the value of the passenger cars within Census Classification Code 37171 which it manufactured or otherwise produced in the United States during the preceding calendar year is more than fifty percent (50%) of the value of its total worldwide manufacture or production of such passenger cars, (ii) the value of the passenger cars within Census Classification Code 37171, which it manufactured or otherwise produced during the preceding calendar year was less than five percent (5%) of the total value of all such manufactured or produced in the United States during the said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than ten percent (10%) of the total value of such produce manufactured or otherwise produced or sold in the United States during said period.

(6) Rebuilding on a factory basis or equivalent: As small if it is bidding on a contract for rebuilding machinery or equipment on a factory basis, the purpose of which is to restore such machinery or equipment to as serviceable and as like new condition as possible and its number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item.

NOTE: The size standard contained herein is not limited to concerns who are manufacturers of the original item but it is applicable to all bidders or offerers. The term "rebuilding on a factory basis" as used in this subsection does not include ordinary repair services such as those involving minor repair and/or preservation operations.

(c) *Nonmanufacturing.* Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product not manufactured by said bidder or offerer, is deemed to be a small business concern when:

(1) Its number of employees does not exceed 500 persons, and

(2) (i) In the case of Government procurement reserved for or involving the preferential treatment of small businesses, such nonmanufacturer furnishes in the performance of the contract the products of a small business manufacturer or producer which products are manufactured or produced in the United States: *Provided, however*, If the goods

to be furnished are woolen, worsted, knitwear, duck, and webbing, dealers and converters shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear), and if finishing is required, by a small finisher. If the procurement is for thread, dealers and converters shall furnish such products which have been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specifications but excluding, mercerizing, spinning, throwing, or twisting operations.")

(ii) If the procurement is for a refined petroleum product, other than a product classified in Standard Industrial Classification Industries Nos. 2951, Paving Mixtures and Blocks; No. 2952, Asphalt Felts and Coatings; No. 2992, Lubricating Oils and Greases; or No. 2999, Products of Petroleum and Coal, Not Elsewhere Classified; paragraph (g) of this section is for application.

(d) *Research, development, and testing.* Any concern bidding on a contract for research, development, and/or testing is classified:

(1) As small if it is bidding on a contract for research and/or development which requires delivery of a manufactured product and (i) it qualifies as a small business manufacturer within the meaning of paragraph (b) of this section for the industry into which the product is classified, or (ii) it qualifies as a small business nonmanufacturer within the meaning of paragraph (c) of this section.

(2) As small if it is bidding on a contract for research and/or development which does not require delivery of a manufactured product or on a contract for testing and its number of employees does not exceed 500 persons.

(e) *Services.* Any concern bidding on a contract for services, not elsewhere defined in this section, is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $1 million.

(1) Any concern bidding on a contract for engineering services other than marine engineering services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $5 million.

(2) Any concern bidding on a contract for motion picture production or motion picture services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $5 million.

(3) Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $3 million.

(4) Any concern bidding on a contract for base maintenance is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $5 million.

(5) Any concern bidding on a contract for marine cargo handling services is classified as small if its annual receipts do not exceed $5 million for the preceding three (3) fiscal years.

(6) Any concern bidding on a contract for naval architectural and marine engineering services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $6 million.

(7) Any concern bidding on a contract for food services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $4 million.

(8) (i) Any concern bidding on a contract for laundry services including linen supply, diaper services, and industrial laundering is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $3 million.

(ii) Any concern bidding on a contract for cleaning and dyeing including rug cleaning services is classified as small if its average annual receipts for the preceding three (3) fiscal years do not exceed $1 million.

(9) Any concern bidding on a contract for computer programing services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $3 million.

(10) Any concern bidding on a contract for flight training services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $5 million.

(11) Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $5 million.

(12) Any concern bidding on a contract for tire recapping service is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $3 million.

(13) Any concern bidding on a contract for data processing services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $3 million.

(14) Any concern bidding on a contract for computer maintenance services is classified as small if its average annual receipts for its preceding three (3) fiscal years do not exceed $5 million.

(f) *Transportation.* Any concern bidding on a contract for passenger or freight transportation, not elsewhere defined in this section, is classified:

(1) As small if its number of employees does not exceed 500 persons.

(2) As small if it is bidding on a contract for air transportation and its number of employees does not exceed 1,500 persons.

(3) As small if it is bidding on a contract for either trucking (local and/or long distance), and/or warehousing and/or packing and crating and/or freight forwarding, and its annual receipts do not exceed $5 million.

(g) *Refined petroleum products.* Any concern bidding on a contract for a refined petroleum product other than a product classified in Standard Industrial Classification Industries No. 2951, Paving Mixtures and Blocks; No. 2952, Asphalt Felts and Coating; No. 2992, Lubricating Oils and Greases; or No. 2999, Products of Petroleum and Coal, Not Elsewhere Classified; is classified as small if (1) (i) its number of employees does not exceed 1,000 persons; (ii) it does not have more than 30,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased; and (iii) the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feed stocks; *Provided, however,* That a petroleum refining concern which meets the requirements in subdivisions (i) and (ii) of this subparagraph may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which requires exchanges in a stated ratio on a refined petroleum product for a refined petroleum product basis, and precludes a monetary settlement, and that the products exchange for the products offered and to be delivered to the Government meet the requirement in subdivision (iii) of this subparagraph; *And, provided further,* That the exchange of products for products to be delivered to the Government, will be completed within 90 days after the expiration of the delivery period under the Government contract; and that any product furnished pursuant to a bona fide exchange agreement must be for delivery in the same Petroleum Administration for Defense (PAD) District pursuant to Schedule G of this Part 121, as that in which the small refinery is located; or (2) its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under subparagraph (1) of this paragraph.

§ 121.3–9 Definition of small business for sales of Government property.

In the submission of a bid or proposal for the purchase of Government-owned property, a concern which meets the criteria provided in this section may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved.

(a) *Sales of Government-owned property other than timber.* A small business concern for the purpose of the sale of Government-owned property other than timber is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field operation, and can further qualify under the following criteria.

(1) *Manufacturers.* Any concern which is primarily engaged in manufacturing is small if its number of employees does not exceed 500 persons: *Provided however,* That a concern primarily engaged in SIC Industry 2911, Petroleum Refining, is small if its number of employees does not exceed 1,000 persons and it does not have more than 30,000 barrels-per-day crude oil or bona fide stock capacity from owned and/or leased facilities, or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis) or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased.

(2) *Other than manufacturers.* Any concern which is primarily not a manufacturer (except as specified in subparagraph (3) of this paragraph) is small if its average annual receipts for its preceding three (3) fiscal years do not exceed $1 million.

(3) *Stockpile purchasers.* Any concern primarily engaged in the purchase of materials which are not domestic products is small if its annual sales or annual receipts for its preceding three (3) fiscal years do not exceed $25 million.

(b) *Sales of Government-owned timber.* (1) In connection with sale of Government-owned timber a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 500 persons.

(2) In the case of Government sales of timber reserved for or involving preferential treatment of small businesses, when the Government timber being purchased is to be resold, a concern is a small business when:

(i) It is a small business within the meaning of subparagraph (1) of this paragraph, and

(ii) It agrees that it will not sell to a concern which is not a small business within the meaning of this paragraph more than thirty percent (30%) of such timber or, in the case of timber from certain geographical areas set forth in Schedule E of this part, more than the percentage established therein for such area.

(3) In the case of Government sales reserved for or involving preferential treatment of small businesses, when the Government timber purchased is not to be resold in the form of sawlogs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in subparagraph (1) of this paragraph, and

(ii) It agrees that in manufacturing lumber or timbers from such sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under subparagraph (1) of this paragraph as a small business.

§ 121.3–10 Definition of small business for SBA loans.

A small business concern for the purpose of receiving an SBA loan is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the criteria set forth below. A concern which is a small business under § 121.3–8 which has applied for or received a Certificate of Competency is a small business eligible for an SBA loan to finance the contract covered by the Certificate of Competency. If no standard for an industry, field of operation, or activity has been set forth in this section, a concern seeking a size determination shall submit SBA Form 355 to the Assistant Administrator for Planning, Research and Analysis, Washington, D.C. 20416. If an applicant for an SBA loan has external-operating affiliates (i.e. affiliates which are primarily engaged in selling to the general public or to concerns other than the applicant concern or an affiliate thereof) and such external-operating affiliates are engaged in industries subject to size standards different than that of the applicant concern, the applicant concern's size status shall be determined by computing the percentage that the size of the applicant concern including any internal-operating affiliates (i.e. affiliates primarily engaged in selling to the applicant or an affiliate thereof) is of the size standard for the industry in which the applicant together with its internal-operating affiliates is primarily engaged; and adding to it the percentage that the size of each of its external-operating affiliates is primarily engaged. In order for the applicant to be eligible under this revision, the total of such percentages must not exceed one hundred percent (100%). If a concern, including its internal-operating affiliates if any, is engaged in more than one industry, the applicable size standard shall be that for its primary industry. In determining which of the industries is the primary industry, consideration shall be given to these criteria among others: Distribution among such industries of receipts, employment, and costs of doing business.

(a) *Construction.* Any construction concern is small if its average annual receipts do not exceed $5 million for the preceding three (3) fiscal years.

(b) *Manufacturing.* Any manufacturing concern is classified:

(1) As small if its number of employees does not exceed 250 persons;

(2) As large if its number of employees exceeds 1,500 persons;

(3) Either as small or large depending on its industry and in accordance with the employment size standards set forth in Schedule "A" of this part, if its number of employees exceeds 250 persons, but not more than 1,500 persons;

(4) As small if it is primarily engaged in the food canning and preserving industry and its number of employees does not exceed 500 persons exclusive of agricultural labor as defined in subsection (k) of the Federal Employment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(c) *Retail.* (1) Any retailing concern is classified:

(i) As small if it is primarily engaged in an industry or subindustry set forth in Schedule D of this part and its annual receipts do not exceed the size standard established therein for that industry or subindustry.

(ii) As small if it is primarily engaged in an industry or subindustry not set forth in Schedule D of this part and its annual receipts do not exceed $1 million.

(d) *Services.* Any service concern is classified:

(1) As small if its annual receipts do not exceed $1 million;

(2) As small if it is primarily engaged in the hotel and motel industry and its annual receipts do not exceed $2 million;

(3) As small if it is primarily engaged in the power laundry industry and its annual receipts do not exceed $2 million;

(4) As small if it is primarily engaged in the trailer court and parks industry and its annual receipts do not exceed $1 million: *Provided,* That a minimum of fifty percent (50%) of the annual receipts is derived from the rental of space to tourist trailers for periods not in excess of thirty (30) days;

(5) As small if it is primarily engaged in owning and operating a hospital and its capacity does not exceed 150 beds (excluding cribs and bassinets);

(6) As small if it is primarily engaged in owning and operating a convalescent or nursing home and its annual receipts do not exceed $1 million;

(7) As small if it is primarily engaged in owning and operating a medical or dental laboratory and (i) it is operated in connection with an eligible proprietary hospital or (ii) it is not operated in connection with an eligible proprietary hospital and its annual receipts do not exceed $1 million;

(8) As small if it is primarily engaged in the motion picture production industry and its annual receipts do not exceed $5 million;

(9) As small if it is primarily engaged in the motion picture services industry and its annual receipts do not exceed $5 million;

(10) As small if it is primarily engaged in rendering engineering services and its annual receipts do not exceed $2.5 million.

(e) *Shopping centers.* (1) Any concern primarily engaged in operating shopping

centers is small if (i) it does not have assets exceeding $5 million, (ii) it does not have net worth in excess of $2½ million, (iii) it does not have an average net income, after Federal Income Taxes, for the preceding two (2) fiscal years in excess of $250,000 (average net income to be computed without benefit of any carryover loss), and (iv) it does not lease more than twenty-five percent (25%) of the gross leasable area to concerns which do not meet the small business definitions contained in this section.

(2) For the purpose of size determinations, shopping center operators will not be considered affiliated with their tenants merely because of lease agreements.

(f) *Transportation and warehousing.* Any concern primarily engaged in passenger and freight transportation or warehousing is classified:

(1) As small if its annual receipts do not exceed $1 million;

(2) As small if it is primarily engaged in the air transportation industry and its number of employees does not exceed 1,000 persons;

(3) As small if it is primarily engaged in the storage of grain and it does not have more than 1 million bushels capacity in owned and leased facilities, and its annual receipts do not exceed $1 million;

(4) As small if it is primarily engaged in trucking (local and/or long distance) and/or warehousing and/or packing and crating and/or freight forwarding and its annual receipts do not exceed $5 million.

(g) *Wholesale.* (1) Any wholesaling concern is classified:

(i) As small if it is primarily engaged in an industry or subindustry set forth in Schedule C of this part and its annual receipts do not exceed the size standard established therein for that industry or subindustry.

(ii) As small if it is primarily engaged in an industry or subindustry not set forth in Schedule C of this part and its annual receipts do not exceed $5 million.

(2) Any concern primarily engaged in wholesaling, but also engaged in manufacturing, is not a "small business concern" unless it qualifies under both the manufacturing and wholesaling standards.

(h) *Mining and mining services.* Any mining or mining services concern primarily engaged in an industry set forth in Schedule F of this part is classified as small if its number of employees does not exceed the size standard established therein for that industry.

(i) *Custom livestock feeding.* Any concern primarily engaged in custom livestock feeding is classified as small if its annual receipts do not exceed $2 million.

(j) *Agriculture production (crops), fish farms, and fish hatcheries.* Any concern primarily engaged (1) in an industry set forth in Major Group 01—Agriculture Production—Crops, of the Standard Industrial Classification Manual, (2) in the operation of a fish farm (part of Standard Industrial Classification Industry No. 0279, Animal Specialties, Not Elsewhere Classified), or (3) in the operation of a fish hatchery (part of Standard Industrial Classification Industry No. 0921, Fish Hatcheries and Preserves) is classified as small if its annual receipts do not exceed $250,000.

§ 121.3–11 Definition of small business for assistance by small business investment companies or by development companies.

A small business concern for the purpose of receiving financial or other assistance from small business investment companies or development companies is one which:

(a) Together with its affiliates, is independently owned and operated, is not dominant in its field of operation, does not have assets exceeding $7½ million, does not have net worth in excess of $2½ million, and does not have an average net income, after Federal income taxes, for the preceding 2 years in excess of $250,000 (average net income to be computed without benefit of any carryover loss); or

(b) Qualifies as a small business concern under § 121.3–10.

§ 121.3–12 Definition of small business Government subcontractors.

(a) Any concern in connection with subcontracts of $2,500 or less which relate to Government procurements will be considered a small business concern if, including its affiliates, its number of employees does not exceed 500 persons.

(b) An yconcern in connection with subcontracts exceeding $2,500 which relate to Government procurements will be considered a small business concern if it qualifies as such under § 121.3–8: *Provided, however,* That a nonmanufacturer is considered as small business for the purpose of Government subcontracting if, including its affiliates, its number of employees does not exceed 500 persons.

§ 121.3–13 Definition of small business for the purpose of lease guarantee.

A small business concern for the purpose of lease guarantee is a concern that qualifies as a small business under § 121.3–11.

§ 121.3–14 Definition of small business for the purpose of Government leases of uranium prospecting or mining rights.

In the submission of a bid or proposal for a Government lease of uranium prospecting or mining rights, a concern whose number of employees does not exceed 100 persons may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular lease involved.

§ 121.3–15 Definition of small business for the purpose of surety bond guarantee assistance.

A small business concern for the purpose of surety bond guarantee assistance is a concern that qualifies as a small business under § 121.3–10, with the following exception:

(a) *Construction.* Any construction concern is small if its annual receipts for its preceding fiscal year or its average annual receipts for its preceding 3 fiscal years, do not exceed $750,000.

§ 121.3–16 Interpretations.

(a) [Reserved]

(b) *Section 121.3–9 of Part 121, "Sales of Government-owned timber."* Any concern which self-certifies as a small business concern for the purpose of the sale of Government-owned timber is expected to maintain sufficient documentary evidence to show that it did so in good faith. This means that a concern which sells more than 30 percent (30%) of the purchased timber will have to maintain the names and addresses of the concerns to whom the timber is sold and the size status of such concerns, unless an exemption has been granted on sales of mixed stumpage of hardwood and softwood species. Further, if the timber purchased is not to be resold in the form of sawlogs, but is to be manufactured into lumber and timber by a concern other than the bidder, the bidder must maintain records to show the name, address and size status of the concern manufacturing the timber into lumber or timbers.

(c) *Section 121.3–2(a) of Part 121, "Affiliates"*—(1) *Nature of Control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. A party owning 50 percent of the voting stock of a concern would have negative power to control such concern since he can block any action of the other stockholders. Also, the bylaws of a corporation may be drawn up in such a manner which would permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties have the power to control a concern while at the same time another party, or other parties, may be in control of the concern at the will of the party or parties with the power to control.

(2) *Meaning of "party or parties."* The term "party or parties" includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(3) *Control through stock ownership.* (i) A party is considered to control or have the power to control a concern if he controls or has the power to control 50 percent or more of its voting stock.

(ii) A party is considered to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock if the block of stock he owns, controls, or has the power to control is large as compared with any other outstanding block

of stock. If two or more parties each own, control or have the power to control less than 50 percent of the voting stock of a concern and such minority blocks are (a) equal or substantially equal in size, and (b) large as compared with any other block outstanding, there is a presumption that each of such parties controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(iii) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

Example. In a corporation where the officers and directors own various size blocks of stock totalling 40 percent of a concern's voting stock but no officer or director has a block sufficient to give him control or the power to control and remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control.

(4) *Stock options, convertible debentures, and agreements to merge.* Stock options and convertible debentures exercisable at the time of, or within a relatively short time after a size determination, and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised prior to the date of the determination.

Example. If, on the date of the determination, company "A" holds an option to purchase a controlling interest in company "B" and such option can be exercised at any time by company "A", the situation is treated as though company "A" had exercised its rights and had become owner of a controlling interest in company "B" prior to the determination. Further, if, as of the date of a determination, company "A" has entered into an agreement to merge with company "B" in the future, the situation is treated as though the merger had taken place prior to the date of the determination.

(5) *Voting trusts.* If the purpose of a voting trust or similar agreement is to separate voting power from beneficial ownership of voting stock, for the purpose of shifting control of, or the power to control a concern, in order that such concern or another concern may qualify as a small business within the size regulation, and voting trust shall not be considered valid for this purpose, regardless of whether the trust is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is a valid trust within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(6) *Control through common management.* A concern is considered as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence the operation of such other concern.

(i) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(ii) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(iii) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or other facilities, whether for a fee or otherwise.

(7) *Control through contractual relationships*—(i) *Definition of a joint venture for size determination purposes.* A joint venture, for size determination purposes, is an association of persons or concerns with interest in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single business venture, such as a Government contract, for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but without creating a corporation or partnership in the legal or technical sense of the term.

(ii) *Joint ventures—financial assistance.* For the purpose of financial assistance to a joint venture, the parties thereto are considered as controlling or having the power to control each other and are considered as being affiliated. For the purpose of financial assistance to a concern which has requested assistance for its own use, but which is incidentally a party to a joint venture, such concern is not considered as being affiliated with its joint venturer.

(iii) *Joint venture—procurement assistance.* Concerns bidding on a particular procurement as joint venturers are considered as controlling or having the power to control each other with regard to performance of the contract, and therefore are considered as being affiliated. However, a concern which is a party to one or more joint ventures, but which is bidding on a procurement as an individual concern, is not considered as being affiliated with its joint ventures since they have no power to control its performance of the contract being bid on. Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(iv) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(d) *Section 121.3–8 of Part 121, Definition of small business for Government procurement*—(1) *Sawmills.* For the purpose of a size determination, a sawmill is considered as the manufacturer of treated lumber, even if it contracts out the treatment of the lumber. Therefore, a small business sawmill can deliver in the performance of a set-aside procurement lumber which has been treated by a concern which does not qualify as a small business concern.

(2) *Oxygen converters.* For the purpose of a size determination, a concern which converts liquid oxygen to gaseous oxygen with or without additives, is a nonmanufacturer of the gaseous oxygen and therefore must furnish gaseous oxygen converted from liquid oxygen manufactured by a small business concern.

(e) *Section 121.3–8 of Part 121.* Section 121.3–8 provides that, in the submission of a bid or proposal on a Government procurement, a concern which meets the size standards criteria provided in § 121.3–8, may represent that it is a small business, provided further, however, that a concern which has been determined by SBA to be ineligible as a small business under a particular size standard: (1) Shall, if it has self-certified as a small business on a pending procurement subject to the same or lower number of employees or annual receipts size standard (whichever is applicable), immediately notify the contracting officer of such adverse size determination and, (2) shall not thereafter self-certify on a procurement subject to the same or a lower employee or annual receipts size standard (whichever is applicable) until it has applied for recertification based on a significant change in its ownership, management, or contractual relations, and has been determined eligible as a small business under such size standard by either the regional office which issued the adverse determination or the Small Business Size Appeals Board.

(f) *Section 121.3–4 of Part 121 "Application for small business size status determination."* Contracting officers, in

order to determine whether to set particular contracts aside for exclusive award to small business concerns or whether to send invitations for bids to particular concerns, may require information from SBA concerning the small business status of such concerns and be unable to wait for a formal small business size determination. In such cases, informal advice or information may be given based on the best evidence available concerning the small business size of such a concern. However, such informal advice is not a small business size determination within the meaning of that term in the Small Business Size Standards Regulation and is not binding with respect to eligibility as a small business for the purpose of a particular Government procurement. Further, an opinion as to a concern's future small business size status, based on proposed but unexecuted changes in its organization, management or contractual relations, is not a small business size determination.

(g) *Section 121.3–6 of Part 121 "Appeals."* The Size Appeals Board only has jurisdiction to consider appeals from formal determinations as to a concern's small business size status and appeals from product or service classification determination made by contracting officers for the purpose of Government procurements. It has no jurisdiction to consider an appeal from an informal opinion or advice concerning a company's small business size status, an opinion as to a company's future small business size status based on proposed but unexecuted changes in its organization, management or contractual relations, or an appeal based on an allegation that the small business size standard established by SBA for a particular industry or field of operation is improper for the purpose intended.

(h) *Sections 121.3–2(r) and 121.3–8(c) "Definition of nonmanufacturer."* For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which with its own forces transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision shall be made by the appropriate SBA regional director or his delegatee, and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc.

(i) *Section 121.3–8(g) "Refined petroleum products."* The proviso in § 121.3–8 (g) (1) (iii) that the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feed stocks, contemplates that, in accomplishing such refining, the bidder will utilize its own employees and facilities which it owns or obtains under a bona fide lease as distinguished from any other arrangement having the same effect as a lease. The proviso in §121.3–8(g) permitting a concern which meets the requirements in subdivisions (i) and (ii) of § 121.3–8 (g) to furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement which meets prescribed requirements, contemplates that the product exchanged by the bidder for the product to be furnished, shall have been refined by the bidder utilizing only its own employees and its own facilities or facilities obtained through a bona fide lease.

(j) *Section 121.3–10 Definition of Small Business for SBA Loans.* Following is an example of the method to be utilized in computing a diversified concern's size status for the purpose of an SBA loan:

Concern A applies for an SBA loan It is affiliated with concern B. Concern A has 15 employees and $2.5 million in receipts and is primarily engaged in the retail sale of groceries (Industry No. 5411) for which the size standard is $5 million in annual receipts. Concern B has 100 employees and $3 million in receipts and is primarily engaged in the manufacture of macaroni (Industry No. 2098) for which the size standard is 250 employees. The receipts of concern A are only 50 percent of the size standard for its industry and the employment of concern B is only 40 percent of the size standard for its industry. Since the combined percentages are less than 100 percent, concern A can qualify for an SBA loan.

(k) *Section 121.3–8(e)(12).* The Small Business Size Appeals Board has interpreted this section to apply only to procurements requiring the services of tire retreading and repair shops (Standard Industrial Classification Industry No. 7534, Tire Retreading and Repair Shops) and not to procurements for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, is considered for size standards purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

(l) *Section 121.3–8(c) "Definition of Nonmanufacturer."* The Government often purchases items in the form of kits such as, but not limited to, tool kits and survival kits, which are not manufactured items but merely assemblages of separate manufactured items. Accordingly, a concern which purchases some or all of such items and packages them into kit form is considered to be a nonmanufacturer for size determination purposes. Such a concern can qualify as a small business only if it meets all other qualifications of a small nonmanufacturer set forth in this part and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

Effective date. This revision shall become effective on publication in the FEDERAL REGISTER (11–30–72).

Dated: November 16, 1972.

THOMAS S. KLEPPE,
Administrator.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING

(The following size standards are to be used when determining the size status of applicants for SBA business loans, displaced business loans, economic opportunity loans, surety bond guarantee assistance, and as alternate standards for secs. 501 and 502 loans and SBIC assistance.)

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
	Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials	250
2321	Men's youth's and boy's shirts (except work shirts) and nightwear	500
	Major Group 28—Chemicals and Allied Products:	
2891	Adhesives and sealants	250
2812	Alkalies and chlorine	1,000
2831	Biological products	250
2895	Carbon black	500
2823	Cellulosic manmade fibers	1,000
2899	Chemicals and chemical preparations, n.e.c	250
2865	Cyclic (coal tar) crudes, and cyclic intermediates, dyes, and organic pigments (lakes and toners)	750
28651	Cyclic (coal tar) crudes	500
2892	Explosives	750
28992	Fatty acids	500
2875	Fertilizers, mixing only	500
2861	Gum and wood chemicals	500
2813	Industrial gases	1,000
2819	Industrial inorganic chemicals, n.e.c	1,000
2869	Industrial organic chemicals, n.e.c	1,000
2816	Inorganic pigments	1,000
2833	Medicinal chemicals and botanical products	750
2873	Nitrogenous fertilizers	1,000
2851	Paints, varnishes, lacquers, enamels, and allied products	250
2844	Perfumes, cosmetics, and other toilet preparations	500
2879	Pesticides and agricultural chemicals, n.e.c	500
2834	Pharmaceutical preparations	750
2874	Phosphatic fertilizers	500
2821	Plastic materials, synthetic resins, and nonvulcanizable elastomers	750
2893	Printing ink	250
2841	Soap and other detergents, except specialty cleaners	750
2842	Specialty cleaning, polishing, and sanitation preparations	500
2843	Surface active agents, finishing agents, sulfonated oils, and assistants	250
2824	Synthetic organic fibers, except cellulosic	1,000
2822	Synthetic rubber (vulcanizable elastomers)	1,000
	Major group 36—electrical and electronic machinery, equipment, and supplies:	
3624	Carbon and graphite products	750
3672	Cathode ray television picture tubes	750
3646	Commercial, industrial, and institutional electric lighting fixtures	250
3678	Connectors, for electronic applications	500
3643	Current-carrying wiring devices	500
3634	Electric housewares and fans	750
3641	Electric lamps	1,000
3694	Electrical equipment for internal combustion engines	750
3629	Electrical industrial apparatus, n.e.c	500
3699	Electrical machinery, equipment, and supplies, n.e.c	500
3675	Electronic capacitors	500
3677	Electronic coils, transformers, and other inductors	500
3679	Electronic components, n.e.c	500
3639	Household appliances, n.e.c	750
3631	Household cooking equipment	1,000
3633	Household laundry equipment	
3632	Household refrigerators and home and farm freezers	1,000
3635	Household vacuum cleaners	750
3622	Industrial controls	750
3648	Lighting equipment, n.e.c	250
3621	Motors and generators	1,000
3644	Non-current-carrying wiring devices	500
3652	Phonograph records and prerecorded magnetic tape	750

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
3612	Power, distribution, and specialty transformers	750
3692	Primary batteries, dry and wet	1,000
3651	Radio and television receiving sets, except communication types	750
3671	Radio and television receiving type electron tubes, except cathode ray	1,000
3662	Radio and television transmitting, signaling, and detection equipment and apparatus	750
3693	Radiographic X-ray, fluoroscopic X-ray, therapeutic X-ray, and other X-ray apparatus and tubes; electromedical and electrotherapeutic apparatus	500
3645	Residential electric lighting fixtures	250
3676	Resistors, for electronic applications	500
3674	Semiconductors and related devices	500
3636	Sewing machines	750
3691	Storage batteries	500
3613	Switchgear and switchboard apparatus	750
3661	Telephone and telegraph apparatus	1,000
3673	Transmitting, industrial, and special purpose electron tubes	750
3647	Vehicular lighting equipment	250
3623	Welding apparatus, electric	250
	Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment:	
3483	Ammunition, except for small arms, n.e.c	1,000
3446	Architectural and ornamental metalwork	250
3465	Automotive stampings	250
3452	Bolts, nuts, screws, rivets, and washers	500
3479	Coating, engraving, and allied services, n.e.c	250
3466	Crowns and closures	250
3421	Cutlery	500
3471	Electroplating, plating, polishing, anodizing and coloring	250
3431	Enameled iron and metal sanitary ware	750
3499	Fabricated metal products, n.e.c	500
3498	Fabricated pipe and fabricated pipe fittings	250
3443	Fabricated plate work (boiler shops)	250
3441	Fabricated structural metal	250
3423	Hand and edge tools, except machine tools and handsaws	250
3425	Handsaws and saw blades	250
3429	Hardware, n.e.c	250
3433	Heating equipment, except electric and warm air furnaces	500
3462	Metal forgings and stampings	500
3411	Metal cans	1,000
3442	Metal doors, sash, frames, molding, and trim	250
3497	Metal foil and leaf	500
3412	Metal shipping barrels, drums, kegs, and pails	500
3469	Metal stampings, n.e.c	250
3496	Miscellaneous fabricated wire products	250
3449	Miscellaneous metalwork	250
3463	Nonferrous forgings	250
3489	Ordnance and accessories, n.e.c	250
3432	Plumbing fixture fittings and trim (brass goods)	500
3448	Prefabricated metal buildings and components	250
3451	Screw machine products	250
3444	Sheet metal work	250
3484	Small arms	1,000
3482	Small arms ammunition	1,000
3493	Steel springs, except wire	500
3494	Valves and pipe fittings, except plumbers' brass goods	500
3495	Wire springs	250
	Major Group 20—Food and Kindred Products:	
3077	Animal and marine fats and oils	250
2063	Beet sugar	750
2045	Blended and prepared flour	500
2086	Bottled and canned soft drinks and carbonated waters	250
2051	Bread and other bakery products, except cookies and crackers	250
2065	Candy and other confectionery products	250
2061	Cane sugar, except refining only	250
2062	Cane sugar refining	750
2091	Canned and cured fish and seafoods	250
2033	Canned fruits, vegetables, preserves, jams, and jellies	500
2032	Canned specialties	1,000
2043	Cereal breakfast foods	1,000
2022	Cheese, natural and processed	250
2067	Chewing gum	500
2066	Chocolate and cocoa products	500
2023	Condensed and evaporated milk	500
2052	Cookies and crackers	750
2074	Cottonseed oil mills	250
2021	Creamery butter	250
2085	Distilled, rectified, and blended liquors	750
2047	Dog, cat, and other pet foods	500
2034	Dried and dehydrated fruits, vegetables, and soup mixes	500
2087	Flavoring extracts and flavoring sirups, n.e.c	500
2041	Flour and other grain mill products	500
2026	Fluid milk	500
2099	Food preparations, n.e.c	250
20991	Desserts (ready to mix)	500
20994	Baking powder and yeast	500
2092	Fresh or frozen packaged fish and seafoods	250
2037	Frozen fruits, fruit juices, and vegetables	500
2038	Frozen specialties	500
2024	Ice cream and frozen desserts	500
2098	Macaroni, spaghetti, vermicelli, and noodles	250
2083	Malt	250
2082	Malt beverages	500
2097	Manufactured ice	250
2011	Meatpacking plants	500
2035	Pickled fruits and vegetables, vegetable sauces and seasonings, and salad dressings	250
2016	Poultry dressing plants	250
2017	Poultry and egg processing	250
2048	Prepared feeds and feed ingredients for animals and fowls, n.e.c	250
2044	Rice milling	250
2095	Roasted coffee	250
2013	Sausages and other prepared meat products	500
2079	Shortening, table oils, margarine, and other edible fats and oils, n.e.c	750
2075	Soybean oil mills	500
2076	Vegetable oil mills, except corn, cottonseed, and soybean	1,000
2046	Wet corn milling	750
2084	Wines, brandy, and brandy spirits	250
	Major Group 25—Furniture and Fixtures:	
2591	Drapery hardware and window blinds and shades	250
2593	Furniture and fixtures, n.e.c	250
2519	Household furniture, n.e.c	250
2515	Mattresses and bedsprings	250
2514	Metal household furniture	250
2522	Metal office furniture	500
2542	Metal partitions, shelving, lockers, and office and store fixtures	250
2531	Public building and related furniture	250
2511	Wood household furniture, except upholstered	250
2512	Wood household furniture, upholstered	250
2521	Wood office furniture	250
2541	Wood partitions, shelving, lockers, and office and store fixtures	250
2517	Wood television, radio, phonograph, and sewing machine cabinets	250
	Major Group 31—Leather and Leather Products:	
3131	Boot and shoe cut stock and findings	250
3149	Footwear, except rubber, n.e.c	500
3142	House slippers	250
3151	Leather gloves and mittens	250
3199	Leather goods, n.e.c	250
3111	Leather tanning and finishing	250
3161	Luggage	250
3143	Men's footwear, except athletic	500
3172	Personal leather goods, except women's handbags and purses	250
3144	Women's footwear, except athletic	500
3171	Women's handbags and purses	250
	Major Group 24—Lumber and Wood Products, Except Furniture	250
	Major Group 35—Machinery, Except Electrical:	
3563	Air and gas compressors	500
3585	Air conditioning and warm air heating equipment and commercial and industrial refrigeration equipment	750
3581	Automatic merchandising machines	250
3562	Ball and roller bearings	750
3564	Blowers and exhaust and ventilation fans	250
3574	Calculating and accounting machines, except electronic computing equipment	1,000
3592	Carburetors, pistons, piston rings, and valves	250
3582	Commercial laundry, dry cleaning, and pressing machines	250
3531	Construction machinery and equipment	750
3535	Conveyors and conveying equipment	250
3573	Electronic computing equipment	1,000
3534	Elevators and moving stairways	500
3523	Farm machinery and equipment	500
3551	Food products machinery	250
3524	Garden tractors and lawn and garden equipment	500
3569	General industrial machinery and equipment, n.e.c	250
3536	Hoists, industrial cranes, and monorail systems	500
3565	Industrial patterns	250
3567	Industrial process furnaces and ovens	250
3537	Industrial trucks, tractors, trailers, and stackers	750
3519	Internal combustion engines, n.e.c	1,000
3545	Machine tool accessories and measuring devices	250
35452	Precision measuring tools	500
3541	Machine tools, metal cutting types	500
3542	Machine tools, metal forming types	500
3599	Machinery, except electrical, n.e.c	250
3586	Measuring and dispensing pumps	500
3568	Mechanical power transmission equipment, n.e.c	500
3549	Metalworking machinery, n.e.c	500
3532	Mining machinery and equipment, except oil field machinery and equipment	500
3579	Office machines, n.e.c	500
3533	Oil field machinery and equipment	500
3554	Paper industries machinery	250
3546	Power driven handtools	500
3555	Printing trades machinery and equipment	500
3561	Pumps and pumping equipment	500
3547	Rolling mill machinery and equipment	500
3576	Scales and balances, except laboratory	250
3589	Service industry machines, n.e.c	250
3544	Special dies and tools, die sets, jigs and fixtures, and industrial molds	250
3559	Special industry machinery, n.e.c	250
3566	Speed changers, industrial high speed drives, and gears	500
3511	Steam, gas, and hydraulic turbines and turbine generator set units	1,000
3552	Textile machinery	250
3572	Typewriters	1,000
3553	Woodworking machinery	250
	Major Group 38—Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks:	
3822	Automatic controls for regulating residential and commercial environments and appliances	500

Footnotes at end of table.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
3843	Dental equipment and supplies	250
3811	Engineering, laboratory, scientific, and research instruments and associated equipment	500
3823	Industrial instruments for measurement, display, and control of process variables; and related products	500
3825	Instruments for measuring and testing of electricity and electrical signals	500
3829	Measuring and controlling devices, n.e.c	500
3851	Ophthalmic goods	250
3832	Optical instruments and lenses	250
3842	Orthopedic, prosthetic, and surgical appliances and supplies	250
3861	Photographic equipment and supplies	500
3841	Surgical and medical instruments and apparatus	250
3824	Totalizing fluid meters and counting devices	500
3873	Watches, clocks, clockwork operated devices, and parts	500
	Major Group 39—Miscellaneous Manufacturing Industries:	
3991	Brooms and brushes	250
3963	Buttons	250
3995	Burial caskets	250
3955	Carbon paper and inked ribbons	250
3961	Costume jewelry and costume novelties, except precious metals	250
3942	Dolls	250
3962	Feathers, plumes, and artificial trees and flowers	250
3944	Games, toys, and children's vehicles; except dolls and bicycles	250
3915	Jeweler's findings and materials, and lapidary work	250
3911	Jewelry, precious metal	250
3952	Lead pencils, crayons, and artists' materials	250
3996	Linoleum, asphalted felt base, and other hard surface floor coverings, n.e.c	750
3999	Manufacturing industries, n.e.c	250
39993	Matches	500
3953	Marking devices	250
3931	Musical instruments	250
3964	Needles, pins, hooks and eyes, and similar notions	250
3951	Pens, mechanical pencils, and parts	500
3993	Signs and advertising displays	250
3914	Silverware, plated ware, and stainless steelware	500
3949	Sporting athletic goods, n.e.c	250
	Major Group 26—Paper and Allied Products:	
2643	Bags, except textile bags	500
2661	Building paper and building board mills	750
2649	Converted paper and paperboard products, n.e.c	500
2653	Corrugated and solid fiber boxes	250
2645	Die-cut paper and paperboard and cardboard	250
2642	Envelopes	250
2655	Fiber cans, tubes, drums, and similar products	250
2651	Folding paperboard boxes	250
2641	Paper coating and glazing	500
2621	Paper mills, except building paper mills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2611	Pulp mills	750
2654	Sanitary food containers	750
2647	Sanitary paper products	500
2652	Set-up paperboard boxes	250
2648	Stationery, tablets, and related products	500
	Major Group 29—Petroleum Refining and Related Industries:	
2952	Asphalt felts and coatings	750
2992	Lubricating oils and greases	500
2951	Paving mixtures and blocks	250
2911	Petroleum refining [2]	1,000
2999	Products of petroleum and coal, n.e.c	250
	Major Group 33—Primary Metal Industries:	
3354	Aluminum extruded products	750
3361	Aluminum foundries (castings)	250
3355	Aluminum rolling and drawing, n.e.c	750
3353	Aluminum sheet, plate, and foil	750
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1,000
3362	Brass, bronze, copper, copper base alloy foundries (castings)	250
3316	Cold rolled steel sheet, strip, and bars	1,000
3357	Drawing and insulating of nonferrous wire	1,000
3313	Electrometallurgical products	750
3321	Gray iron foundries	500
3322	Malleable iron foundries	500
3398	Metal heat treating	750
3369	Nonferrous foundries (castings), n.e.c	250
3399	Primary metal products, n.e.c	750
3334	Primary production of aluminum	1,000
3331	Primary smelting and refining of copper	1,000
3332	Primary smelting and refining of lead	1,000
3339	Primary smelting and refining of nonferrous metals, n.e.c	750
3333	Primary smelting and refining of zinc	750
3351	Rolling, drawing, and extruding of copper	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3341	Secondary smelting and refining of nonferrous metals	250
3325	Steel foundries, n.e.c	500
3324	Steel investment foundries	500
3317	Steel pipe and tubes	1,000
3315	Steel wire drawing and steel nails and spikes	1,000
	Major Group 27—Printing and Publishing Industries	250
	Major Group 30—Rubber and Miscellaneous Plastic Products:	
3069	Fabricated rubber products, n.e.c	500
3079	Miscellaneous plastic products, n.e.c	250
3031	Reclaimed rubber	750
3021	Rubber and plastics footwear	1,000
3041	Rubber and plastics hose and belting	500
3011	Tires and inner tubes	1,000
	Major Group 32—Stone, Clay, Glass, and Concrete Products:	
3291	Abrasive products	250
3292	Asbestos products	750
3251	Brick and structural clay tile	250
3241	Cement, hydraulic	750
3253	Ceramic wall and floor tile	500
3255	Clay refractors	250
3271	Concrete block and brick	250
3272	Concrete products, except block and brick	250
3281	Cut stone and stone products	250
3263	Fine earthenware (whiteware) table and kitchen articles	500
3211	Flat glass	1,000
3293	Gaskets, packing, and sealing devices	500
3221	Glass containers	750
3231	Glass products, made of purchased glass	250
3275	Gypsum products	1,000
3274	Lime	500
3296	Mineral wool	750
3295	Minerals and earths, ground or otherwise treated	250
3297	Nonclay refractories	750
3299	Nonmetallic mineral products, n.e.c	250
3264	Porcelain electrical supplies	500
3269	Pottery products, n.e.c	250
3229	Pressed and blown glass and glassware, n.e.c	750
3273	Ready-mixed concrete	250
3259	Structural clay products, n.e.c	250
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3262	Vitreous china table and kitchen articles	500
	Major Group 22—Textile Mill Products:	
2211	Broad woven fabric mills, cotton	1,000
2221	Broad woven fabric mills, manmade fiber and silk	500
2231	Broad woven fabric mills, wool (including dyeing and finishing)	250
2279	Carpets and rugs, n.e.c	500
2257	Circular knit fabric mills	250
2295	Coated fabrics, not rubberized	250
2298	Cordage and twine	250
2291	Felt goods, except woven felts and hats	250
2261	Finishers of broad woven fabrics of cotton	500
2262	Finishers of broad woven fabrics of manmade fiber and silk	500
2269	Finishers of textiles, n.e.c	250
2252	Hosiery, except women's full length and knee length hosiery	250
2253	Knit outerwear mills	250
2254	Knit underwear mills	250
2259	Knitting mills, n.e.c	250
2292	Lace goods	250
2241	Narrow fabrics and other smallwares mills: cotton, wool, silk, and manmade fiber	250
2297	Nonwoven fabrics	250
2293	Paddings and upholstery filling	250
2294	Processed waste and recovered fibers and flock	250
2299	Textile goods, n.e.c	250
2284	Thread mills	500
2296	Tire cord and fabric	1,000
2272	Tufted carpets and rugs	500
2258	Warp knit fabric mills	250
2251	Women's full length and knee length hosiery	250
2271	Woven carpets and rugs	750
2283	Yarn mills, wool, including carpet and rug yarn	250
2281	Yarn spinning mills: cotton, manmade fibers and silk	500
2282	Yarn texturizing, throwing, twisting, and winding mills: cotton, manmade fibers and silk	250
	Major Group 21—Tobacco Manufacturers:	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Tobacco (chewing and smoking) and snuff	500
2141	Tobacco stemming and redrying	500
	Major Group 37—Transportation Equipment:	
3721	Aircraft [3]	1,500
3724	Aircraft engines and engine parts	1,000
3728	Aircraft parts and auxiliary equipment, n.e.c	1,000
3732	Boat building and repairing	250
3761	Guided missiles and space vehicles	250
3769	Guided missile and space vehicle parts and auxiliary equipment, n.e.c	1,000
3764	Guided missile and space vehicle propulsion units and propulsion unit parts	1,000
3711	Motor vehicle and passenger car bodies	1,000
3714	Motor vehicle parts and accessories	500
3751	Motorcycles, bicycles, and parts	500
3743	Railroad equipment	750
3731	Ship building and repairing	1,000
3795	Tanks and tank components	1,000
3799	Transportation equipment, n.e.c	250
3792	Travel trailers and campers	250
3713	Truck and bus bodies	250
3715	Truck trailers	500

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the 3d month in each calender quarter for the preceding 4 quarters.

[2] Together with its affiliates does not employ more than 1,000 persons and does not have more than 30,000 barrels per day crude oil or bona fide feed stock capacity from owned and/or leased facilities or from facilities made available to such concerns under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product or a refined product basis) or a throughput or other form of processing agreement with the same effect as though such facilities had been leased.

[3] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviations Regulations, "Maintenance" means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. "Preventive maintenance" means simple or minor preservation operations and the repalcement of small standard parts not involving complex assembly operations.

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)

Census classification	Industry or class of products	Employment size standard (number of employees) [1]
	Major Group 20—Food and Kindred Products	
2026	Fluid milk [2]	750
2032	Canned specialties	1,000
2043	Cereal breakfast foods	1,000
2046	Wet corn milling	750
2052	Cookies and crackers	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2076	Vegetable oil mills, except corn, cottonseed and soybean	1,000
2079	Shortening, table oils, margarine and other edible fats and oils, n.e.c.	750
2085	Distilled, rectified, and blended liquors	750
	Major Group 21—Tobacco Manufactures	
2111	Cigarettes	1,000
	Major Group 22—Textile Mill Products	
2211	Broad-woven fabric mills, cotton	1,000
2261	Finishers of broad-woven fabrics of cotton	1,000
2271	Woven carpets and rugs	750
2295	Fabrics, not rubberized	1,000
2296	Tire cord and fabric	1,000
	Major Group 26—Paper and Allied Products:	
2611	Pulp mills	750
2621	Papermills, except building	750
	Papermills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	Major Group 28—Chemicals and Allied Products:	
2812	Alkalies and chlorine	1,000
2813	Industrial gases	1,000
2816	Inorganic pigments	1,000
2819	Industrial inorganic chemicals, n.e.c.	1,000
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanazible elastomers)	1,000
2823	Cellulosic manmade fibers	1,000
2824	Synthetic organic fibers, except cellulosic	1,000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2865	Cyclic (coal tar) crudes and cyclic intermediates, dyes, and organic pigments (lakes and toners)	750
2869	Industrial organic chemicals, n.e.c.	1,000
2873	Nitrogenous fertilizers	1,000
2892	Explosives	750
	Major Group 29—Petroleum Refining and Related Industries: [3]	
2952	Asphalt felts and coatings	750
	Major Group 30—Rubber and Miscellaneous Plastics Products:	
3011	Tires and innertubes	1,000
30111	Passenger car and motorcycle pneumatic tires (casings) [4]	
30112	Truck and bus (and off-the-road) pneumatic tires [4]	
3021	Rubber and plastics footwear	1,00
3031	Reclaimed rubber	750
	Major Group 32—Stone, Clay, Glass, and Concrete Products:	
3211	Flat glass	1,000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, n.e.c.	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3275	Gypsum products	1,000
3292	Asbestos procucts	750
3296	Mineral wool	750
3297	Nonclay refractories	750
	Major Group 33—Primary Metal Industries:	
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1,000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1,000
3316	Cold rolled sheet, strip and bars	1,000
3317	Steel pipe and tubes	1,000
3331	Primary smelting and refining of copper	1,000
3332	Primary smelting and refining of lead	1,000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1,000
3339	Primary smelting and refining of nonferrous metals, n.e.c.	750
3351	Rolling drawing and extruding of copper	750
3353	Aluminum sheet, plate and foil	740
3354	Aluminum extruded products	750
3355	Aluminum rolling and drawing, n.e.c.	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1,000
3398	Metal heat treating	750
3399	Primary metal products, n.e.c.	750
	Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment:	
3411	Metal cans	1,000
3431	Enameled iron and metal sanitary ware	750
3482	Small arms ammunition	1,000
3483	Ammunition except for small arms, n.e.c.	1,500
3484	Small arms	1,000
	Major Group 35—Machinery, Except Electrical:	
3511	Steam, gas, and hydraulic turbines and turbine-generator set units	1,000
3519	Internal combustion engines, n.e.c.	1,000
3531	Construction machinery and equipment	750
3537	Industrial trucks, tractors, trailers, and stackers	750
3562	Ball and roller bearings	750
3572	Typewriters	1,000
3573	Electronic computing equipment	1,000
3574	Calculating and accounting machines, except electronic computing equipment	1,000
3585	Air conditioning and warm air heating equipment and commercial and industrial refrigeration equipment	750
	Major Group 36—Electrical and Electronic Machinery, Equipment, and Supplies:	
3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1,000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1,000
3633	Household laundry equipment	1,000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3641	Electric lamps	1,000
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records and prerecorded magnetic tapes	750
3661	Telephone and telegraph apparatus	1,000
3662	Radio and television transmitting, signaling, and detection equipment and apparatus [5]	750
3671	Radio and television receiving type electron tubes, except cathode ray	1,000
3672	Cathode ray television picture tubes	750
3673	Transmitting, industrial and special purpose electron tubes	750
3692	Primary batteries, dry and wet	1,000
3694	Electrical equipment for internal combustion engines	750
	Major Group 37—Transportation Equipment:	
3711	Motor vehicles and passenger car bodies	1,000
37111	Passenger cars (knocked down or assembled)	(6)
3721	Aircraft [6]	1,500
3724	Aircraft engines and engine parts [6]	1,000
3728	Aircraft parts and auxiliary equipment, n.e.c.	1,000
3731	Shipbuilding and repairing	1,000
3743	Railroad equipment	1,000
3761	Guided missiles and space vehicles	1,000
3764	Guided missiles and space vehicle propulsion units and propulsion unit parts	1,000
3769	Guided missile and space vehicle parts and auxiliary equipment, n.e.c.	1,000
3795	Tanks and tank components	1,000
	Major Group 39—Miscellaneous Manufacturing Industries:	
3996	Linoleum, asphalted-felt-base, and other hard surface floor coverings, n.e.c.	750

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the 3rd month in each calendar quarter for the preceding 4 quarters.

[2] The size standard for Census Classification Code 2026, Fluid Milk, will be reduced to 625 employees effective May 1, 1973, and further reduced to 500 employees, effective May 1, 1974.

[3] The size standard for SIC 2911 is set forth in §121.3-8(g).

[4] The size standard for SIC 30111, 30112, and 37111 are set forth in §121.3-8(b)(4) and §121.3-8(b)(5), respectively, of this part.

[5] Guided missile engines and engine parts are classified in SIC 3764 and 3724. Missile control systems are classified in SIC 3662.

[6] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations: "Maintenance": means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. "Preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.

SCHEDULE C—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN WHOLESALING

(The following size standards are to be used when determining the size status of wholesaling concerns for the purpose of SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for secs. 501 and 502 and SBIC assistance. Where a code is followed by a letter, the size standard applies only to the class of product designated.)

Industry or subindustry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in millions)
5052(a)	Coal	$10
5082	Construction and mining machinery and equipment	10
5039	Construction materials, n.e.c.	10
5143	Diary products	10
5122	Drugs, drug proprietaries, and druggists' sundries	10
5064	Electrical appliances, television and radio sets	10
5139	Footwear	10
5153	Grain	10
5149	Groceries and related products, n.e.c.	10

SCHEDULE C—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN WHOLESALING

Industry or subindustry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in millions)
5023(a)	Home furnishings, floor coverings	10
5084	Industrial machinery and equipment	10
5085	Industrial supplies	10
5154	Livestock	10
5147	Meats and meat products	10
5051(a)	Metal service centers	10
5134	Notions and other dry goods	10
5133	Piece goods (woven fabrics)	10
5111	Printing and writing paper	10
5041	Sporting and recreational goods and supplies	10
5194	Tobacco and tobacco products	10
5042	Toys and hobby goods and supplies	10
5012	Automobile and motor vehicles	15
5161	Chemicals and allied products	15
5081	Commercial machines and equipment	15
5152	Cotton	15
5063	Electrical apparatus and equipment, wiring supplies and construction materials	15
5083	Farm and garden machinery and equipment	15
5142	Frozen foods	15
5141	Groceries, general line	15
5113	Industrial and personal service paper	15
5051(b)	Metals sales offices	15
5198	Paints, varnishes, and supplies	15
5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals	15
5171	Petroleum bulk stations and terminals	15
5014	Tires and tubes	15
5182	Wines and distilled alcoholic beverages	15

SCHEDULE D—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN RETAILING

(The following size standards are to be used when determining the size status of retailing concerns for the purpose of SBA loans, displaced business loans, economic opportunities loans, and as alternate standards for secs. 501 and 502 loans and SBIC assistance. Where a code is followed by a letter, the size standard applies only to the class of product designated.)

Industry or subindustry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in millions)
	Major Group 56—Apparel and Accessory Stores	
5651	Family clothing stores	$1.5
5611	Men's and boys' clothing and furnishings stores	1.5
5661	Shoe stores	1.5
5621	Women's ready-to-wear stores	1.5
	Major Group 55—Automotive Dealers and Gasoline Service Stations	
5599(a)	Aircraft (a part of automotive dealers, n.e.c.)	3.0
5511	Motor vehicle dealers (new and used)	5.0
5521	Motor vehicle dealers (used only)	5.0
	Major Group 54—Foodstores	
5411	Grocery stores	5.0
5423(a)	Meat markets (a part of meat and fish (seafood) markets)	5.0
	Major Group 57—Furniture, Home Furnishings, and Equipment Stores	
5722	Household appliance stores	1.5
5732	Radio and television stores	1.5
	Major Group 53—General Merchandise	
5311	Department stores	5.0
5331	Variety stores	2.0
	Major Group 59—Miscellaneous Retail	
5961	Mail order houses	5.0

SCHEDULE E—GOVERNMENT-OWNED TIMBER RESALE STANDARDS FOR SPECIFIC GEOGRAPHICAL AREAS

Area from which timber is cut	Percentage of timber purchased that may be sold to other than small business
Alaska	50

SCHEDULE F—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MINING AND MINING SERVICES

(The following size standards are to be used when determining the size status of mining and mining services concerns for the purpose of SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for secs. 501 and 502 loans and small business investment company assistance.)

Census classification code	Industry or class of products	Employment size standard (number of employees)
1111	Anthracite	250
1112	Anthracite mining services	250
1211	Bituminous coal and lignite	500
1213	Bituminous coal and lignite mining services	250

SCHEDULE G—PETROLEUM ADMINISTRATION FOR DEFENSE (PAD) DISTRICTS AS UTILIZED BY THE DEFENSE FUEL SUPPLY CENTER IN THE PROCUREMENT OF REFINED PETROLEUM PRODUCTS

PAD Districts and States included in PAD District:

1. Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida.
2. North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Kentucky, and Tennessee.
3. New Mexico, Texas, Arkansas, Louisiana, Mississippi, and Alabama.
4. Montana, Idaho, Wyoming, Utah, and Colorado.
5. Alaska, Hawaii, Washington, Oregon, Nevada, California, and Arizona.

[FR Doc.72-20326 Filed 11-29-72;8:45 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 12006, Amdt. 25-34 and 121-99]

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

Rear Exit Security: Large Passenger-Carrying Turbojet Powered Airplanes

The purpose of these amendments to Parts 25 and 121 of the Federal Aviation Regulations is to provide additional security on certain large passenger-carrying turbojet powered airplanes operated under Part 121 by requiring that each ventral exit and tailcone exit be designed and constructed so that it cannot be opened during flight. These amendments also apply to air travel clubs certificated under Part 123 and to air taxi operators certificated under Part 135, when conducting operations governed by those parts with the large airplanes.

Interested persons have been afforded an opportunity to participate in the making of these amendments by a notice of proposed rule making (Notice 72-15) issued June 20, 1972, and published in the FEDERAL REGISTER on June 24, 1972 (37 F.R. 12507) and due consideration has been given to all comments received in response to the notice, insofar as they relate to matters within the scope of the notice. Except for editorial changes, and except as specifically discussed hereinafter, these amendments and the reasons therefor are the same as those contained in the notice.

Several commentators objected to the requirement in proposed § 25.809(j)(1) and § 121.310(k)(1) that means must be provided so that takeoff cannot be started if either the ventral exit or tailcone exit is not locked. They based their objection on the possible catastrophic results of a malfunction or failure in the currently available means that could be used to implement this requirement, for example, systems providing for the locking of brakes or throttles by electrical signals from the stair lock. In this regard, a number of means were suggested by commentators to assure that the ventral exit could not be opened during flight, but that it still would be available for use as an emergency exit. The FAA agrees with those comments, and, accordingly, the proposal that means be provided so that takeoff cannot be started if the ventral exit or tailcone exit is not locked is not adopted in this amendment. However, under the rule as adopted, when the airplane becomes airborne the design and construction characteristics of each ventral exit and tailcone exit must be such that it cannot be opened during flight.

Certain comments contended that altering the design of an aircraft is not an effective means of overcoming the problems of hijacking, because simple devices can be overcome by the hijacker and more complicated devices create additional risk in the operation of the aircraft. One comment pointed out that it is patently impossible to add a lock to an emergency exit without statistically reducing the reliability of that exit. However, the FAA does not believe that, because a device installed in compliance with the rule may be simple in design, it will necessarily also be simple for a hijacker to overcome it. Nor does the FAA believe that compliance with the rule, as adopted, will reduce the reliability of the exits in an emergency.

One commentator recommended that the rule specify that the ventral exit be available for normal and emergency ground operations. The FAA does not

agree that a rule change in this respect is necessary, since the amendment as adopted herein in no way conflicts with other rules dealing with the availability of exits for emergency egress in an actual emergency.

Several commentators recommended that an appropriately worded placard be installed in a conspicuous location near the means of opening each ventral exit and tailcone exit, stating that the exit cannot be opened during flight. The FAA agrees, and this requirement is added to the proposed amendments.

One commentator suggests that the proposed rule should not be applied to air travel clubs, because the makeup of their membership and their financial structure makes it highly unlikely that they would be subjected to the kind of hijacking and extortion the proposed rule is intended to prevent. The FAA does not agree. The proposal was intended to prevent all hijacking of certain large aircraft engaged in operations required to be conducted in accordance with Part 121 and the amendment is applicable to all such operations.

One commentator objected to the rule, stating that it is unnecessary since the proper response to any hijacker is to refuse all of his demands for ransom, whatever the cost. The FAA does not agree. As stated in the notice, every possible step must be taken to deter persons from boarding aircraft for the purpose of hijacking them and escaping by parachute. The purpose of these amendments is to make it clear that any attempt to hijack a large passenger-carrying turbojet-powered airplane and escape therefrom by parachute will be a futile effort.

While the notice proposed to make the amendment to § 121.310 effective 6 months after the effective date of the rule, the rule as adopted provides for an 8-month compliance period to allow additional time for design, manufacture, and installation, where modifications are needed to conform to the rule.

In consideration of the foregoing, and for the reasons given in notice 72-15, Parts 25 and 121 of the Federal Aviation Regulations are amended, effective December 31, 1972, as follows:

1. By adding a new paragraph (j) to § 25.809 to read as follows:

§ 25.809 Emergency exit arrangement.

* * * * *

(j) When required by the operating rules for any large passenger-carrying turbojet-powered airplane, each ventral exit and tailcone exit must be—

(1) Designed and constructed so that it cannot be opened during flight; and

(2) Marked with a placard readable from a distance of 30 inches and installed at a conspicuous location near the means of opening the exit, stating that the exit has been designed and constructed so that it cannot be opened during flight.

2. By adding a new paragraph (k) to § 121.310 to read as follows:

§ 121.310 Additional emergency equipment.

* * * * *

(k) After August 28, 1973, on each large passenger-carrying turbojet-powered airplane, each ventral exit and tailcone exit must be—

(1) Designed and constructed so that it cannot be opened during flight; and

(2) Marked with a placard readable from a distance of 30 inches and installed at a conspicuous location near the means of opening the exit, stating that the exit has been designed and constructed so that it cannot be opened during flight.

(Section 313(a), 601, 603, 604, and 605 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1425. Section 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on November 24, 1972.

J. H. SHAFFER,
Administrator.

[FR Doc.72-18118 Filed 11-29-72;8:51 am]

[Airworthiness Docket No. 72-WE-15-AD, Amdt. 39-1566]

PART 39—AIRWORTHINESS DIRECTIVES

Douglas Model DC-9-10 Series Airplanes

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring that the entry door closing assist handle be removed and an improved design modification installed on Douglas Model DC-9-10 series airplanes was published at 37 F.R. 16621 (August 17, 1972).

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all comments received in response to the above notice, insofar as they relate to matters within the scope of the notice.

One commentator suggested that equivalent modifications need not be approved by the Chief, Aircraft Engineering Division, Federal Aviation Administration, Western Region, and that, due to procurement time, 4,000 hours would be required to schedule the modification. The agency does not agree. Due to the scope of this modification, the equivalent modifications should be approved by the Chief, Aircraft Engineering Division, Federal Aviation Administration, Western Region. The procurement time was considered when the NPRM was published. The commentator did not substantiate need for an increase in compliance time and, therefore, the compliance time of 3,000 hours was retained.

One commentator suggested that the compliance time be reduced to 500 hours and that, until the accomplishment of the AD, flight attendants should be seated in a passenger seat as near as practical to floor-level exits. This comment was based on the results of the Ozark Air Lines 1968 Sioux City accident and other related problems (see below). The FAA does not agree with the comment as it pertains to a substantial reduction of the compliance time. The service experience does not convince the agency that more immediate regulatory action is warranted. This commentator also suggested that further consideration be given to the protruding cockpit door molding and the main cabin handle. While related to the problem, the agency has considered both of these installations and has determined that these installations need not be modified by way of an AD. This conclusion is, of course, subject to continuing review of the service experience.

One commentator proposed a relocation of the main cabin door handle. The NPRM concerns the entry door closing assist handle and not the main cabin door handle, and, therefore, the comment is not within the scope of the notice.

One commentator supported and endorsed the proposed rule.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

McDONNELL DOUGLAS. Applies to Model DC-9-10 series airplanes certificated in all categories.

Compliance required within the next 3,000 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent possible injury to the forward flight attendant, remove the entry door closing assist handle, P/N 3918664-1, and install a handle, P/N 3924268-1, per McDonnell Douglas Service Bulletin No. 25-31, dated May 4, 1966, or McDonnell Douglas Service Bulletin No. 25-185, dated March 31, 1972 or later FAA-approved revisions, or an equivalent modification approved by the Chief, Aircraft Engineering Division, FAA, Western Region.

This amendment becomes effective January 3, 1973.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Los Angeles, Calif., on November 17, 1972.

ROBERT O. BLANCHARD,
Acting Director,
FAA Western Region.

[FR Doc.72-20548 Filed 11-29-72;8:48 am]

[Airspace Docket No. 72-WA-62]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Change to Waypoint Reference Facility

The purpose of this amendment to Part 75 of the Federal Aviation Regulations is to make a change of the reference facility for the Tucson, Ariz., waypoint from Phoenix, Ariz., to Tucson in area high route J903R.

Since this change is minor in nature because neither the route nor the waypoint is moved and since no substantive change in the regulations is effected, notice and public procedure thereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective January 4, 1973.

The Phoenix reference facility cannot be used on J905R for the Tucson waypoint because of the lack of signal coverage. However, the Tucson reference facility can be used on both J903R and J905R for this waypoint.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., January 4, 1973, as hereinafter set forth.

Section 75.400 (37 F.R. 2400 and 5489) is amended as follows:

In J903R "Tucson, Ariz. 32°07'21" N. 110°49'12" W. Phoenix, Ariz." is deleted and "Tucson, Ariz. 32°07'21" N. 110°49'12" W. Tucson, Ariz." is substituted therefor.

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

Issued in Washington, D.C., on November 27, 1972.

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

[FR Doc.72-20601 Filed 11-29-72;8:52 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. 34-9878]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Quarterly Statements Furnished to Customers of Broker-Dealers

The Securities and Exchange Commission announced today the adoption of an amendment to paragraph (n) of rule 17a-5 (17 CFR 240.17a-5) under the Securities Exchange Act of 1934. This amendment will modify the requirements of the recently adopted paragraphs (m) and (n), which were announced on June 30, 1972 in Securities Exchange Act Release No. 9658 (37 F.R. 14607).

Paragraph (n), as originally adopted, requires all broker-dealers subject to paragraph (k) of rule 17a-5 to furnish his customers, the Commission and all the self-regulatory organizations of which he is a member, each quarter a statement of financial condition and certain information respecting the firm's net capital and subordinated capital. As originally adopted, paragraphs (m) and (n) could, in some cases, operate to require the broker-dealer to furnish five financial statements to customers annually. Four such quarterly statements would be furnished pursuant to paragraph (n) and would be unaudited. A fifth audited statement would be furnished pursuant to paragraph (m), if the firm's annual audit did not fall at the end of a firm's calendar or fiscal quarter. This situation arises primarily as a result of the surprise audit requirement of several of the self-regulatory bodies. For firms not subject to a surprise audit requirement, the broker-dealer may have other compelling reasons to have its audit on a date which does not fall as of the end of a particular quarter. In addition it is conceivable for the rule to operate so as to have the broker-dealer mail such statements to its customers twice within the same quarter.

The Commission believes that it is important that customers of broker-dealers receive regularly certain information as set forth in paragraphs (m) and (n) of the rule concerning the financial and operating condition of the broker-dealer to whom they entrust their moneys or securities. The Commission also believes that more frequent statements would not materially assist customers of broker-dealers and may be unduly burdensome and expensive for the broker-dealer. Therefore, the Commission is adopting effective immediately an amendment to rule 17a-5(n) which will permit the substitution of the broker-dealer's annual audited statement prepared pursuant to paragraph (m) of the rule in lieu of one of the unaudited quarterly statements furnished customers pursuant to paragraph (n), provided the audited statement is as of the date not more than two months preceding the regular quarterly statements. The audited statement should be sent to those customers who would have received the quarterly unaudited statements required by paragraph (n). The effect of the amendment in most instances would require the particular broker-dealer to furnish customers and to file with the appropriate regional office of the Commission and the particular self-regulatory body of which it is a member four rather than five reports annually.

Commission action. Acting pursuant to the provisions of the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17(a), and 23(a) thereof, and deeming it necessary and appropriate in the public interest and for the protection of investors and also deeming such action necessary for the execution of its functions, the Securities and Exchange Commission hereby amends paragraph (n) of § 240.17a-5 of Chapter II of Title 17 of the Code of Federal Regulations, effective immediately, to read as follows:

§ 240.17a-5 Reports to be made by certain exchange members, brokers and dealers.

* * * * *

(n) Every member, broker or dealer who is subject to paragraphs (k), (l) and (m) of this section shall furnish to his customers (as defined in paragraph (o) of this section) and shall file with the Commission and with the national securities exchange and the national securities association of which he is a member not later than 40 days after the end of each calendar quarter, fiscal quarter or quarter for which the member, broker or dealer is required to file substantially equivalent information with the national securities exchange or national securities association of which he or it is a member, the information specified in paragraphs (m) (1) and (2) of this section, except that such quarterly information shall not be required to be certified. If the annual report sent to customers pursuant to paragraph (m) of this section is as of a date not more than two months preceding the quarterly report required by this paragraph, no quarterly report need be sent for such quarter.

* * * * *

Because the effect of the above described amendments would be to relax certain of the requirements of rule 17a-5 under the Act, the Commission finds that, for good cause, the notice and procedures specified in the Administrative Procedure Act (5 U.S.C. 553) are unnecessary, and accordingly it adopts the foregoing amendment effective immediately on November 24, 1972.

(Secs. 15(c)(3), 17(a), 23(a), 48 Stat. 895, 897, 901 secs. 3, 4, 8, 49 Stat 1377, 1379, secs. 2, 5, 52 Stat. 1075, 1076, sec. 7(d), 84 Stat. 1653, 15 U.S.C. 78o(c)(3), 78q(a), 78w)

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

NOVEMBER 24, 1972.

[FR Doc.72-20523 Filed 11-29-72;8:46 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

TERTIARY BUTYLHYDROQUINONE

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 1A2588) filed by Eastman Chemical Products, Inc., Kingsport, Tenn. 37662, and other relevant material, concludes that the food additive regulations should be amended, as set forth below, to provide for the safe use of tertiary butylhydroquinone (TBHQ) in food as an antioxidant alone or in combination with BHA and/or BHT, whereby the total antioxidant content of the food does not exceed 0.02 percent of its oil or fat content, including its essential (volatile) oil content.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR

2.120), Part 121 is amended by adding to Subpart D the following new section:

§ 121.1244 Tertiary butylhydroquinone (TBHQ).

The food additive tertiary butylhydroquinone (TBHQ) may be safely used in food in accordance with the following prescribed conditions:

(a) The food additive has a melting point of 126.5° C.–128.5° C.

(b) It is used as an antioxidant alone or in combination with BHA and/or BHT.

(c) The total antioxidant content of a food containing the additive will not exceed 0.02 percent of the oil or fat content of the food, including the essential (volatile) oil content of the food.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (11–30–72).

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348 (c)(1))

Dated: November 24, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-20545 Filed 11-29-72;8:48 am]

Chapter III—Special Action Office for Drug Abuse Prevention

PART 401—CONFIDENTIALITY OF DRUG ABUSE PATIENT RECORDS

Correction

In F.R. Doc. 72–19925 appearing at page 24636 of the issue for Friday, November 17, 1972, in the fourth line of § 401.44(a) the comma after the word "management" should be deleted.

Title 31—MONEY AND FINANCE

Chapter II—Fiscal Service, Department of the Treasury

SUBCHAPTER B—BUREAU OF THE PUBLIC DEBT

PART 344—REGULATIONS GOVERNING UNITED STATES TREASURY CERTIFICATES OF INDEBTEDNESS—STATE AND LOCAL GOVERNMENT SERIES, UNITED STATES TREASURY NOTES—STATE AND LOCAL GOVERNMENT SERIES, AND UNITED STATES TREASURY BONDS—STATE AND LOCAL GOVERNMENT SERIES

The regulations in Department of the Treasury Circular, Public Debt Series No. 3–72, as amended (31 CFR Part 344), have been retitled and further amended, as set forth below. The changes were effected under the authority of 26 U.S.C. 103(d), 83 Stat. 656; 31 U.S.C. 753, 754, 754b, and 5 U.S.C. 301. Notice and public procedures thereon are unnecessary as they relate to the fiscal policy of the United States.

Dated: November 21, 1972.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

Department of the Treasury Circular, Public Debt Series No. 3–72, dated May 22, 1972, as amended (31 CFR Part 344), is hereby further amended and issued as Department of the Treasury Circular, Public Debt Series No. 3–72, Revised.

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

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

§ 344.0 Offering of securities.

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

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

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

(c) U.S. Treasury Bonds—State and Local Government Series,

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

§ 344.1 Description of securities.

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

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

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

(3) *Bonds.* The bonds will be issued in multiples of $5,000 with periods of maturity fixed, at the option of the government body, from 7 years 6 months up to and including 10 years, or for any intervening half-yearly period. Each bond will bear such rate of interest as the government body may designate, provided that it shall not be more than the current Treasury rate on a comparable maturity, reduced by one-eighth of 1

percent, on the date the subscription is submitted. The applicable Treasury rates will be determined by the Treasury not less often than monthly, and will be available at Federal Reserve Banks and Branches. Interest on the bonds will be payable on a semiannual basis by Treasury check on June 1 and December 1, and at maturity if other than June 1 or December 1. Final interest will be paid with the principal.

§ 344.2 Subscription for purchase.

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

§ 344.3 Issue date and payment.

The issue date of a security will be the date requested by the subscriber, provided that date is not more than 3 weeks after the date of the subscription, and provided funds in full payment are available on that date at the Federal Reserve Bank or Branch to which the subscription was submitted.

§ 344.4 Redemption.

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

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

§ 344.5 General provisions.

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

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

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

[FR Doc.72-20556 Filed 11-29-72;8:45 am]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER B—SALES AND SERVICES

PART 815—PERSONS AUTHORIZED MEDICAL CARE

Miscellaneous Amendments

Subchapter B of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

Part 815 is amended as follows:

NOTE: Part 806 states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the manuals and regulations that are referenced herein.

1. Section 815.2 is revised to read as follows:

§ 815.2 Definitions.

Terms used in this part are explained as follows:

(a) *Armed Forces.* The Air Force, Army, Navy, Marine Corps, and Coast Guard including their Reserve components.

(b) *Bureau of Employees Compensation (BEC) Beneficiary.* A civilian employee, including a civilian officer, of the U.S. Government who is injured or incurs a disease in the performance of duty and is designated as a beneficiary by the Bureau.

(c) *Continental United States (CONUS).* United States territory including the adjacent territorial waters located within the North American continent between Canada and Mexico.

(d) *Dependents.* (1) Dependents of active duty or retired members of a uniformed service and dependents of a person who at the time of his death was an active duty or a retired member of a uniformed service are defined in AFR 168-9.

(2) The following definition is applicable to dependents authorized care under other sections of this part unless otherwise specified:

(i) Spouses.

(ii) Children as defined in AFR 168-9.

(iii) Dependent parents and parents-in-law as defined in AFR 168-9.

EXCEPTION: Parents (including stepparents and parents-in-law) and foster parents of the officer or employee listed in § 815.60a of this part when the parents are dependent on the officer or employee for over one-half of their support and are residing in his household overseas (authorized medical care but not at State Department expense).

(e) *Disability.* A disease, injury, or other physical or mental defect.

(f) *Elective medical care.* Medical, surgical, or dental care desired or requested by the individual or recommended by the physician or dentist which, in the opinion of the professional authority, can be performed at another time or place without jeopardizing life, limb, health, or well-being of the patient. An example is surgery for cosmetic purposes. Certain nonessential dental prosthetic appliances, as determined by a dental officer, also fall into this category.

(g) *Emergency medical care.* The immediate inpatient or outpatient medical care required to prevent loss of life, limb, or undue suffering.

(h) *Hospital Commander.* The director of base medical service/commander of base medical unit, of hospitals or dispensaries, as appropriate.

(i) *Maximum hospital benefit.* That point during hospitalization when the

patient's progress appears to have stabilized and it can be anticipated that additional hospitalization will not directly contribute to any further substantial recovery. A patient who will continue to improve slowly over a long period of time without specific therapy or medical supervision, or with only a moderate amount of treatment on an outpatient basis, may be considered as having attained maximum hospital benefit.

(j) *Medical care.* Inpatient, outpatient, dental care, and related professional services, unless otherwise qualified.

(k) *Member of a uniformed service.* A person appointed, enlisted, inducted, called, ordered, or conscripted into a uniformed service who is serving on active duty or active duty for training.

(l) *Optimum hospital improvement for disposition purposes.* That point during hospitalization when, after essential initial medical treatment, the patient's medical fitness for further active service can be determined, and it is considered probable that further treatment for a reasonable period will not result in any material change in the patient's condition which would alter his ultimate type of disposition or amount of separation benefits.

(m) *Retired member of a uniformed service.* A member or former member of a uniformed service entitled to retired or retainer pay, or equivalent pay, as a result of service in a uniformed service.

(n) *Routine dental care.* All the medical, surgical, and restorative treatment of oral diseases, injuries, and deficiencies that come within the field of dental and oral surgery as commonly practiced by the dental profession.

(o) *Uniformed services.* The Air Force, Army, Navy, Marine Corps, Coast Guard, the Commissioned Corps of the Public Health Service, their respective components, and the Commissioned Corps of the National Oceanic and Atmospheric Administration (formerly Environmental Science Services Administration).

(p) *United States.* The 50 States and the District of Columbia.

(q) *Veteran.* A person who served on active duty in the Armed Forces and was discharged or released therefrom under conditions other than dishonorable.

(r) *Veterans' Administration beneficiary.* A veteran who is entitled to certain medical care in a Veterans' Administration hospital.

2. Section 815.3 is revised to read as follows:

§ 815.3 Policies.

(a) The hospital commander is the authority to approve medical care. He may provide medical care at his facility for authorized patients who are not uniformed services personnel if space and facilities are available and the capabilities of the professional staff permit. However, such persons must furnish the commander with satisfactory identification to prove their eligibility. Medical commanders are authorized to correspond direct with other medical authorities on the care of patients. In foreign countries the laws (customs and practices) of the host country must be complied with and local customs and practices considered when applying this part so that the operating rights and status of personnel under international agreements are not jeopardized.

(b) Patients authorized only emergency care and those admitted as civilian emergencies will be treated only during the period of the emergency. As soon as the emergency period ends, the patients will be discharged, if medically indicated, or transferred if civilian medical facilities are available and adequate as determined by the local hospital commander. These disposition instructions are applicable in all emergency cases unless otherwise specified in this part. The registrar and medical resource management officer will insure complete identification of these patients before disposition. Identification should not be limited to data supplied by the patient, such as home address or location of emergency addressee. Accurate, complete identification should be ascertained from identification cards, drivers' licenses, medical insurance cards, copies of discharge papers, social security cards, etc. If feasible, this information should be verified through visitors to the patient or by contacting the emergency addressee.

(c) Persons not authorized care in Air Force medical treatment facilities by law or regulation will be charged the full reimbursement rate for the type of care provided except when charges are waived by the Secretary of the Air Force or the appropriate oversea commander or when provided medical treatment in conjunction with natural disaster relief operations. See AFR 168–7 for rates applicable to specific categories of patients, including patients in transit in the aeromedical evacuation system.

(d) Air Force medical treatment facilities operating food service activities will collect and deposit subsistence charges according to AFM 168–4, chapter 10. If the medical facility does not operate a food service activity, it will charge inpatients according to Part 814 of this subchapter. In either case, the rate charge for subsistence furnished to persons in patient status who are not entitled to subsistence at Government expense will be according to rates in AFR 168–7.

3. Section 815.10 is revised to read as follows:

§ 815.10 Retired members of a uniformed service (§ 815.2(m)).

Medical care is authorized for retired members, subject to the applicable conditions indicated below:

(a) Persons retired for other than physical disability are entitled to the same health benefits in uniformed services facilities as active duty members, subject to the availability of space and facilities and the capabilities of the professional staff, and to the priorities cited in AFR 168–9, paragraph 4–2, September 15, 1970.

(b) Persons retired for physical disability:

(1) *Temporary retirement (periodic medical examinations).* Temporarily retired members who require hospitalization in connection with the conduct of periodic medical examinations.

(2) *Temporary or permanent retirement (less than 20 years of active duty).* Members temporarily or permanently retired for physical disability or receiving disability retirement pay, with less than 20 years of active duty, except hospitalization for the following chronic conditions: chronic arthritis, malignancy, phychiatric or neuropsychiatric disorder, neurological disabilities, poliomyelitis with disability residuals and degenerative disease of the nervous system, severe injuries to the nervous system including quadriplegia, hemiplegia, and paraplegia, tuberculosis, blindness and deafness requiring definitive rehabilitation, and major amputees (hospitalization for the above conditions is the responsibility of the Veterans' Administration).

(3) *Temporary or permanent retirement (20 years or more of active duty).* Members temporarily or permanently retired for physical disability or receiving disability retirement pay, with 20 years or more of active duty, except those with blindness, neuropsychiatric or psychiatric disorders, and tuberculosis (hospitalization for the above conditions is the responsibility of the Veterans' Administration).

(c) Persons mentioned above who are eligible for medical care in uniformed services facilities may be moved between such facilities and from uniformed services facilities overseas to continental U.S. facilities, when directed in writing by competent medical authority.

NOTE: A member temporarily or permanently retired for physical disability electing to receive disability compensation from the Veterans' Administration in place of retired pay is eligible for care in uniformed services medical facilities, except for those chronic conditions listed in subparagraph (2) of paragraph (b) of this section. A member removed from the temporary disability retired list and discharged with severance pay is not eligible for medical care in uniformed services facilities at the expense of the Air Force even though he is entitled to and receives disability compensation from the Veterans' Administration.

4. Section 815.11 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 815.11 VA beneficiaries.

(a) * * *

(2) Veterans admitted to Air Force hospitals on an emergency basis may or may not be eligible Veterans' Administration beneficiaries. However, if the patient is a veteran, the hospital commander will notify the responsible VA field station of the admission within the required 72-hour period and request written authorization and disposition instructions. Notification should include a copy of the individual's discharge certificate, order for release from active

duty under other than dishonorable conditions, or evidence of receipt of VA compensation or discharge for disability incurred or aggravated in line of duty, if available.

(b) * * *

(1) Veterans of the Armed Forces who are U.S. citizens residing or sojourning abroad may be provided medical care for service connected disabilities on presentation of a signed authorization. The responsibility for authorizing medical care in foreign countries is vested in:

(i) Republic of the Philippines: Director, Outpatient Clinic, United States VA Regional Office, APO San Francisco 96528.

(ii) All other foreign countries: Veterans' Administration Hospital, 50 Irving Street NW., Washington, DC 20422.

* * * * *

5. The title of Subpart C is amended to read as follows: Subpart C—Reserve Officers Training Corps, Junior Reserve Officers Training Corps, Civil Air Patrol, and Scouts of America.

6. Section 815.20 is amended by revising paragraphs (c) and (e) to read as follows:

§ 815.20 Senior Reserve Officers Training Corps members (ROTC), Air Force, Army, and Navy (includes advanced course applicants, 10 U.S.C. 2104b(6)(B)).

* * * * *

(c) Air Force ROTC members may require civilian medical attendance during their training period if medical facilities of the uniformed services or other Government agencies are not readily available. However, prior approval must be obtained for such civilian medical attendance (Part 880 of Subchapter I of this chapter).

* * * * *

(e) When directed by competent orders, ROTC students at colleges, universities, or other institutions may be given physical examinations at Air Force medical facilities, if available. When the Air Force facility does not have the capability to complete the examination, supplemental care is authorized if it is more economical than to transport the member to another Armed Forces medical facility. Hospitalization is authorized when qualification for service cannot otherwise be determined. This period is to be used for diagnostic purposes only, not to correct disqualifying defects. Hospitalization furnished such individuals for emergency conditions occurring during the physical examination period will be administered as stated in § 815.86.

* * * * *

7. Sections 815.21 and 815.22 are revised and redesignated to §§ 815.22 and 815.23 and a new § 815.21 is added to read as follows:

§ 815.21 Junior Reserve Officers Training Corps (JROTC) members, Air Force, Army, and Navy.

Members of JROTC units, Air Force, Army, and Navy, are authorized hospitalization and medical care in emergencies occurring while participating in base visits at Air Force installations. Hospitalization beyond the period of emergency or medical care at other than Air Force medical facilities is not authorized at Air Force expense.

§ 815.22 Civil Air Patrol (CAP) members.

(a) CAP membership is divided into two groups:

(1) *Seniors.* Adults over 18 years of age.

(2) *Cadets.* Boys and girls who are U.S. citizens and have passed their 13th birthday or (if younger) are enrolled in high school or its equivalent (grade 9 or above) and are not more than 20 years of age. A cadet may become a senior member when he is 18 years old, but this status change is not mandatory.

(b) During a period of specified assignment, a senior CAP member may be provided medical care in an Air Force medical treatment facility for injury or disease incurred while he was engaged in authorized activities without regard to line of duty status (Part 832 of Subchapter C of this chapter). Authorized activities are those performed under Air Force direction and authorized in writing by competent authority. Such authorization must cover a specific assignment and prescribe a time limit for the assignment.

(c) A senior member who is injured or contracts a disease in line of duty and who receives medical care beyond the period of specified assignment will be reported to the Bureau of Employees' Compensation as a potential beneficiary of that Bureau (Subpart E of this part). The benefits of the Federal Employees' Compensation Act have been extended by law (5 U.S.C. 8141) to include senior CAP members who are injured or who contract disease in line of duty while engaged in authorized activities. Such duty includes the period of travel to and from the place where service or duty is performed. Medical care beyond the authorized encampment period will not be provided at Air Force expense.

(d) Charges for medical care provided beyond the period of specified assignment for injury or disease incurred not in line of duty will be the responsibility of the patient.

(e) When attending encampments at Air Force installations, cadets will be provided medical care in an emergency. Senior member benefits do not apply to CAP cadets. Treatment required beyond the encampment period will be provided only until medical care can be arranged elsewhere and will not be provided at Air Force expense.

(f) Medical care is not authorized at Air Force expense in other than Air Force medical facilities for either senior or cadet members.

(g) Prior written authorization from the Air Force liaison officer of the CAP wing to which the member is assigned is required for admission to an Air Force medical facility, except in an emergency. In an emergency, written authorization is obtained with the least practicable delay.

§ 815.23 Scouts.

Boy Scouts of America, including Explorer Scouts, and Girl Scouts of the United States of America may be provided medical care in emergencies occurring while the scouts are participating in visits, training exercises, and encampments at Air Force installation. Hospitalization beyond the period of emergency or medical care at other than Air Force medical facilities is not authorized at Air Force expense.

8. Section 815.30 is revised to read as follows:

§ 815.30 Applicants for enlistment or commission.

(a) Physical examinations for determining qualification for duty in the uniformed services will be provided for:

(1) Personnel ordered into active service under the Military Selective Service Act.

NOTE: Selective Service registrants who suffer illness or injury while acting under orders issued under the Military Selective Service Act are entitled to emergency medical care, including hospitalization (50 U.S.C. App 461).

(2) Applicants for enlistment or commission.

(3) Applicants for Air Force, Military, Naval, and Coast Guard Academies.

(4) Reservists not on active duty as required by AFR 160–19.

(5) Aerospace medicine consultation service for Reservists as required by AFR 161–23.

When supplemental services are considered essential for the proper evaluation of an applicant for the service academies or for commission or enlistment, but are not available at the military facility, the facility may procure these necessary services from local civilian sources utilizing local funds. Hospitalization is authorized when qualification for service cannot otherwise be determined. This period is to be used for diagnostic purposes only, not to correct disqualifying defects. Medical care including hospitalization, may be furnished such individuals for emergency conditions occurring during the physical examination period.

(b) In addition to the above, applicants for the Air Force Academy may be afforded emergency hospitalization and treatment for injury incurred in the actual performance of physical aptitude examinations while at an Air Force facility. Hospitalization should not exceed 3 days. If final disposition cannot be effected within this period, instructions should be obtained from HQ USAF/SGHM, Washington, D.C. 20314.

§ 815.31 [Amended]

9. Section 815.31 is amended by changing the last sentence of paragraph (c) to: "If the mother is discharged from the hospital and the infant must remain, charges will be at the infant rate."

§ 815.40 [Amended]

10. Section 815.40 is amended by changing the section reference in the

first sentence of paragraph (c) to "§ 815.-22(b)."

11. Section 815.41 is revised to read as follows:

§ 815.41 **Administrative procedures.**

(a) Except in an emergency, persons in § 815.40 applying for medical care in an Air Force facility must present three copies of form CA 16, "Request for Examination and/or Treatment" (AFR 40-810). The supervisor or commander of the person applying for care will prepare this form. In an emergency, medical care (including hospitalization) may be furnished upon verbal authorization of the applicant's official supervisor. However, form CA 16 will be required for the responsible individual within 48 hours after verbal authorization. The date entered on the form will be the date of hospitalization or treatment.

NOTE: A CA form 16 is not required when only first aid treatment is provided civilian employees, since the Air Force does not charge the Federal Employees' Compensation Fund for such treatment. A CA form 16 is required if there is to be prolonged treatment, disability for work beyond the day of injury, recurrence of disability, or a charge to the Compensation Fund for medical treatment or supplies.

(b) Form CA 20, "Attending Physicians' Report," will be submitted to the BEC on all cases which result in charges for treatment or supplies against the BEC or which involve any loss of time beyond the day, shift, turn, or working period during which the injury occurs. Also, a copy of SF 502, "Clinical Record-Narrative Summary," will be submitted to the bureau on all hospitalized cases at the time of discharge. An interim SF 502 should be forwarded to the bureau after 30 days in hospitalized cases of extended duration.

(c) Form CA 20 pertaining to ROTC and CAP members should be submitted to the appropriate district BEC office through the local commander of the unit concerned. Air Force civilian personnel officers will, upon request, assist the claimant and the unit commander in carrying out their responsibilities.

(d) Payment for hospitalization not approved by BEC is the responsibility of the person receiving the care and will be collected locally. Sections 815.74 and 815.86, as appropriate, applies.

12. Section 815.50 is amended by revising paragraph (i) to read as follows:

§ 815.50 **Persons eligible for care.**

* * * * *

(i) Civilian seamen in service of ships operated by the Army or Military Sealift Command within the United States and its possessions.

* * * * *

13. Section 815.52 is amended by revising paragraph (a) to read as follows:

§ 815.52 **Certain seamen.**

(a) Civilian seamen in service of ships operated by the Army or Military Sealift Command outside the United States and its possessions may be provided medical care upon presentation of written authorization from the ship's master or appropriate Army authority (where the ship is in the service of the Army) or other administrative authority in case of Military Sealift Command ships. Seamen with injury or disease incurred in the course of employment should be administered as BEC beneficiaries (subpart E). Dental care is limited to relief of emergencies.

* * * * *

14. Section 815.60 is revised to read as follows:

§ 815.60 **Department of State beneficiaries.**

(a) *Outside the Continental United States.* (1) Officers and employees (U.S. citizens) of the agencies listed in this subparagraph serving abroad and dependents residing abroad with their sponsor may be provided medical care (including physical examinations and immunizations) in Air Force medical facilities at the expense of the State Department. Dental treatment at State Department expense is authorized only for conditions resulting in hospitalization or when required for posthospitalization follow-up.

(i) Department of State.

(ii) U.S. Information Agency (USIA).

(iii) U.S. Agency for International Development (AID). (AID contractor employees and their dependents are not entitled to medical care at State Department expense.)

(iv) Foreign Agriculture Service, Department of Agriculture (USDA).

(v) Federal Aviation Administration (FAA).

(vi) Bureau of Public Roads, Department of Commerce.

(vii) U.S. Geological Survey employees detailed to an oversea assignment under AID auspices.

(viii) Staff members of the Peace Corps. (Peace Corps volunteers, volunteer leaders, and their dependents are not included here.)

(ix) Such other agencies as may from time to time be included in the Foreign Service's Medical Program.

(2) Except in an emergency, medical treatment must be authorized in writing by a principal or administrative officer of an established State Department foreign service post before treatment is initiated. In an emergency, such approval will be obtained as soon as possible.

(3) Elective medical or surgical treatment will not be authorized unless the hospital commander concerned believes that the patient requires such elective treatment to adequately perform his assigned duties and return to the United States for medical reasons would otherwise result. Dental care is limited to relief of emergencies.

(4) Persons specified in subparagraph (1) of this paragraph requiring hospitalization for a prolonged period may be returned to the continental United States upon the written request of the sponsoring agency.

(5) Dependent patients requiring prolonged hospitalization, who decline evacuation, will be released to the custody of their sponsor. Readmission for the same condition is authorized only to prevent loss of life or undue suffering.

(6) Authorization for medical care of dependents at State Department expense normally is limited to 120 days for each illness or injury. The 120 days cover the days for which expenses for treatment are incurred and need not be consecutive. Medical care beyond the 120 days may not be provided at State Department expense, except upon written authorization of the principal or administrative officer of the foreign service post concerned.

(7) If persons listed in subparagraph (1) of this paragraph are furnished medical care which is not authorized at State Department expense, § 815.74 applies.

(8) Problems encountered in collecting locally from officers, employees, or dependents hospitalized for care not authorized at State Department expense will be referred to the immediate supervisor of the officer, employee, or sponsor.

(b) *Within the continental United States.* Upon prior written request of the State Department medical director (or appropriate official of the agency concerned), the following medical services may be provided in Air Force medical facilities within the continental United States:

(1) Pre-employment physical examinations and necessary immunizations of applicants for appointment as officers and employees in the foreign service of the agencies listed in paragraph (a)(1) of this section.

(2) Pre-embarkation and periodic physical examinations and immunizations for officers, employees, and eligible dependents. The written request will include instructions for disposition of the SF 88, "Report of Medical Examination," and SF 93, "Report of Medical History."

(c) Upon written authorization provided by the State Department medical director, or a principal or administrative officer of the foreign service post concerned, persons listed in paragraph (a)(1) of this section may be provided medical care in the continental United States at State Department expense for illness or injury incurred overseas.

15. Section 815.61 is amended by revising the introductory text to read as follows:

§ 815.61 **VA employees and their dependents in oversea office.**

U.S. citizen employees of VA assigned to the oversea U.S. regional office, Republic of the Philippines, and their dependents, may be provided medical care, except as indicated in paragraph (a) of this section. The U.S. VA Regional Office, APO San Francisco 96528, will provide written authorization for care for beneficiaries mentioned above prior to their admission and will furnish evacuation and disposition instructions for patients being returned to the continental United States by aeromedical evacuation. In an emergency, approval will be obtained in writing as soon as practicable.

* * * * *

16. Section 815.62 is revised to read as follows:

§ 815.62 Peace Corps volunteer personnel and their dependents.

(a) *Within the continental United States.* (1) Peace Corps volunteer applicants (volunteers and volunteer leaders) may be provided preselection physical examinations at Air Force hospitals and "Class A" dispensaries.

(i) The above-mentioned persons will apply to the medical installation for appointment, with: a letter of authorization, SFs 88 and 93, detailed instructions regarding examinations required, necessary consultations, and disposition of the two forms.

(ii) Air Force physicians are not required to assess the qualifications of individuals.

(iii) Hospitalization is not authorized in conjunction with these examinations.

(iv) Immunizations are authorized upon special request of the Peace Corps.

(2) Upon request of the Peace Corps, separation or other special physical examinations may be provided for volunteers and volunteer leaders, and dependents of volunteer leaders. Instructions enumerated above apply.

(3) Medical care for illness or injury occurring during the training period may be provided volunteers and volunteer leaders (but not dependents of volunteer leaders) upon approval at departmental level. All such requests should be referred by the most expeditious means to HQ USAF/SGHM.

(b) *Outside the Continental United States.* (1) Volunteers, volunteer leaders, and dependents of volunteer leaders, and Peace Corps trainees may be provided medical care at Peace Corps expense when requested in writing by a representative or physician of a Peace Corps foreign service post. In an emergency, approval will be obtained in writing as soon as possible.

(2) Volunteers and volunteer leaders, and the dependents of volunteer leaders, may be provided termination physical examinations. In most cases these examinations will be conducted by Peace Corps staff physicians; however, assistance may be requested for ancillary services. Reimbursement for the examination, in whole or in part, will be at the full outpatient rate for each individual. Request for payment will be sent to the Peace Corps, Medical Program Division, Washington, D.C. 20525.

§ 815.70 [Amended]

17. Section 815.70 is amended by correcting the reference to "SF–89" in paragraphs (a)(1) and (b)(1) to read "SF–93."

§ 815.71 [Amended]

18. Section 815.71 is amended by changing the office symbol reference in paragraph (b) to read "HQ USAF/SGHC."

19. Section 815.72 is revised to read as follows:

§ 815.72 Secret Service special agents.

Upon presentation of a letter of authority from the Chief, U.S. Secret Service, special agents of that agency may be provided routine annual physical examinations in Air Force medical facilities. The examinations will be conducted and recorded in the same manner as the periodic medical examinations provided nonflying officers. Examinations will be conducted on an outpatient basis only. If hospitalization for diagnostic purposes is considered desirable, a statement to that effect is placed in item 73 or 75, as appropriate, of the SF 88. The SF's 88 and 93 (one copy of each) are forwarded to the Chief, U.S. Secret Service, Treasury Department, Washington, D.C. 20220.

§ 815.73 [Amended]

20. Section 815.73 is amended by changing the reference to "SF–89" to read "SF–93" in paragraphs (a), (b) and subparagraphs (1) and (2) of paragraph (c).

21. Section 815.74 is revised to read as follows:

§ 815.74 Department of Defense and other U.S. Government agency employees paid from appropriated and nonappropriated funds and their dependents outside the United States.

(a) Unless otherwise specified in this part, U.S. citizens who are employees of the Department of Defense or other Federal agencies (paid from appropriated or nonappropriated funds), and their dependents, stationed outside the United States, may receive medical care in Air Force facilities. Routine dental care is on a space available basis within capabilities as determined by the base dental surgeon. When capabilities do not exist dental care will be limited to relief of emergencies. (In Puerto Rico, only those serving under a current transportation agreement are eligible for such medical and dental care.)

(b) Non-U.S. citizen civilian employees of the Department of Defense paid from appropriated or nonappropriated funds and their dependents may receive medical care in Air Force medical facilities when civilian facilities are not available or are not adequate. Charges will be imposed at the special reimbursement rate per inpatient day and at the special outpatient rate per outpatient visit as prescribed in AFR 168–7 except where:

(1) It is determined by the oversea major commander that salary rates paid non-U.S. citizen personnel are inadequate for a charge at the special reimbursement rate. In such instances, the only charge will be for subsistence.

(2) Other official agreements are made to provide medical care without charge.

(c) U.S. citizen employees of the Department of Defense or their dependents may be returned to the continental United States in a patient status. Before transfer, the patient or next of kin will make arrangements for continuing the required medical care in the continental United States.

(d) Subpart E of this part applies when an employee, paid from appropriated funds, is a potential BEC beneficiary.

22. Section 815.75 is revised to read as follows:

§ 815.75 Federal civilian employees health program.

Civilian employees of the Government paid from appropriated funds, and employees of Government-owned and controlled corporations are entitled to outpatient type care for on-the-job illnesses and injuries and for other outpatient care as set forth below. Employees on temporary duty at locations other than their permanent duty station are entitled to the same outpatient type care.

(a) Preemployment physical examinations, including related medical services required to complete the examinations.

(b) Immunization of employees and their dependents when authorized by AFR 161–13.

(c) Examinations following sickness absenteeism, when indicated.

(d) Examinations, when indicated, upon request of the employee's superior or competent medical authority.

(e) Periodic examinations to determine effect of environment.

(f) Emergency care for nonservice connected illness or injury. When admission is for 24 hours or more, personnel will be administered according to § 815.86 unless they are otherwise entitled to such care. Employees who are injured or become ill while on temporary duty may be transported in the aeromedical system when a medical reason exists and commercial transportation is not available. Transportation is chargeable to the accounting classification appearing on the employee's TDY orders.

(g) Treatment of minor illnesses during work hours when necessary to alleviate pain or when illnesses would require a disproportionate amount of time lost from the job.

(h) Upon the specific request of a local physician, special treatments on an outpatient basis are permitted to prevent loss of time from duty. Medicines needed for such treatments will be furnished by the employee, but will be administered without charge.

(i) Supplemental care is authorized, utilizing funds locally available to the medical facility, in performing special fitness-for-duty type examinations for civilian employees now on duty as well as for applicants for employment. In each instance, the examination should be justifiable on the ground of being necessary to determine if the physical condition of the employee or applicant for employment, such as, for example, physically handicapped persons, is commensurate with or will be aggravated by employment or will jeopardize the safety of the individual or his fellow employees. In each instance, there should be no otherwise available local Government personnel and facilities adequate to perform the particular examination.

23. Section 815.76 is revised to read as follows:

§ 815.76 Physical examinations for special categories of personnel.

Examinations are confined to those required by Air Force or major command directives and examinations considered necessary by the medical facility commander. When physical examinations are beyond the capability of the Air Force medical facility, every effort should be made to have the examination performed by another uniformed services facility. Supplemental care is authorized, when necessary, using funds locally available to the medical facility.

(a) Preemployment and periodic physical examinations may be provided for:

(1) Contract food service employees.

(2) Base exchange employees and base exchange concessionaire employees.

(3) Officer, noncommissioned officer, and service club employees.

(4) Schoolteachers when employed on base or in oversea areas when employed in Armed Forces schools operated by a U.S. military department.

(5) Employees of civilian contractors when employed in a position that requires exposure to occupational hazards, that is, laser energy, toxic substances, etc., to such a degree that special physical examinations are required.

(b) Domestic servants employed by Armed Forces personnel may be given health inspections and immunizations in Air Force medical facilities at Government expense when required by command directives as a condition of employment. In instances outside the United States where health inspections and immunizations are not required as conditions of employment, these services may be provided without charge, upon the request of the sponsor, when the local director of base medical services deems that their provision is in the best interest of the health of the command. Health inspections are performed to insure that communicable disease will not go undetected at an Armed Forces installation. Medical care is not authorized in connection with these health inspections and only those procedures necessary to establish the presence or absence of communicable disease are carried out.

(c) Medical examinations in connection with disability retirement may be furnished civilian employees of all Federal agencies without charge when such examinations are requested by authorized representatives of the U.S. Civil Service Commission.

EXCEPTION: When hospitalization is necessary to the proper conduct of these examinations, subsistence charges will be collected locally from the person concerned. Hospitalization is authorized for diagnostic purposes only, not to correct disqualifying defects.

24. A new § 815.77 is added under Subpart H to read as follows:

§ 815.77 Social Security beneficiaries.

In an emergency, beneficiaries of the Social Security Health Insurance Program for the Aged (Medicare) may be provided hospitalization in Air Force medical treatment facilities within the United States and Puerto Rico. Social Security Medicare benefits are not authorized outside the United States other than in Puerto Rico. Emergency services under Medicare are defined as those services that are necessary to prevent death or serious impairment of the health of the individual, and which, because of the threat to life or health, necessitate the use of the most accessible hospital available that is equipped to furnish such services. Benefit payments under Medicare for emergency services can be made for only that period of time during which the emergency continues. Therefore, when the emergency is terminated and it is permissible from a medical standpoint, the patient should be discharged or transferred to a hospital participating in Medicare. The Social Security Administration local office will be notified as soon as possible after emergency admission of a social security beneficiary. DD Form 7 or 7A will be forwarded to HQ USAF/SGHC for central collection at the full reimbursement rate (include Medicare number and home address on the forms).

25. Section 815.80 is revised to read as follows:

§ 815.80 American National Red Cross personnel, their dependents, and other officially recognized welfare workers.

Such persons are authorized medical care subject to applicable conditions indicated below:

(a) *Red Cross personnel.* (1) Uniformed and nonuniformed, full-time, paid professional field and headquarters staff when on duty with a uniformed service.

(2) Uniformed, full-time, paid secretarial and clerical workers on duty outside the continental United States.

(3) Nonuniformed, full-time, paid secretarial and clerical workers on duty in Red Cross offices at installations within the United States, and volunteer workers, uniformed and nonuniformed, both within and outside the continental United States. (Medical care for these categories of personnel will be limited to care for injuries sustained in the course of performance of their duties at uniformed services facilities.)

(b) *Dependents of Red Cross personnel.* Dependents of Red Cross personnel listed in paragraph (a)(1) and (2) of this section are authorized medical care on a space available basis when accompanying their sponsors outside the United States.

(c) *Other officially recognized welfare workers and non-Red Cross volunteer workers.* For injury sustained in the course of performance of their duties at uniformed services facilities.

26. Section 815.82 is amended by revising the introductory text of paragraph (e), adding a sentence to the end of subparagraph (4) of paragraph (e), and adding new paragraphs (f) and (g) to read as follows:

§ 815.82 Alien scientific and technological specialists; employees of commercial airlines; civilian employees of "Cost-Plus-A-Fixed-Fee" contractors; and certain civilians (U.S. citizens) outside CONUS.

* * * * *

(e) The following personnel who assist the oversea commander in accomplishing his mission may be furnished emergency hospitalization and medical treatment. Reimbursement for hospitalization will be obtained whenever the recipient has health or medical insurance which covers the type of medical care provided. Where the recipient has no health or medical insurance coverage, the charge will be for subsistence only. Medical care is not authorized during delays en route except when such delays are for the convenience of the Department of Defense or the Department of State:

* * * * *

(4) Representatives of the United Service Organization, other social agencies, and educational institutions. (Exception: Paragraph (f) of this section.)

* * * * *

(f) Hospitalization and medical care on a space available basis may be provided USO professional personnel (oversea area executives, club directors, and associate club directors) and their accompanying dependents without charge (except subsistence which will be collected locally).

(g) Persons listed in paragraphs (e) and (f) of this section may be furnished immunizations prior to departure from CONUS at no charge.

27. Section 815.85 is revised and redesignated to § 815.86 and a new § 815.85 is added to read as follows:

§ 815.85 Claimants whose claims are administered by Federal departments and claimants who are proposed beneficiaries of private relief bills.

(a) *Air Force.* So the nature and extent of the injuries or disabilities claimed may be determined, civilian claimants may be furnished medical examinations and hospitalization incident thereto, without charge except for subsistence, upon written request from the Air Force activity responsible for administering the claim. Subsistence charges will be collected locally.

(b) *Other Federal departments.* So the nature and extent of the injuries or disabilities claimed may be determined, civilian claimants may be furnished medical examinations without charge upon written request from the Federal department responsible for administering the claim. When hospitalization is necessary to the proper conduct of these examinations, DD Form 7 will be forwarded to HQ USAF/SGHCA for reimbursement action.

(c) *Private relief bills.* So the nature and extent of the injuries or disabilities claimed may be determined, claimants who are proposed beneficiaries of private relief bills based on injuries or disabilities allegedly arising from the operation

of the defense establishment may be furnished medical examinations and hospitalization incident thereto, without charge except for subsistence. Subsistence charges will be collected locally.

§ 815.86 Persons not included elsewhere.

(a) Any person may be admitted to an Air Force medical facility in an emergency upon the approval of the hospital commander or his designated representative (§ 815.3(b)). The full reimbursement rate specified in AFR 168–7 applies and will be collected locally from the individual. If collection cannot be accomplished, accounts should be processed according to AFM 168–4, chapter 10.

(b) Civilian patients hospitalized as a result of natural disaster, as defined in AFM 355–1, will be billed for subsistence only. There will be no charge for outpatient care.

28. Section 815.90 is amended by adding new paragraphs (c), (d), and (e) to read as follows:

§ 815.90 The Secretary of the Air Force and designees.

* * * * *

(c) The Secretary of the Air Force authorizes former Presidents of the United States, and their wives, widows, and minor children to receive medical care in Air Force medical facilities without advance written approval. Medical facilities will immediately notify HQ USAF/SGH of persons treated under this authorization. At the time of treatment, SGH will determine the charges (if any).

(d) The Secretary of the Air Force authorizes active members of the U.S. Senate and of the U.S. House of Representatives (dependents excluded) to receive medical care in Air Force medical facilities without advance written approval. Medical facilities will immediately notify HQ USAF/SGH of persons treated under this authorization. Unless specifically authorized otherwise by the Secretary, the full reimbursement rate or the full outpatient rate, whichever is applicable, will be collected locally from each person.

(e) The Secretary of the Air Force authorizes preadoptive children of active duty and retired members to receive medical care in Air Force medical facilities upon prior application to the medical facility commander and approval of the local staff judge advocate. Care is authorized at the rate charged military dependents.

(1) To apply for medical care as a Secretary of the Air Force designee the sponsor must submit a request to the medical facility commander with the following information:

(i) The name of the prospective adoptee.

(ii) The sponsor's name, rank, social security account number and organization, or address for retirees.

(iii) A notarized, acknowledged, or photostat copy of the legal decree or other instrument issued by a court of law or adoption agency which awarded custody for the purpose of adoption.

(iv) The date of placement and expected date of final adoption.

(v) A statement that no other organization is obligated to furnish medical care for the child.

(2) After the medical facility commander makes his determination as to whether or not the child fits within this class of Secretarial designee, he will indorse the application to the local staff judge advocate for decision. If approved, the application will be so annotated by the staff judge advocate and returned to the medical facility. A copy will be provided to the sponsor and the original retained on file in the medical facility until the adoption is final. It may then be destroyed.

(3) Responsibility for approval will not be delegated below the medical facility commander.

(4) Applications for medical care of foster children, wards, or those under the care of a legal guardian are not considered under this paragraph.

29. Section 815.95 is revised to read as follows:

§ 815.95 North Atlantic Treaty Organization (NATO) personnel in the United States.

(a) Military personnel of the following NATO nations, who in connection with their official duties are stationed in, or passing through the United States, and their dependents residing in the United States with their sponsors may be provided medical and dental care to the same extent and under the same conditions as comparable U.S. military personnel and their dependents: Belgium, Canada, Denmark, France, Federal Republic of Germany, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Turkey, and United Kingdom. "Official" duties in this instance are not limited to NATO duties. NATO military personnel, and their dependents, in the United States as trainees with military assistance and foreign military sales programs are included in this category, unless otherwise specified by agreement between the United States and the NATO country.

(b) Here, "military personnel" and "civilian personnel" mean:

(1) *Military personnel.* Persons belonging to the land, sea, or air armed services of any State which is a party to the North Atlantic Treaty when in the United States in connection with their official duties.

(2) *Civilian personnel.* Civilian person accompanying military personnel as employees of an armed service of the NATO nation concerned, provided that such civilians are not stateless persons nor nationals of any State which is not a party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, the United States. (Medical care for this category is the same as for comparable U.S. civilian personnel.)

(c) Eligible persons stationed in the United States who apply for care will present an appropriate DD Form 1173, "Uniformed Services Identification and Privilege Card." Each card will indicate the services authorized and bear an expiration date. Eligible persons passing through the United States on official duties who require care will present orders or other identification verifying their status.

§ 815.96 [Amended]

30. Section 815.96 is amended by deleting the last sentences of paragraphs (e) and (f).

§ 815.97 [Amended]

31. Section 815.97 is amended by changing the office symbol reference to read "USAF/SGHM."

32. Section 815.98 is revised to read as follows:

§ 815.98 Trainees under the Military Assistance Program (MAP).

Foreign personnel (military or civilian) in the United States or stationed at U.S. Armed Forces installations overseas for training under the MAP may be provided medical care. Medical care from civilian sources may be authorized this category of personnel. Elective medical care, as defined in § 815.2(f), is not authorized. In the rare instance when elective medical care is considered necessary, the complete facts of the case will be transmitted for approval by message to CSAF/SGHM. The notification will include name, grade, country of origin, diagnosis, type of elective medical care, and prognosis.

(a) Transfer between medical facilities of the Armed Forces in the continental United States is authorized when the medical facility to which the person was originally admitted cannot provide required care.

(b) When the hospital commander has determined that a MAP trainee requires medical treatment that will force discontinuance of his training for more than 90 days, the commander of the training facility will be so notified. When it is determined that the trainee is physically or mentally disqualified for further training, the hospital commander will:

(1) Forward information by message to ATC/ACFA with an information copy to CSAF/SMSB. Information will include name, grade, service number, home country, diagnosis, prognosis, expected time and type of disposition, and recommendation on whether return to home country is indicated.

(2) When a trainee is being returned to his home country, ATC/ACFA will request HQ USAF/STPLA to move the patient, with an information copy of request to HQ USAF/SMSB and SAF/USI. Send a copy of the patient's clinical records and all personal effects with the patient.

(c) When dependents of MAP trainees live in the continental United States or on U.S. Armed Forces installations overseas with their principal, they may be provided medical care subject to the availability of space and facilities and the capabilities of the medical staff. Dental care may be provided to the same extent and under the same conditions as for dependents of U.S. military personnel.

33. Section 815.100 is revised to read as follows:

§ 815.100 Movement into the United States to obtain medical care.

(a) Foreign nationals (military or civilian) will not be moved or scheduled for movement into the United States for care in Air Force medical facilities without prior approval of the State Department, the Secretary of the Air Force, and the Chief of Staff, USAF. The responsibility for obtaining diplomatic approval rests with the foreign country concerned.

(b) The request to move a foreign national into the United States to obtain medical care will be processed in the following manner:

(1) The request will be forwarded to HQ USAF/CVAFL, Washington, D.C. 20330 and will include:

(i) Full name and grade of service member.

(ii) The country of which a citizen.

(iii) Results of coordination with chief of the diplomatic mission to the country involved.

(iv) Medical report giving the history, diagnosis, clinical findings, results of diagnostic tests and procedures, and all other pertinent medical information.

(v) Availability of professional skills and adequacy of facilities for treatment in the member's country and oversea Air Force medical facilities.

(vi) Who will assume financial responsibility for costs of transportation and hospitalization.

(2) Upon approval of entry to the United States from the Department of State, the Chief of Staff, USAF, will determine the acceptance of the patient for treatment in an Air Force medical facility. The Surgeon General, USAF, will furnish recommendations on medical aspects of the case based on subdivisions (iv) and (v) of subparagraph (1) of this paragraph and identify the Air Force hospital having capability to provide required care. The Chief of Staff, USAF (STPLA), will task the oversea commander to move the patient to a hospital in the continental United States designated by the Surgeon General, USAF. Complete recoupment for hospitalization and transportation will be indicated. Should the inability to pay for transportation and/or hospitalization become a factor, the Secretary of the Air Force will resolve the matter.

(3) If medical care for a foreign national is approved by the Secretary of the Air Force, it is considered sufficiently important that the need for hospitalization is paramount to all other considerations. Dependents, family members or wives, should not normally accompany the patient unless required as non-medical attendants for care en route or if the attending physician requests their presence. The provisions of hospitalization for a foreign person do not automatically entitle other family members to privileges of the military base, such as base exchange, housing or commissary.

(4) When a case of this nature originates with, or is processed by, an agency outside the Department of Defense, the Defense official transmitting the recommendation or request should include a statement of agreement of the agency involved that any fiscal responsibility in the matter will be borne by the originating agency if necessary.

Subpart L—[Deleted]

34. Subpart L of this part is deleted in its entirety.

(10 U.S.C. 8012, except as otherwise noted)

By Order of the Secretary of the Air Force.

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SUBCHAPTER C—PUBLIC RELATIONS

PART 825—AIR FORCE NEWSPAPERS, BASE GUIDES, AND DIRECTORIES

Part 825, Subchapter C of Chapter VII of Title 32 of the Code of Federal Regulations is revised to read as follows:

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825.1 Purpose.
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825.17 Air Force News Service (AFNS).
825.18 Office of Information for the Armed Forces (IAF), Department of Defense.

AUTHORITY: The provisions of this Part 825 issued under 10 U.S.C. 8012.

NOTE: Part 806 states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the manuals and regulations that are referenced herein.

§ 825.1 Purpose.

This part prescribes policy and procedures for establishing and publishing Air Force newspapers. It defines and provides guidelines on the relationship of the Air Force to commercial enterprise publications, and describes services provided by the Air Force News Service (AFNS) and the Office of Information for the Armed Forces (IAF).

§ 825.2 Air Force newspaper.

(a) *Definition.* An Air Force newspaper is a publication produced at any level of command by personnel assigned to Offices of Information, or through the cooperation of such an office. Its purpose is to provide Air Force news and information not immediately available from other sources to military and civilian members of the Air Force and their families at specific locations.

(b) *Types of newspapers.* There are two types of Air Force newspapers—official and unofficial. (See §§ 825.8 and 825.9.) Air Force civilian employee newspapers and those published by or for Air National Guard and Air Force Reserve units are considered Air Force newspapers, but publication produced by or for members of the Civil Air Patrol, the AFROTC, and sundry fund activities or private associations such as wives' clubs are not. Opinions expressed in Air Force newspapers do not necessarily reflect the official views of the U.S. Air Force. This will be stated in their mastheads.

(c) *Official newspapers.* These are financed by appropriated or nonappropriated funds. Official newspapers will not carry commercial advertising.

(1) Appropriated fund newspapers are subject to printing and duplicating regulations (AFR 6-1) and certain other limitations outlined in this part. They may be published with appropriated funds when approved by HQ USAF, and when funds are available and programmed by the major command headquarters concerned. (See § 825.10.)

(2) Nonappropriated fund newspapers are subject only to the limitations prescribed in this part and are not subject to printing and duplicating regulations.

(d) *Unofficial newspapers.* These are commercial enterprise newspapers published under written agreement by civilian concerns exclusively in the interest of Air Force personnel of a particular base or organization, at no cost to the U.S. Government. A commercial enterprise newspaper is similar to an official newspaper except as noted in this paragraph.

(e) *News magazines.* The provisions of this part apply to news magazines when they serve as Air Force newspapers and so state in their masthead.

(f) *Comic and feature supplements, base guides, and yearbooks.*

(1) A commercial enterprise comic or feature supplement consists of comic strips, cartoons, and features intended for a military audience. It may be distributed as an insert in official or unofficial newspaper provided requirements of this part are met.

(2) A commercial enterprise base guide or directory, usually published annually, is a guide or directory to an Air Force installation and adjacent community and geographical area. It is published without cost to the U.S. Government.

(3) Yearbooks are memento-type publications which, through the use of photographs and narrative, describe the makeup of a particular organization. They are commercial enterprise publications which are supported from advertising revenue and/or purchase of the book by individual members of organizations concerned. Distribution through official

channels is not authorized, except as required for review and/or approval.

§ 825.3 Authorization to establish newspapers.

(a) *Funding the newspaper.* Air Force organizations and installations are authorized and encouraged to establish and maintain newspapers as stated in this part. Appropriated or nonappropriated funds may be used to publish a newspaper when this need cannot be met by an unofficial commercial enterprise newspaper published at no cost to the U.S. Government. Appropriated fund expenditures are authorized to support the Air Force Internal Information program.

(b) *Allocation of funds.* Appropriated and nonappropriated funds will not be mixed to pay the costs of publishing any one issue of a newspaper. However, appropriated and nonappropriated funds may be combined to cover the overall annual costs of publishing a newspaper, as long as they are used to separately fund specific issues of the newspaper. For example, the first 40 issues of a newspaper could be supported by appropriated funds and the remaining 12 from nonappropriated funds, or in any other similar combination.

(c) *Commercial enterprise newspaper costs.* Appropriated funds may not be used to pay any part of the costs of publishing a commercial enterprise newspaper. Costs involved in the preparation and delivery of copy to a commercial enterprise newspaper are those incurred in the normal functions of an Information office, and are not costs connected with the publishing of a newspaper.

(d) *Use of Air Force personnel.* Military and civilian personnel paid from appropriated funds may serve in any editorial capacity for official Air Force newspapers supported by appropriated or nonappropriated funds.

(e) *Use of inserts.* An official paper will not be distributed as an insert in a commercial enterprise newspaper; nor will a commercial enterprise newspaper be distributed as an insert in an official paper. However, a commercial enterprise comic or feature supplement with commercial advertising may be distributed as an insert in an official newspaper provided:

(1) Fair and equal opportunity is provided for responsible persons or organizations to compete for the privilege as provided in § 825.9(c).

(2) The front page of the supplement carries a statement as required in § 825.9(k)(4), and each succeeding page carries a statement in similar type, to the effect that the appearance of commercial advertisements in the supplement does not constitute Department of the Air Force endorsement of the products or services advertised.

(f) *Purchasing Air Force newspapers.* Nonappropriated funds may be used to buy copies of commercial enterprise base newspapers for distribution to Air Force personnel when the commander feels there is insufficient revenue from other sources to make this type of publication feasible. (See § 825.5(c)(3).)

§ 825.4 Who is responsible for Air Force newspapers.

(a) The Director of Information, Office of the Secretary of the Air Force (OSAF), will exercise general supervision over Air Force newspapers and other publications covered in this part in keeping with policies established by the Secretary of the Air Force.

(b) Commanders of major commands are responsible for administrative support and financing of official newspapers, and for approving and monitoring Air Force newspapers, base guides, directories, and yearbooks published in their commands. They will establish procedures for reviewing issues of base newspapers to insure compliance with Air Force standards and directives, and review and maintain a current file of agreements between comanders and publishers of commercial enterprise base newspapers and base guides to insure compliance with Air Force directives.

(c) Base commanders will supervise Air Force newspapers published in their commands and monitor commercial enterprise publications with which they have agreements to insure compliance with Air Force and major command policies and directives.

§ 825.5 General policies for Air Force newspapers.

(a) The intent of this part is to insure that the military and civilian personnel on each Air Force base or installation be served by an Air Force newspaper. The content of the newspaper will provide for equitable consideration of both host and tenant units, and will serve the mutual interest of all military and civilian personnel and their dependents at the installation. Normally, it is not practicable for an installation of fewer than 500 assigned military and civilian personnel to publish a newspaper. Meeting the newspaper needs of such small organizations should be the responsibility of their parent organizations. However, this part does not prohibit the commander of a small organization from publishing a newspaper or unit news sheet from within the unit resources.

(b) The functions of an Air Force newspaper are to increase knowledge and understanding of the Air Force by providing detailed coverage of information of interest and value to Air Force personnel, and to afford the commander an Internal Information channel through which he may provide information on subjects of particular benefit to the Air Force, the commander, intermediate echelons, and his unit.

(c) The following priority sequence for meeting the costs of publishing a newspaper will be followed:

(1) Commanders should first try to satisfy newspaper requirements through the use of commercial enterprise publications.

(2) Where the commercial enterprise method is not feasible, commanders are authorized appropriated fund expenditures to publish Air Force newspapers.

(3) When the above methods of publishing a newspaper are not adequate, nonappropriated funds may be requested locally.

(d) Normally, Air Force newspapers will be issued once a week. However, publication once every two weeks or monthly is authorized if considered by the commander to be in the best interest of the organization.

(e) Air Force newspapers will be classified as follows:

(1) Class 1—Newspapers printed for bases having a total population of fewer than 1,000 military and civilian personnel.

(2) Class 2—Newspapers printed for bases having a total population of between 1,000 and 5,000 military and civilian personnel.

(3) Class 3—Newspapers printed for bases having a total population of between 5,000 and 10,000 military and civilian personnel.

(4) Class 4—Newspapers printed for bases having a total population in excess of 10,000 military and civilian personnel.

(5) Class 5—Command newspapers serving more than one base. This is a special classification established for U.S. Air Force newspaper contest purposes only. Bases which share common support facilities and are separated by a distance of 25 miles or less will not be considered separate bases for the purpose of determining this classification. (The term "civilian personnel" includes classified civilian employees, Department of the Air Force employees, indigenous employees, and employees paid from nonappropriated funds.)

(f) Newspaper publication activities are assigned to the organization's Office of Information, except for those published by dependents' organizations, open messes, and similar groups. The latter should be provided with advice, assistance, and news releases.

(g) The principles of operation of official newspapers are comparable to those governing civilian commercial newspapers published in the United States. Commanders occupy a status comparable to that of civilian publishers and are responsible for the publication of newspapers within their commands.

§ 825.6 Editorial policies.

Every effort will be made to provide information which is compatible with the concept of the Air Force newspaper as the house organ of the commander and to further Air Force objectives. However, overemphasis on management subjects to the exclusion of entertainment will inevitably result in loss of reading audience and negate the newspaper's purpose. A judicious balance is essential in all Air Force newspapers. The selection and writing of news and other articles will be governed by the following general policies:

(a) News coverage will be as complete as practicable. The writing should be factual, objective, and as timely as possible. Articles should be based on reports provided by members of the staffs

of individual Air Force newspapers, the Air Force News Service (AFNS), command news services, the American Forces Press Service (AFPS), official releases, and commercial press associations (where authority to use them exists).

(b) Editorial and news policies of Air Force newspapers will serve to increase knowledge and understanding of the Air Force. There must be no appeal to emotions detrimental to either the interests of the Nation or any Government agency.

(c) Newspapers will distinguish between facts and opinions which may be part of a news story. When opinion is expressed, the person or source will be identified.

(d) Editorial opinion will be identified as such. Editorials originated locally will reflect the policies of the commander and be directed to the interest and welfare of the Air Force.

(e) Newspapers are subject to the security regulations governing Air Force activities.

(f) Editors will conform to the principles of good taste, the laws governing libel and copyright, printing and postal regulations (see § 825.14), and policies of the Air Force. Care should be taken when using material on ideological subjects, world affairs, U.S. foreign policy, and nuclear weapons and missiles to insure the material is consistent with national policy.

(g) Orders and directives will be treated according to their straight news value or departmentalized as official documents published for the information of all concerned.

(h) News on base exchanges and commissaries will be governed by guidelines set forth in AFR 147-7. In no case will comparisons be made of prices, goods, and services available to service personnel through base exchanges and commissaries in contrast to those available on the civilian economy.

(i) Labor union news which might provoke controversy, that is, editorial endorsement or criticism of union actions, recruiting, or discouraging union membership should be avoided.

(j) Book reviews may be used if written objectively so there is no implication of endorsement by the Department of the Air Force or any element of the Department of Defense.

(k) Air Force newspapers may provide space for free and noncommercial listing of personal property or services offered by, and for the convenience of, local base or unit personnel without regard to race, creed, color or national origin.

(l) All Air Force newspapers will carry a front page dateline which includes the volume and issue number, geographical location of the installation (if not prohibited by security limitations) and issue date.

(m) Air Force photographs will carry the credit line "U.S. Air Force Photo." Credit may be given a photographer by name, grade, and editorial position in an official newspaper. The name and grade of the photographer may be used in a commercial enterprise newspaper if there is no inference he is a member of the staff.

(n) AFP 190-42, Armed Forces Newspaper Guide and AFP 190-38, Armed Forces News Style Guide, will be used as the official guides for publishing base newspapers.

§ 825.7 Political campaign news and advertising.

(a) Air Force newspapers published in the 50 States will not contain political campaign news, since this news generally is available in local civilian newspapers. However, it is appropriate for the Air Force to make sufficient current campaign information available to personnel stationed outside the United States to enable them to understand the political scene and vote intelligently. Political campaign news coverage will be governed by the following policies.

(1) Air Force newspapers, news sheets, or news bulletins published in oversea commands where civilian-published, English-language newspapers generally are not available may include factual political campaign news obtained from commercial news services.

(2) Presentation of political campaign news in Air Force newspapers should be impartial and nonpartisan. Great care will be exercised in maintaining a well-balanced handling of materials by, about, or originating from opposing parties or candidates.

(3) Air Force newspapers will not contain editorials dealing with candidates or issues and will not include editorial comments, criticism, analyses, or interpretations of political campaign news.

(4) Air Force newspapers will carry information during election years about voting laws of the various States and territories and editorials supporting the Federal Voting Assistance program. They may also carry nonpartisan appeals from national leaders for military personnel and their dependents to study candidates and issues and then exercise their right to vote.

(5) No Air Force newspaper will conduct a political opinion poll, survey, or straw vote. Commanders entering into an agreement with a civilian enterprise publisher will insure that such a restriction is part of the written agreement.

(6) Political advertisements will not be carried in Air Force newspapers.

§ 825.8 Official Air Force newspapers.

(a) Official newspapers will contain no commercial advertisements inserted by, or on behalf of any private individual, firm, or corporation; neither will they contain any material which implies that any military department or the Department of Defense endorses or favors a specific commercial product, commodity or service.

(b) Official newspapers will not subscribe, even without cost, to commercial or feature wire services whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

(c) Only one official base newspaper will be published to serve the total personnel of an installation.

(d) The statement of publication masthead of official Air Force newspapers will be easily identifiable and will include the names of the officer in charge, editor, members of the editorial staff, and the following statement:

> The (name of the newspaper) is an official Class (1, 2, 3, 4, as defined in this part) Air Force newspaper, published (frequency of publication), on (day of week or, in the case of a monthly or semimonthly, the actual date) for the personnel of (name of Air Force installation), (name of major air command) at (name of geographical location, if not prohibited by security limitations, and post office address). Opinions expressed herein do not necessarily represent those of the U.S. Air Force.

§ 825.9 Unofficial newspapers, base guides, and yearbooks.

(a) Commanders are authorized to enter into agreements for commercial enterprise publications for dissemination of Air Force news to units under their command.

(b) Commercial enterprise publications printed under such agreements may be distributed through official channels without cost to the publisher, provided this will not require additional expenditures of appropriated funds. With the concurrence of the commander concerned, the publisher of such a commercial enterprise publication may arrange for direct distribution to intended Air Force readers.

(c) In selecting a commercial enterprise publication for distribution within his control, each commander will afford a fair and equal opportunity to any responsible bidder who may wish to submit a proposal to publish such a publication. The best obtainable offer and price per copy, if any, will be considered if a charge from nonappropriated funds is expected. The contract period will be for a period not in excess of 2 years.

(d) A commander may afford the opportunity to reputable publishers to sell or give away publications at the activity he commands, except as provided by AFR 35-15, but such publications may not be distributed through official channels nor direct distribution to intended readership be made without his concurrence.

(e) A military installation will be limited to one commercial enterprise publication in each category, except that a commercial enterprise newspaper may carry as an insert or separate inserts, comic and/or feature supplements.

(f) Installations having selected commercial enterprise publications for distribution to Air Force personnel will maintain current written agreements with the civilian publisher. (Part 835 of this subchapter.) Such agreements are drawn up by the base commander and the civilian publisher. Copies of these agreements will be forwarded for file to major commands concerned.

(g) A separate agreement is not required for a commercial enterprise comic or feature supplement intended for distribution with a commercial enterprise

newspaper if the contract with the newspaper publisher stipulates that any such supplements will have the prior approval of the commander.

(h) Complaints of the commander or information officer concerning the publication or distribution of an unofficial commercial enterprise publication will be sent in writing to the publisher with an information copy forwarded through channels to Secretary of the Air Force (SAFOIIB), Washington, DC 20330. Also major commands and SAFOIIB will be informed in advance whenever a commercial enterprise publication agreement is terminated before the full term of the agreement. Reasons for action will be stated in full.

(i) Before signing an agreement for a commercial enterprise publication, a commander will assure the competence, reliability, and responsibility of the prospective publisher.

(j) The content of a commercial enterprise publication is not subject to military control. However, the commander responsible for the agreement with the civilian publisher may suggest the positioning of editorial matter and military photographs within the newspaper. In addition, he has the authority and responsibility to prohibit circulation within his command of any issue of the newspaper he considers unlawful or prejudicial to good order and discipline. He also has the responsibility and authority to prohibit the distribution of a commercial enterprise publication carrying an advertisement which he determines would not be in the best interest of his command. Commanders should acquaint publishers with whom they have a distribution agreement with these criteria to avoid the acceptance of advertising which would be detrimental to the accomplishment of the military mission or in any way imply condonement of or indorsement of such activity. When such a ban is invoked the commander will give written notice to the publisher informing him of such action, and stating what he must do to have the prohibition lifted. SAFOIIB will be informed as directed in paragraph (h) of this section.

(k) A commander who authorizes distribution of a commercial enterprise publication within his command will insure that the following practices are observed:

(1) A commercial enterprise publication will not state that it is an official publication of the Air Force, nor use the name, seal, insignia, or emblem of the Air Force, command, base, or unit in any manner that might imply it is an official Air Force publication. The name of the base will not be included in the dateline of a commercial enterprise newspaper but may appear in the flag if the words "Air Force Base" or "AFB" are not included.

(2) Air Force military personnel on extended active duty and Air Force civilian personnel may not serve on the editorial staff of a commercial enterprise publication or authorize their names to be carried in its masthead. This policy does not prohibit news releases through normal channels, nor does it prohibit contributions by military and civilian personnel or articles or military photographs, with bylines, to commercial enterprise publications without reimbursement. No editorial title may be attached to the byline, and the material cannot imply that the author has an official position on the publication.

(3) All news and information made available by the Air Force to a commercial enterprise publication will be made available equally to any other publisher who requests it.

(4) The title masthead of commercial enterprise newspapers should be easily identifiable and should include the name of the newspaper, the volume and issue number, the geographical location of the installation (if not prohibited by security limitations), and the day of the week published. The following statement in 8-point bold, if available, but in any case no smaller than the main body type, will be printed on the front page or cover of each commercial enterprise newspaper, supplement or insert.

The (name) is an unofficial newspaper published (frequency of publication) in the interest of personnel at (name of Air Force installation) of (major command). It is published by (name of publisher), a private firm (or individual), in no way connected with the Department of the Air Force. Opinions expressed by publishers and writers are their own and are not to be considered an official expression by the Department of the Air Force. The appearance of advertisements, including supplements and inserts, in this publication does not constitute an endorsement by the Department of the Air Force of products or services advertised.

(l) The front cover of a commercial enterprise base guide or directory will carry the name of the civilian publisher prominently just above the disclaimer. The word "guide" or "directory," which appears on the front page or cover, will be preceded by "unofficial" in type at least as large as that in which the word "guide" or "directory" is printed. The format for the guide or directory will be designed so that the publication cannot be mistaken for an official guide or directory. The following statements are required on the front cover of each unofficial directory or base guide:

Published by (name of publisher), a private firm (or individual), in no way connected with the Department of (insert appropriate military department). Opinions expressed by the publishers and writers herein are their own and are not to be considered an official expression by the Department of (insert appropriate military department). The appearance of advertisements in this publication does not constitute an endorsement by the Department of (insert appropriate military department) of the products or services advertised.

NOTE: If the standard (or similar) format for an unofficial directory, or base guide is used for a civilian enterprise area guide, any neighboring city, town, or area may salute a military activity. In the title on the front cover, the name of the military activity shall be subordinate to that of the city, town, or area. On the inside front cover or just after the title page, the guide may carry pictures of the city, town, or area officials, along with messages from them to base or post personnel and visitors. On subsequent pages the guide may carry pictures of military officials. These may be accompanied by biographical information but not by messages from these officials.

(m) In addition to the conditions previously set forth in this part, the agreement between the commander and the publisher of the guide or directory will include the following:

(1) No organizational charts or listings of the command will be included in the publication.

(2) The publication will not contain the base telephone numbers of personnel, or organizational elements, or the home addresses and telephone numbers of personnel. At the discretion of the base commander, emergency and service numbers, that is, hospital, security police, fire, etc., and an alphabetical listing of personnel may be included.

(3) On one of the inside pages, the publication date (month and year) and the publisher's name, permanent address, and telephone number will be shown plainly.

(4) Neither the name of the installation, organization, nor a military post office address, may be included in the publisher's letterhead or mailing address.

(5) Reference to base exchanges and commissaries in guides or directories will contain only the location and hours of operation.

(n) Base or equivalent commanders concerned may authorize publication of base or organization unofficial yearbooks provided they do not contain information determined to be of possible value to a potential enemy. Types of such information include, but are not limited to:

(1) Detailed biographical data of other than key personnel.

(2) Information on special combat equipment.

(3) Detailed manning and specialties of key combat and support units.

(4) Other detailed air order of battle data.

§ 825.10 Appropriated fund newspapers.

(a) To establish an appropriated fund newspaper or to convert a civilian enterprise or nonappropriated fund newspaper to one using appropriated funds, the major command concerned must first obtain approval of the Secretary of the Air Force.

(b) An activity must have more than 500 total military and civilian employees to be eligible for an appropriated fund newspaper. The publication will also be governed by the following:

(1) A ratio of one copy to each three members of the total complement is the maximum number of newspapers which will normally be approved. If a greater number of copies is necessary to carry out the newspaper's function, specific and conclusive justification must be submitted with the annual requests for appropriated funds.

(2) Appropriated funds may be used for special expanded issues for such occasions as Armed Forces Day, Easter,

Thanksgiving, and Christmas. (See § 825.13.) Annual printing budget requests will cover the costs of these special issues and be made concurrently with other budget requests.

(3) Air Force appropriated fund newspapers are items of printing, and appropriated printing funds will be cited for the cost of contracts for printing services.

(4) Commanders are authorized to contract for newspapers on an annual fiscal year basis.

(5) The commercial enterprise method of publishing a base newspaper should be reexplored prior to renewing printing contracts for appropriated fund papers already established.

§ 825.11 Commercial advertising.

(a) To be acceptable for on-base distribution through official channels, no advertising in commercial enterprise publications shall be worded or phrased to give the reader the impression that the Air Force in any way endorses, guarantees, or sponsors any product or service. Advertisements will not be carried that imply discrimination against any person because of race, religion, national origin, or sex.

(b) The publisher of a civilian enterprise publication will be requested to place his readers and advertisers on notice of the requirements listed above by prominently displaying in an appropriate location of the publication the following statement:

> Everything advertised in this publication must be made available for purchase, use or patronage without regard to the race, creed, color, national origin, or sex of the purchaser, user, or patron. A confirmed violation or rejection of this policy of equal opportunities by an advertiser will result in the refusal to print advertising from that source.

(c) Advertisements which appear to be editorials or news stories may be confused as such by readers and should be clearly labeled, top and bottom, as advertisements in a type size equal to text type or larger.

(d) Advertisers will be requested by the publisher to observe the highest business ethics and applicable laws in describing goods, services and commodities, and the terms of sale, including guarantees, warranties, etc. If credit terms are offered in such advertisements, a clear statement of the total cash price as well as the total cost of credit, including all charges, should be shown clearly in the company's advertisements. If time payments are shown, the number of payments, the amount of each, and the time period should also be shown in order that the reader can easily compute the dollar cost of the loan.

(e) Active-duty Air Force military and civilian personnel are prohibited from soliciting or endorsing advertisements carried in commercial enterprise publications.

(f) Copy or art provided by the Department of Defense or the Air Force may not be used in commercial advertisements to promote the sale of goods or services offered by the advertiser, except as provided by Part 837 of this subchapter.

(g) The unofficial nature of the commercial enterprise publication will be made plain to every person or firm solicited for advertising. Any brochure or letter from the publisher to a prospective advertiser must make this clear.

(h) Advertisements must conform to the principles of good taste, and the amount of space in each issue used for advertisements must not detract from the primary purpose of the publication which is to provide news and information of particular interest to Air Force military and civilian personnel.

(i) The monthly ratio of advertising copy to news copy in commercial enterprise base newspapers should average:

(1) 4–8-page newspaper, 50 percent advertisements.

(2) 12–16-page newspaper, 55 percent advertisements.

(3) 20–24-page newspaper, 60 percent advertisements.

(4) More than 24-page newspaper, 65 percent advertisements.

§ 825.12 Printing and production standards for official papers.

Official Air Force newspapers will be printed commercially, except in locations where commercial sources are not available. At these locations, Air Force printing plants or duplicating activities may be used if existing production facilities are adequate to provide for newspaper production in addition to all official business.

(a) The following weekly maximum allowances for paper are established for official Air Force newspapers:

Class newspaper:	*Total paper allowance per copy (square inches per week)*
1	374
2	748
3	1,496
4	2,992

Newspapers issued twice monthly may increase their paper allowance in proportion to the weekly allowance. For example, a Class 1 newspaper issued twice a month may have a paper allowance of 748 square inches. To meet local printing and paper problems, newspapers may use various page sizes so long as they remain within the maximum limit of paper allowance authorized for their classification.

(b) Specifications prepared for printing official Air Force newspapers will be written to obtain maximum economy consistent with the needs of the Air Force. The following Congressional Joint Committee on Printing (JCP) standards will be used when specifying paper stocks for official Air Force newspapers.

(1) Paper produced by letterpress will be printed on standard newsprint, natural shade, not to exceed 64-pound stock (weight basis 24×36″—1,000) as specified in JCP Specification A10.

(2) Paper produced by the offset process will be printed on offset book, not to exceed 100-pound stock (weight basis 25×38″—1,000), as specified in JCP Specification A60.

(c) The use of illustrations is encouraged, but their use will not exceed 50 percent of the total weekly space allowance. Illustrations or material supplied without cost to the newspaper in matrix or photographic form are not chargeable against the illustration space limitation.

§ 825.13 Standards for use of appropriated funds.

(a) In addition to those standards prescribed in § 825.12, all Air Force newspapers printed from appropriated funds are subject to the following: Air Force newspapers printed from appropriated funds will be limited to one color (black), except that a maximum of four issues per year may be published in one additional color for Easter, Thanksgiving, Christmas, Armed Forces Day, or similar occasions. Such special issues may be printed with one additional color as an overprint, a separately printed cover, or on a double-page center section. Black is considered a color when determining the use of two colors in Air Force newspapers.

(b) Armed Forces Day issues may be printed in twice the normal number of pages and three times the normal number of copies. Any combination of these limits is permissible. For example, an issue may have the normal number of pages and be published in six times the number of copies.

§ 825.14 Mailing newspapers.

(a) Air Force newspapers containing no commercial advertising may be mailed under the "Postage and Fees Paid" indicia (AFR 182–15). Newspapers not meeting these criteria are authorized for mailing to addresses in § 825.15, and to U.S. Government addressees who need to receive copies for operational purposes. Newspapers sent through the mails must be folded (not rolled, stapled, or taped) and enclosed in an envelope or wrapper.

(b) Air Force newspapers transmitted through the mails will conform to the provisions of section 1302 of Title 18, The United States Code. Specifically, newspapers will avoid mention of lotteries or games of chance of any kind. The penalties for mailing newspapers containing such information call for fines up to $1,000 or 2 years' imprisonment.

(c) When mailing newspapers, consider both needed speed of delivery and economy in determining the type of service used. For example, airmail should not be used when military official mail or first-class service would provide delivery to addressee within acceptable time limits. Personnel making the determination should:

(1) Be aware of transit times and costs of moving various classes of mail (AFM 10–5).

(2) Carefully weigh the timely news value against cost of mailing.

(3) Monitor the mailing to insure the appropriate type of mail service is being

used and that newspapers are properly packed and addressed.

§ 825.15 Distribution of Air Force newspapers.

(a) Issues of each Air Force newspaper will be distributed on its publication date as follows:

(1) One copy only to: Secretary of the Air Force (SAFOIIB), Washington, D.C. 20330.

(2) If subscribing to American Forces Press Service, two copies to: American Forces Press Service, 1117 North 19th Street, Arlington, VA 22209.

(b) Newspaper distribution lists will exclude persons or organizations not affiliated with the base of origin and those without official interest in the publication. Exception may be made when a written request is received, and when it is determined to be in the best interest of the Air Force to include the requester on the distribution list. Copies of such requests will be kept on file.

(c) Newspaper distribution lists will be revised at least once a year to insure they are up to date and accurate.

(d) All requests for Air Force newspapers by individuals or organizations unrecognized by the base information officer or the commander as having legitimate requirement will be forwarded for action to Secretary of the Air Force (SAFOIIB), Washington, D.C. 20330.

(e) A central office (HQ USAF (AFCVFB)) has been established by the U.S. Air Force to handle requests made by foreign diplomatic missions or attachés for Air Force newspapers.

§ 825.16 Annual Air Force newspaper contest and awards.

(a) *Period covered.* The contest is an annual worldwide competition among Air Force newspapers published under the provisions of this part. Contest periods are from January 1 through December 31. Awards recognize newspaper effectiveness.

(b) *Awards for best newspapers.* (1) Awards for official and commercial enterprise papers consist of plaques for first-, second-, and third-place winners in each of five classes in each category. The plaques, for permanent retention by the winning newspaper, will bear signatures of the Secretary of the Air Force, Chief of Staff, and Director of Information. Funding for the plaques will be from appropriated funds.

(2) The Chief of Staff presents the plaques to editors or representatives of official and commercial enterprise newspapers winning first place. This ceremony takes place in the Pentagon shortly after announcement of the judges' decisions (usually in mid-February).

(3) Second- and third-place plaques are mailed to major commands.

(c) *Who is eligible.* (1) Air Force newspapers in all classes are eligible to compete provided they meet the requirements stated in this part.

(2) Newspapers must have been in continuous publication for at least 6 months of the contest year.

§ 825.17 Air Force News Service (AFNS).

AFNS is an activity of the Office of Information, Office of the Secretary of the Air Force. Though use of AFNS is not mandatory, information officers and editors are urged to give it maximum use. AFNS material is prepared and produced with careful attention to the support of Air Force objectives.

(a) *Services provided.* (1) Air Force news emanating from HQ USAF is mailed weekly, direct to all Air Force newspapers. In addition, AFNS provides news stories on major command activities, feature stories and editorials, a photo service, and articles of interest to wives. Coverage includes information on national events having important Air Force aspects, Air Staff actions of general interest (including personnel matters, housing, regulations, and policies), and material explaining basic Air Force missions and doctrines. Coverage does not include general world or national news, but may include articles or editorials on world affairs of special significance to Air Force members. Periodically, AFNS contains Editor's Notebook, a special feature carrying advice, suggestions, and Air Force newspaper policy for editors. Attention is directed to subjects of top priority in the Air Force and means of developing stories at the local level. Special critiques are available upon request.

(2) News of greatest importance is electrically transmitted to major commands for retransmittal to base editors.

(b) *Who may receive AFNS material.* All newspapers published by or for Air Force personnel are eligible to receive material prepared by AFNS. AFNS will be furnished to commercial enterprise newspapers only through the base information officer concerned. Forward requests for AFNS distribution to: Secretary of the Air Force (SAFOIIB), Washington, D.C. 20330.

(c) *Use of AFNS material.* (1) Normally, AFNS provides material of primary interest to Air Force newspapers. However, the information in AFNS material can and should have a wider use than distribution solely through newspapers. Information officers should examine each AFNS mailing for wider application and use through such media as Air Force radio and television stations, daily bulletins, Commander's Call programs, bulletin boards, etc.

(2) Material of interest to Air Force wives should be passed on by the information officer to the editor of the base wives' club publication, whether the material is used in the base newspaper or not.

(3) Editors are encouraged to rewrite AFNS material to adapt it more closely to the interest of the installation audience, through the use of localized leads and additional local information. Use of AFNS credit lines is encouraged.

(4) Commands may establish news services to provide information of specific interest to command personnel, but such services will not duplicate material provided by AFNS.

§ 825.18 Office of Information for the Armed Forces (IAF), Department of Defense.

(a) *Services provided.* Upon request, this office provides the following press materials and services to Air Force newspapers.

(1) *American Forces Press Service.* A clipsheet, published weekly, carrying text and art which may be included in Air Force newspapers. Illustrations appearing in the press service are provided upon request in matrix form for letterpress newspapers; in electronically cut stencils for mimeograph newspapers; and in preprinted paper masters for multilith-duplicated newspapers. Photo-offset newspapers may use the illustrations as they appear in the press service.

(2) *Commanders Digest.* A publication containing Department of Defense policies, and seat-of-government news and information. Reproduction of contents is authorized.

(3) *Galley Guide.* Published monthly and distributed with the press service as a service to editors of Air Force newspapers. Contains news and professional notes of interest to staff members of Air Force newspapers.

(4) *Armed Forces Newspaper Guide.* A manual for personnel performing editorial duties on Air Force newspapers.

(5) *Armed Forces News Style Guide.* A guide designed to help Air Force newspaper staffs standardize their style by providing guidance on such matters as abbreviations, punctuation, and spelling.

(6) *Advice to Editors.* Advice concerning the organization and operation of service newspapers and detailed critiques of individual Air Force newspapers are available upon request.

(b) *Who may receive IAF material.* (1) All Air Force newspapers are eligible to receive material prepared by IAF. However, a commercial enterprise newspaper should be serviced with IAF material through the information officer of the installation it serves. Commercial enterprise newspapers may not use copyrighted material without approval.

(2) Nonpublishing activities may be provided with IAF press material upon written justification of their need for the service.

(c) *Use of IAF materials.* (1) Materials may be edited or revised by editors of Air Force newspapers as required by newspaper space limitations or as advisable for local appeal.

(2) Material will not be used in commercial advertising in any newspaper.

(d) *Department of Defense awards.* The Assistant Secretary of Defense (Manpower and Reserve Affairs) will make annual Department of Defense Thomas Jefferson awards to newspapers of active military units or installations for professional excellence and outstanding achievements in the accomplishment of their mission. Such awards for Air Force newspapers will be based on nominations submitted by the Department of the Air Force.

By order of the Secretary of the Air Force.

JOHN W. FAHRNEY,
Colonel, U.S. Air Force, Chief, Legislative Division, Office of The Judge Advocate General.

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SUBCHAPTER I—MILITARY PERSONNEL

PART 881—APPOINTMENT IN COMMISSIONED GRADES—RESERVE OF THE AIR FORCE AND UNITED STATES AIR FORCE (TEMPORARY)

Subchapter I of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

Part 881 is revised to read as follows:

Subpart A—General

Sec.
881.1 Purpose.
881.1a Statutory authority.
881.2 Duration of appointment.
881.3 Temporary appointments.
881.4 Responsibility.
881.5 Procurement objectives.

Subpart B—Eligibility Requirements

881.10 Who may apply for appointment.
881.11 Who is ineligible for appointment.
881.12 Former and reserve officers.
881.12a Former officers of the regular Air Force.
881.12b Former officers of any of the services.
881.12c Reserve officers of other Armed Forces of the United States.
881.12d Former rated officers.
881.13 Officer training school and AFROTC graduates.
881.14 Appointment as a ResAF.
881.14a Appointment as a ResAF officer for assignment to the retired reserve and placement of name on the U.S. Air Force reserve retired list.
881.14b Appointment as a ResAF upon removal from the temporary disability retired list (TDRL).
881.14c Posthumous appointments.
881.14d Appointment of USAFR airmen not on EAD as ResAF officers.
881.15 Appointment for immediate entry on active duty.
881.16 Eligibility requirements.
881.16a How to determine grade.
881.16b Award of constructive service.
881.16c Computing and recording total years service date (TYSD), promotion service date (PSD), and total Federal commissioned service date (TFCSD).
881.16d U.S. Air Force (temporary) appointments.

Subpart C—Application and Processing Procedures

881.20 How to apply.
881.21 Processing applications to Air Force Academy and aircrew examining centers.
881.22 Duties of the examining centers.
881.23 Selection of applicants.
881.24 Personnel security investigations.
881.25 Appointing and notifying appointees.

Subpart D—Appointment of Judge Advocate Officers

881.30 Submitting applications.
881.31 Professional qualifications.
881.32 Appointment and reappointment.

Subpart E—Appointment of Chaplains

Sec.
881.40 Application for the Air Force chaplaincy.
881.41 Compensatory professional considerations.
881.42 Ecclesiastical indorsement.
881.43 The chaplain candidate program.

Subpart F—Appointment of Physicians, Dentists, Veterinarians, and Nurses

881.50 How to apply.
881.51 General qualifications for appointment.
881.52 Doctors of medicine.
881.53 Doctors of osteopathy.
881.54 Doctors of dentistry.
881.55 Criteria for appointment of doctors of medicine, osteopathy, and dentistry to grades above first lieutenant.
881.56 Doctors of veterinary medicine.
881.57 Appointment of nurses.

Subpart G—Appointment of Officers in the Medical Service Corps

881.60 Application, processing, and selection.
881.61 Health services administrator (AFSC 9021).
881.62 Other applicants.

Subpart H—Appointment of Officers in the Biomedical Sciences Corps

881.70 Application, processing and selection.
881.71 Dietitian (AFSC 9216A).
881.72 Occupational therapist (AFSC 9226).
881.73 Physical therapist (AFSC 9236).
881.74 Appointment for training.
881.75 Pharmacy officer (AFSC 9241).
881.76 Optometry officer (AFSC 9251).
881.77 Bioenvironmental engineer (AFSC 9121).
881.78 Medical entomologist (AFSC 9131).
881.79 Biomedical laboratory officer (AFSC 9151).
881.80 Aerospace physiologist (AFSC 9161).
881.81 Health physicist (AFSC 9171).
881.82 Clinical psychologist (AFSC 9181).
881.83 Social worker (AFSC 9191).
881.84 Biomedical therapist (AFSC 9261).

AUTHORITY: The provisions of this Part 881 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012; 10 U.S.C. 591, 593, 8067, 8353, 8358, 8359 and 8444, except as otherwise noted.

NOTE: Part 806 states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the manuals and regulations that are referenced herein.

Subpart A—General

§ 881.1 Purpose.

This part states the policies and procedures governing the direct appointment of commissioned officers as Reserves of the U.S. Air Force or as commissioned officers in the U.S. Air Force. It explains the method of application, eligibility requirements, and where to apply for appointment.

§ 881.1a Statutory authority.

The statutory authority for appointments tendered according to this part is contained in sections 591, 593, 1211, 8067, 8353, 8358, 8359, 8444, and 9411 and chapter 103, 10 U.S.C.

§ 881.2 Duration of appointment.

All Reserve of the Air Force (ResAF) appointments are for an indefinite term. All U.S. Air Force (temporary) appointments effected during a war or national emergency will continue for the duration of such war and for 6 months thereafter, unless sooner terminated.

§ 881.3 Temporary appointments.

(a) Appointments in the U.S. Air Force without component (temporary) will be made only according to special instructions issued by HQ USAF, except as stated in paragraph (b) of this section.

(b) Physicians and dentists who are resident aliens or conscientious objectors normally do not qualify for Reserve appointments; however, such persons who have a liability for training and service under the Military Selective Service Act of 1967 may be appointed, if otherwise qualified, as follows:

(1) Applicants who are 26 years of age or over at time of appointment will be tendered temporary appointments in grades specified in § 881.16a(c)(1). Temporary appointments made under this authority terminate upon appointee's release from active duty.

(2) Applicants, including participants in the Armed Forces Physicians' Appointment and Residency Consideration program (Berry plan), who must be appointed on a date that will require acceptance of commission before age 26 will be initially tendered Reserve appointments. The provisions of §§ 881.11 (f) and 881.16(b) are waived in this instance.

(3) Noncitizen applicants must possess a valid Form I-151, "Immigration and Naturalization Service (INS) Alien Registration Receipt Card" (which may be obtained from the local Immigration and Naturalization office), as evidence of lawful entry into the United States for permanent residence. Since reproduction of this form is prohibited, the applicant must submit the following statement signed by an officer, notary public, or other persons authorized to administer oaths:

I certify that I have this date seen INS Form I-151 issued to _____
(Name of applicant)
indicating lawful entry into the United States for permanent residence on _____
(Date)

(c) Nondeclarant aliens who are appointed to commissioned status, may place their present citizenship in jeopardy by executing AF Form 133, "Oath of Office (Military Personnel)." If a nondeclarant alien indicates, while being processed for a commission, that he does not desire to take the oath of allegiance prescribed by AFR 36-39, he may be administered the following oath of service and obedience in the same manner as the AF Form 133:

I, _____, a citizen of _____, and without intention of surrendering such citizenship, having been appointed a _____, do solemnly swear (or affirm) that I will serve the United

States against all their enemies whomsoever, and that I will honestly and faithfully discharge the duties of the office upon which I am about to enter; So Help Me God.

(d) Noncitizen physicians and dentists who receive temporary appointments may be tendered Reserve appointments upon request and submission of proof of citizenship as outlined in § 881.16(b).

§ 881.4 Responsibility.

(a) HQ USAF selects or appoints persons except as may be otherwise delegated:

(1) In grades above captain.

(2) To perform medical, dental, and allied medical duties.

(3) Who are former officers of the Regular Air Force (RegAF).

(4) As chaplains.

(5) As Reserves of the Air Force (ANGUS) based on extension of Federal recognition.

(6) Those removed from the temporary disability retired list (TDRL) by reason of being found physically fit.

(7) As judge advocates.

(b) Air Training Command (ATC) appoints successful graduates of the Officer Training School in the grade of second lieutenant.

(c) Air Force Reserve Officers' Training Corps (AFROTC) appoints as second lieutenants, ResAF, persons who successfully complete the AFROTC program.

(d) Air Force Reserve (AFRES) selects:

(1) Members of the medical services for concurrent Ready Reserve assignments upon approval of HQ USAF.

(2) Former rated officers of any of the services to fill Ready Reserve aircrew positions.

(3) Reserve officers of other services to fill Ready Reserve vacancies. All appointments of judge advocate officers, chaplains, personnel of the medical services, and all appointments above captain require HQ USAF approval.

(4) Air reserve technicians (ART) to fill designated ART positions in all specialties involved. Appointments above captain require HQ USAF approval.

(e) Air Reserve Personnel Center (ARPC):

(1) Appoints officers selected under subparagraphs (1) through (4) of paragraph (d) of this section, and those selected under paragraph (a) of this section when directed to do so by HQ USAF.

(2) Selects and appoints outstanding USAFR airmen under quotas and guidelines established by HQ USAF (§ 881.14d).

(f) Commands indicated in paragraphs (b), (c), (d), and (e) of this section may determine administrative procedures necessary to accomplish the required procurement objective and insure that only properly qualified persons are tendered appointments.

§ 881.5 Procurement objectives.

(a) Appointments will be made by grade and category in numbers required and authorized from time to time by HQ USAF. These authorizations will constitute procurement objectives. AFM 36-1 will be used as a guide in determining the required educational, professional, and technical qualifications for appointments for duty in specialties not specified herein. Appointments will be made only to meet procurement objectives in the categories for which appointments are currently authorized and within the grade ceilings established by law.

(b) Persons selected for appointment must be fully qualified according to criteria in this part, AFM 36-1, and/or other directives. Appointment is not assured merely by reason of meeting the established requirements. Only persons who are best qualified will be appointed.

(c) Appointments will normally be made to fill authorized Ready Reserve position vacancies or active duty requirements.

(d) Outstanding persons in business, scientific, professional, or technical fields who do not meet eligibility criteria, but who have demonstrated through their civilian occupation that they are outstanding in their field, may be appointed upon approval of the Secretary of the Air Force. Generally, they must have attained such prominence in their field or specialty as to be nationally known.

Subpart B—Eligibility Requirements

§ 881.10 Who may apply for appointment.

A person with or without prior military service may apply unless he is ineligible under § 881.11. This authorization includes airmen and warrant officers who are Reserves of the Air Force or members of the Regular Air Force or the United States Air Force (temporary).

§ 881.11 Who is ineligible for appointment.

(a) A commissioned officer of the Armed Forces serving on active duty, except as provided by this part. AFR 36-26 provides for interservice transfer of officers on active duty.

(b) An enlisted member or warrant officer of the Army, Navy, Marine Corps, or Coast Guard serving in the active service of the United States.

(c) An officer, warrant officer, or enlisted member in the Reserve Forces of the U.S. Army, Navy, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service, unless he has obtained a conditional release from his appointment or enlistment and is not on active duty or under orders to report for active duty.

(d) A person who has previously applied for appointment under this part, but was not selected, or who was selected and declined appointment is ineligible to apply for 6 months from the date of notification of previous rejection or declination.

(e) A person disenrolled or eliminated from a training program leading to a commission as an officer for the following reasons unless prior approval is obtained from HQ USAF:

(1) Resignation or dismissal from officer training programs of the Army, Navy, Air Force, Coast Guard, or Merchant Marine, because of military inaptitude, indifference, undesirable traits of character, disciplinary reasons, evasion of a contractual agreement, or declination of a proffered commission. Superintendents of military academies and commanders of officer training programs may recommend waivers only in exceptional cases worthy of consideration.

(2) Elimination from officer training programs of the Army, Navy, Air Force, Coast Guard, or Merchant Marine for lack of academic progress or breaches of the honor code.

(3) Elimination from a civilian-operated military institution by the educational authorities because of violations of the institution's honor code.

NOTE: Requests for determination of the eligibility of applicants disenrolled or eliminated for any of the reasons stated above should be made only in rare cases of sufficient merit to justify consideration. Their applications together with DD Form 785, "Record of Disenrollment from Officer Candidate Type Training," will be referred to USAFMPC (DPMRDS) for review and approval before appointment. If approved, normally an individual will not be appointed until after the date of graduation of the class from which eliminated.

(f) A conscientious objector.

(g) A person who admits or whose records show that he has at any time engaged in any of the activities in AFR 35-62, or who is reasonably believed to have done so.

(h) A person who intentionally fails or refuses to accomplish DD Form 98, "Armed Forces Security Questionnaire," in its entirety. If a medical or dental applicant for appointment is subject to induction and intentionally fails or refuses to accomplish DD Form 98 in its entirety, he will not be appointed; his induction will be handled by the Selective Service System.

(i) A person with a record of conviction (for other than a minor traffic violation) by any type of military or civil court. However, he may request the appointing authority to grant a waiver for other minor violations that are nonrecurrent and are not considered prejudicial to performance of duty as an officer. The applicant must include a request for waiver with his application, stating fully the circumstances of the case. Each request for waiver will be considered on its own merit and evaluated in connection with the National Agency check or other appropriate security investigation.

(j) A former officer, warrant officer, or enlisted member of any of the Armed Forces who has been or is being released from active duty or discharged from the service for one of the following reasons:

(1) Conditions other than honorable.

(2) Unsatisfactory service or failure to meet standards of performance prescribed by the Secretary concerned.

(3) Resignation in lieu of court-martial, reclassification, elimination, or any form of corrective or disciplinary action.

(4) Court-martial or board action initiated because of his inefficiency or misconduct, or for security reasons.

(5) Failure of selection for promotion.

(6) Dropped from the rolls of the service concerned because of confinement to a State or Federal penitentiary or correctional institution, or absence without authority for a period of 3 months.

(7) Failure to meet minimum Reserve participation requirements.

(8) Failure to respond to official correspondence.

NOTE: ARPC and HQ USAF (DPMRDS) may grant waivers of conditions, subparagraphs (7) and (8) of paragraph (j) this section on an individual basis for former rated officers applying under § 881.12d and for former line officers applying under subpart F.

(9) Elimination from the Inactive Status List Reserve Section (ISLRS).

(10) Physical disability.

(11) Any condition for which severance pay is received.

(12) Hardship or national health, safety, or interest reasons.

(13) Any other reason, when appointment would not be in the best interest of the service.

(k) A person on the retired roll of any of the Armed Forces, Public Health Service, Coast Guard, or National Oceanic and Atmospheric Administration.

(l) A cadet of any of the service academies, including the Coast Guard and Merchant Marine, and persons enrolled in a course of training or instruction leading to a commission in any of the Armed Forces.

(m) Any officer who is a deferred officer as defined in 10 U.S.C. 8368, or who has had his name removed from the recommended list under 10 U.S.C. 8377.

(n) A person who will not be available for active duty within 30 days:

(1) From date of acceptance of appointment, when appointment depends upon immediate entry on active duty.

(2) From date of issuance of orders calling him to active duty in time of war or national emergency hereafter declared by the President or by Congress, or when otherwise authorized by law, if appointment is based upon Air Force Reserve requirements and not upon immediate entry on active duty.

(3) Because he is principally engaged or employed in a key position in an essential civilian or government activity related to the defense effort.

(4) Because he is undergoing apprenticeship training in a critical civilian occupation.

(o) A person who has been ordered to report for preinduction medical examination or other appropriate processing usually conducted immediately preceding induction under the Military Selective Service Act of 1967 or who is classified 1-A unless he obtains a statement from his Selective Service Board that he is not scheduled for induction within the following 120 days. A person who has applied and is later classified 1-A may remain eligible for consideration until the date he is notified to report for induction, at which time he becomes ineligible for further consideration or appointment.

(p) A person who would not qualify for retired pay when he reaches age 60.

(q) Normally, a person who, by reason of award of constructive service or prior Reserve commissioned service creditable toward total years of service date, is ineligible for entry on extended active duty because of his inability to complete 20 years' active Federal service before attaining 28 total years of service (not applicable to chaplains).

§ 881.12 Former and reserve officers.

§ 881.12a Former officers of the regular Air Force.

(a) An officer of the RegAF who is honorably separated by reason of unqualified resignation and has a remaining military service obligation (MSO) or unfulfilled contractual agreement may be separated contingent upon his acceptance of a Reserve appointment in the grade to which entitled. An officer with an MSO will then be initially assigned to the Obligated Reserve Section (ORS), ARPC, in a Ready Reserve status. An officer with no MSO but with an unfulfilled contractual agreement will be assigned to the nonaffiliated Reserve Section (NARS-A) ARPC in a standby status. To control contingent resignations, separation from the RegAF and acceptance of the Reserve commission occur on the same date. The special orders effecting discharge also constitute the instrument of appointment as a Reserve of the Air Force (ResAF). In these cases, the effective date specified in the special orders is considered to be the last day of duty as a member of the RegAF and the individual is considered to enter status as a ResAF officer on the following day.

(b) A former officer of the RegAF who has no MSO or unfulfilled contractual agreement and is honorably separated by reason of unqualified resignation may, at the time he tenders his resignation, request an appointment as a ResAF officer. Upon approval of HQ USAF, a person appointed under this authority will be initially assigned to NARS-A, ARPC, in a standby status, unless he applies for a Ready Reserve assignment according to Part 888b of this subchapter. Appointment as a ResAF will be made by a letter of appointment, and acceptance must be accomplished after discharge from the RegAF. Execution of the oath of office as a Reserve officer on the day following discharge will insure continuous commissioned status and permit a person who holds a currently effective aeronautical rating to assume flying activities in the Reserve program without revalidating his flying status orders.

(c) A RegAF officer who does not request a Reserve appointment at the time of his resignation may apply direct to USAFMPC (DPMRDS) and be considered up to 1 year from the date of his discharge. If his application is received within 6 months from his date of discharge, he may be appointed upon letter request. If it is received after 6 months but within the 1-year limitation, he must submit the documents required by § 881.20(a)(1), (3) thru (6), (12), (13), and (17).

(d) Appointment may be made in the permanent or temporary grade in which serving at time of discharge. Constructive service appropriate for the grade will be awarded based on length of active Federal commissioned service and education where applicable. Constructive service will also be awarded for prior service in an active status as a Reserve officer not on extended active duty (EAD) for those years in which minimum participation requirements for retention and retirement were satisfied (minimum of 50 points per year). If an applicant does not have the length of service which would permit the crediting of sufficient constructive service for Reserve appointment in the active duty grade, satisfactory performance in the active duty grade constitutes the basis for award of the minimum amount of constructive service appropriate to the Reserve grade as indicated in paragraph (f) of this section. Constructive service possessed by an applicant that is in excess of that required for the grade in which appointed will be awarded as service in grade and identified as a promotion service date (PSD). No individual will be appointed as a Reserve officer in a grade higher than that in which he served on active duty. Accordingly, constructive service credit in excess of the maximum authorized for the active duty grade will not be awarded regardless of length of actual service. For example, an applicant whose highest activity duty grade was captain must be awarded at least seven but less than 14 years' constructive service.

(e) Air Force policy is to appoint as ResAF officers only individuals who normally may be expected to participate in reserve activities and who will be available for immediate active service. Under current laws, an individual who is preparing for the ministry in a recognized theological or divinity school may not be required to serve on active duty, or to participate in active duty training and service, active duty for training (ACDUTRA), or inactive duty training (INACDUTRA). Accordingly, a former officer of the RegAF who resigns to enter seminary training is not eligible for appointment as a ResAF officer. He may, however, apply for appointment as a chaplain upon meeting the requirements specified in subpart E.

(f) Constructive service:

Line	A. If active duty grade is—	B. Then minimum years of constructive service are—
1	1st lieutenant	3
2	Captain	7
3	Major	14
4	Lieutenant colonel	21
5	Colonel	23

(g) In addition to other requirements, a former chaplain of the RegAF must submit a current ecclesiastical endorsement for appointment as a ResAF. A former chaplain may not be appointed in any other category.

§ 881.12b Former officers of any of the services.

Except for those who are ineligible under § 881.11, former officers of any of the services may be appointed for duty in any specialty for which they are qualified and for which there is a procurement quota. Former officers may be tendered appointments based solely on prior service, except as provided in this part.

§ 881.12c Reserve officers of other Armed Forces of the United States.

A Reserve officer of another Armed Force of the United States not on active duty may be appointed as a ResAF in any grade (or equivalent permanent grade) held as a Reserve of the Armed Force concerned, without appearing before an examining board.

EXCEPTION: Appointment may be made in a higher grade only when the Reserve commission held in the other Armed Force is in other than a professional category (medical, dental, legal, etc.) and the applicant desires and qualifies for appointment in a professional category in the Air Force for which a procurement authorization exists. Grades will be determined according to § 881.16a(c)(1).

He will be awarded a permanent Reserve grade and date of rank (DOR) as determined by applying the amount of his promotion service in his present service to the appointment laws in effect for the service to which he is being transferred: *Provided*, That in addition to the application and allied papers the following requirements are met:

(a) His age does not exceed the maximum age for his grade (see § 881.16(d)(2)(i)).

(b) A Ready Reserve position vacancy exists for which he is qualified.

(c) The commander of the unit of assignment in which the vacancy exists submits a statement requesting his appointment to it.

(d) No Air Force Reserve officer with the required qualifications and residing within a reasonable distance of the assignment is available, volunteers, and will accept the assignment.

(e) He submits a completed AF Form 1288, "Application for Reserve Assignment," and DD Form 1644, "Ready Reserve Service Agreement" (triplicate).

(f) He signs an agreement to be available for active service in the assignment for 3 years.

(g) He has no active duty obligation under the Military Selective Service Act of 1967.

(h) He obtains a conditional release from the other Armed Force or component in which he holds an appointment.

(i) If a rated officer with another Armed Force, he has final approval of the aeronautical rating by HQ USAF before processing the application to completion.

§ 881.12d Former rated officers.

(a) Former rated officers of any of the services (including RegAF officers who did not apply for a Reserve commission within 1 year after resignation may be appointed in a grade held at time of discharge, not above O–4, to fill rated positions in the Ready Reserve. To be eligible for appointment, the applicant must:

(1) Have been on flying status at the time his previous appointment was terminated. He must furnish a copy of his individual flight record.

(2) Be available for, and agree to participate in, a Ready Reserve aircrew position for at least 4 years after being appointed.

(3) Qualify for an Air Force aeronautical rating or return to flying status under AFM 35–13.

(4) Not have had a previous appointment terminated for cause. Normally, the termination of appointment due to nonparticipation or failure to answer official correspondence will not automatically disqualify an individual for appointment.

(5) Meet all criteria for initial appointment as a ResAF officer, except that age may exceed the normal maximum by the number of years of previous commissioned service.

(6) Not have held a permanent Reserve grade higher than O–4 at the time of discharge.

(b) The computation of constructive service for appointment and promotion service date (PSD) purposes is as follows:

(1) A former officer who satisfactorily held the Reserve grade of O–4 will be awarded a minimum of 14 years' constructive service credit or an aggregate of the following, whichever is greater, but not to exceed a total of 16 years:

(i) Active Federal commissioned service.

(ii) All service in an active status as a Reserve officer not on active duty for the years in which minimum participation requirements for retention and retirement were satisfied (50 points minimum per year).

(2) A former officer who satisfactorily held the Reserve grade of O–3 will be awarded a minimum of 7 years' constructive service credit or an aggregate as described in § 881.12d(b)(1) (i) and (ii) of this section, whichever is greater, but not to exceed a total of 9 years.

(3) A former officer who satisfactorily held the Reserve grade of O–2 will be awarded a minimum of 3 years' constructive service credit or an aggregate as described in § 881.12d(b)(1) (i) and (ii) of this section, whichever is greater, but not to exceed a total of 5 years.

(4) Constructive service possessed by an applicant in excess of the amount required for the appointive grade, will be awarded as service in grade and identified as a PSD.

§ 881.13 Officer Training School and AFROTC graduates.

(a) *Officer Training School graduates.* Applicants must have successfully completed the prescribed course and be recommended for appointment by a faculty board (AFR 53–27 and AFM 50–5).

(b) *AFROTC graduates.* Applicants must have successfully completed the prescribed academic and military training requirements (Subchapter H of this chapter).

§ 881.14 Appointment as a ResAF.

§ 881.14a Appointment as a ResAF officer for assignment to the Retired Reserve and placement of name on the U.S. Air Force reserved retired list.

An individual who qualifies for membership in the Retired Reserve under the provisions of AFM 35–7 and does not hold a Reserve commission may be appointed under this section for the sole purpose of assignment to the Retired Reserve. Appointment will be made in the highest grade he has satisfactorily held or is eligible for by law. Former members separated for reasons involving moral or professional dereliction normally will not be tendered an appointment. Eligibility for appointment under this section is not governed by the other conditions outlined in this part.

§ 881.14b Appointment as a ResAF upon removal from the temporary disability retired list (TDRL) (10 U.S.C. 1211).

(a) If a member is removed from the TDRL following a finding that he is physically fit, he must be reappointed to the Reserve grade he held at the time he was placed on the TDRL.

(b) He will be reappointed the day following his discharge from the TDRL and will be awarded the PSD he had when he was placed on the TDRL.

§ 881.14c Posthumous appointments.

A posthumous appointment as a ResAF may be issued in the name of a member of the Air Force who was selected for appointment, or had successfully completed an Officer Training School course and been recommended for appointment by the school's commanding officer, but was unable to accept appointment because of death in the line of duty.

(a) The MAJCOM will, if he considers appointment appropriate, request USAFMPC (DPMRDS) to publish the appointment orders.

(b) No financial benefits will accrue as a result of a posthumous appointment.

(c) Authority: Title 10, U.S.C. chapter 77.

§ 881.14d Appointment of USAFR airmen not on EAD as ResAF officers.

Direct appointment of qualified and deserving airmen not on EAD to officer status and a concurrent Ready Reserve assignment may be made under the following criteria:

(a) *Quotas.* HQ USAF announces fiscal year quotas and any modifications to criteria.

(b) *Restrictions on appointments.* Appointments are subject to the following limitations:

(1) They will not be made in specialties specified in Subparts D through H of this part.

(2) They are restricted to grades of captain and below. They are limited to second lieutenants, except for applicants who have sufficient constructive credit to qualify for higher grades.

(3) An applicant who is age 30 or over and has insufficient constructive credit for appointment in a grade higher than second lieutenant is not eligible for appointment.

(c) *Waivers.* Waiver of requirements is not permitted except as provided in § 881.16(c).

(d) *Eligibility criteria.* In addition to meeting the prescribed moral, citizenship, medical, age, and testing requirements (§§ 881.16 and 881.22) an applicant must:

(1) Have completed:

(i) His MSO or have served on AD (other than ACDUTRA) for 12 months or more. The 12 months' AD need not have been consecutive.

(ii) At least 12 consecutive months in a training category A, B, or D Ready Reserve assignment and be actively participating in training in such a unit or mobilization augmentation position at the time of application and appointment.

(2) Agree in writing that, if appointed, he will meet the training requirements of the training category in which assigned and will remain assigned for 3 years in training category A, B, or D. (Subsequent failure to participate for reasons within his control may result in discharge action under AFR 45–41.)

(3) Not have reached age 40 as of July 1 of the year of selection.

(4) Be a high school graduate or possess a certificate of equivalency. College graduates will be given priority of selection. It is desirable that a noncommissioned officer (NCO) be a graduate of a recognized NCO academy. When a noncollege graduate applies, the commander of the unit possessing the vacancy must certify that a qualified college graduate is not available or, if available, refuses to apply, and that the geographical location of the unit precludes consideration of a college graduate. Noncollege graduates will not be appointed in specialties in which AFM 36–1 specifies a degree is mandatory.

(5) Be tentatively selected for assignment to a vacant lieutenant or captain position in a training category A unit or to an authorized mobilization augmentation position in a Regular Air Force unit. The vacancy is not restricted to the airman's current unit of assignment. However, if an airman is tentatively selected for a position in another unit, he must obtain from the commander of that unit and attach to his application a statement that he is acceptable and the position will be blocked pending final results of the selection board.

(e) *Miscellaneous provisions.* (1) Upon an airman's discharge to accept appointment under this program, his servicing CBPO will forward his FPR to ARPC (DPIDA).

(2) A selectee who is an ART must be informed that if he accepts the appointment he will be separated from his ART position.

§ 881.15 Appointment for immediate entry on active duty.

(a) Persons who are eligible under §§ 881.12c and 881.12d and who meet recall criteria may be appointed for immediate recall to active duty. Appointments in grades above captain will be made only when vacancies exist. Appointments may be made under this authority only in skills listed on current recall requirements listings.

(b) Applications are forwarded to ARPC for processing according to instructions provided annually by HQ USAF.

§ 881.16 Eligibility requirements.

(a) *Moral requirements.* Applicant must possess high moral character and personal qualifications.

(b) *Citizenship requirements.* A person appointed as a Reserve of the Air Force under this part must at the time of appointment be a citizen of the United States. An individual who is not a citizen by birth must submit the statement in subparagraphs (1) and (2) of this paragraph, signed by an officer, notary public, or other person authorized by law to administer oaths. In no circumstances will facsimiles or copies (photographic or otherwise) of naturalization certificates, declarations of intention, certificates of citizenship, or alien registration receipt cards be made. 18 U.S.C. 1426(h) provides that "whoever, without lawful authority, prints, photographs, makes or executes a print or impression in the likeness of a certificate of arrival, declaration of intention to become a citizen, or certificate of naturalization or citizenship, or any part thereof, shall be fined not more than $5,000 or imprisoned not more than 5 years, or both."

(1) *For persons who are citizens by naturalization.*

I certify that I have this date seen the original certificate of citizenship No. ------ (or certified copy of the court order establishing citizenship) stating that ---------- was admitted to United States citizenship by the court of ---------- at (District or County) ----------, on ----------. (City and State) (Date)

(2) *For persons who claim derivative citizenship through naturalization of parent(s).*

I certify that I have this date seen the original certificate of citizenship No. ------ issued to ---------- by the (Name of applicant) Immigration and Naturalization Service, Department of Justice, stating that ---------- (Name ---------- acquired citizenship on of applicant) ---------- (Date)

(c) *Medical requirements.* All applicants must be medically qualified, or medically acceptable with waiver for Air Force commission, in accordance with AFM 160–1. A report of medical examination will be accomplished not more than 90 days before the date of application. Except for women applicants, medical examinations will be without expense to the Government. Women applicants for commission may be examined by qualified civilian physicians where no military examining capability exists. Funds provided for the operation of the USAF Recruiting Service will be used for this purpose. Travel performed in connection with medical examinations will be without expense to the Government.

(d) *Age, education, experience, and grade requirements*—(1) *General.* Applicants whose appointments are based on guidelines in AFM 36–1 must meet the mandatory requirements it specifies. When AFM 36–1 does not specify a degree as mandatory, applicants must possess at least 2 years of college (60 transferable semester hours or the equivalent) and 1 year of qualifying experience as a substitute for each year of college study required for the appropriate degree. Experience thus applied must be gained and evaluated as defined in subparagraph (4) of this paragraph. Exception: Persons applying for appointment under §§ 881.12a, 881.12c, 881.12d, 881.13, 881.14a, 881.14b, or 881.14d must possess the minimum educational and experience requirements specified for those categories.

(2) *Age.* By law, no person under the age of 18 years will be appointed as a Reserve of the Air Force. Applicants without prior military service will not be appointed after they reach 40 years of age. Section 881.16(d)(2)(i) shows the maximum age for grade that will apply for appointments made under this part.

(i) *Maximum age for grade* (see note).

Rule	A. If applicant is for appointment in the grade of—	B. Then the applicant's age must be less than—
1	2d lieutenant	30
2	1st lieutenant	34
3	Captain	40
4	Major	46
5	Lieutenant colonel	51
6	Colonel	56

NOTE: Age alone does not determine grade; therefore, this table must be used in conjunction with the table for grade determination (see § 881.16a(c)(1)).

(3) *Education.* Only education above high school level that is gained at accredited institutions will be acceptable for purposes of this part. Institutions recognized for credit under this part must have national or regional accreditations as listed in the Education Directory, Part 3, published by the Office of Education, Department of Health, Education, and Welfare. Persons whose credits are from other than a nationally accredited institution will be considered as meeting the educational requirements of this part upon presentation of evidence that their credits are acceptable for unconditional admission into the graduate school of, or for full transfer to,

a nationally or regionally accredited college or university, except as otherwise provided in this part.

(4) *Experience.* (i) Only experience gained through full-time employment in a responsible position will be acceptable for the purpose of this part. Any additional education or training in a field allied to nursing (includes anesthesia training) attained after graduation from a school of nursing will be credited as experience. Unless appointed under subpart F or §§ 881.71, 881.72, or 881.73, an applicant must have completed at least 12 months of employment before his experience is acceptable. If an applicant's record of experience is questionable, a statement must be obtained from his employer.

(ii) Unless otherwise provided, only experience gained after applicant attained the appropriate degree is creditable as service in an active status for appointment to duty in one of the applicable specialties. Experience is computed as follows:

(*a*) For physicians, dentists, and veterinarians—from date of graduation from medical, dental, or veterinary school, except that each year of professional experience or fraction thereof in excess of 21 years will be given only one-half credit. Periods of unemployment exceeding 30 days are not creditable.

(*b*) For nurses, dietitians, occupational and physical therapists—from date of completion of the educational requirements specified in Subparts F and H of this part and within the limitations stated therein, excluding periods in excess of 30 days per calendar year for vacations.

(*c*) For all other medical service personnel—within the limitations specified in § 881.16b, from date of attainment of the appropriate degree or date of licensure in the case of pharmacy and optometry officers. Except for a person who possesses a Master's degree, no constructive service credit is authorized unless he has at least 3 years of such professional experience and is otherwise qualified for appointment in grade of first lieutenant or higher.

(*d*) For judge advocates—within the limitations specified in § 881.16b, from date of graduation from law school or date of admission to the bar of a Federal court or of the highest court of a State, whichever is later.

(*e*) For chaplains—within the limitations specified in § 881.16b, from date of ordination, provided applicant has completed the required undergraduate study prescribed in § 881.40(c)(2)(i). No experience is creditable while attending seminary. For applicants from religious denominations which do not operate accredited or recognized seminaries, creditable experience will be determined by the Chief of Air Force Chaplains.

(*f*) For all others—as specified in pertinent sections of this part relating to appointment of former officers of the Regular Air Force, appointment of officers of other Armed Forces, and reappointment of former rated officers. For appointments for duty in specialties not listed in this part, but contained in other appointment authorizations, creditable experience will be computed from date of attainment of the appropriate degree, where applicable, and within the limitations secified in § 881.16b. Except for person who has a Master's degree, no constructive service credit is authorized unlegs he possesses at least 3 years of experience and is otherwise qualified for appointment in grade of first lieutenant or higher.

(5) *Grade.* Grade is determined by the combined education and experience constructive credits the applicant possesses (see § 881.16a).

§ 881.16a How to determine grades.

(a) Use subparagraph (1) of this paragraph to convert to years of constructive service credit educotion that is pertinent to applicant's specialty (see § 881.16b).

(1) *Education constructive service.*

Rule	A. If the applicant holds a—	B. Then, the amount of constructive service awarded will be—
1	Baccalaureate degree (except in nursing)	None.
2	Baccalaureate degree in nursing or a field allied to nursing	1 year.
3	Dietetic internship or a certificate in occupational or physical therapy	Do.
4	Master's degree	Do.
5	Master's degree in nursing or a field allied to nursing, dietetics, occupational or physical therapy.	1 year.[1]
6	Doctor of philosophy, bachelor of divinity, bachelor of laws, doctor of veterinary medicine, or equivalent degree.	3 years.
7	Degree in medicine, dentistry, or osteopathy	4 years.

[1] The 1 year awarded under this rule is in addition to that awarded under rules 2 and 3. No additional constructive service is authorized if the master's degree was obtained while applicant was gainfully employed.

(b) If on date of his application an applicant possesses experience pertinent to his specialty that is in excess of that required for appointment as second lieutenant, convert it to constructive service credits by year, month, and day on a day-to-day basis (see § 881.16b).

(c) Using applicant's combined education and experience credits, determine his appointment grade from subparagraph (1) of this paragraph.

(1) Grade determination:

Rule	A. If applicant's combined education and experience constructive service credit is [1]—	B. Then appointment will be made in grade of—
1	Less than 3 years	2d lieutenant.
2	At least 3 but less than 7 years	1st lieutenant.
3	At least 7 but less than 14 years	Captain.
4	At least 14 but less than 21 years	Major.
5	At least 21 but less than 23 years	Lieutenant colonel.
6	23 or more years	Colonel or lieutenant colonel.[2]

[1] Constructive service credit does not apply to persons commissioned through AFROTC or OTS.

(2) A person who has achieved national prominence as an authority in his particular specialty may be appointed in the grade of colonel.

§ 881.16b Award of constructive service.

The award of constructive service to reflect an applicant's combined years of education and experience was originally authorized by section 201 of the Reserve Officer Personnel Act of 1954 (ROPA), now codified as 10 U.S.C. 8353. ROPA became effective on July 1, 1955, and contains no retroactive provisions. Accordingly, persons appointed before the effective date of the law, July 1, 1955, are not eligible for any constructive service credit.

(a) The constructive service credit possessed by an applicant is the amount of education (§ 881.16a(a)(1)) and experience (§ 881.16(d)(4)) credited for grade determination. Constructive credit in excess of that required for the grade in which appointed, but less than that required for the next higher grade, will be awarded as promotion service in grade.

(b) The award of constructive service credit will be limited to the minimum amount required for appointment in the determined grade. For example, 3 years for appointment in grade of first lieutenant and 7 years for captain. This rule applies to all categories except:

(1) Medical (includes osteopaths), dental, and veterinary officers.

(2) Nurses, dietitians, occupational therapists, and physical therapists appointed in grades below captain.

(3) Persons who hold master's degrees and are appointed in grade of second lieutenant.

(4) Former Regular Air Force officers appointed as Reserve officers under § 881.12a.

(5) Reserve officers of other Armed Forces of the United States as Reserves of the Air Force if eligible under the criteria stated in § 881.12c of this part or AFR 36–26.

(6) Reappointment of former rated officers in accordance with § 881.12d.

(c) The amount of constructive service awarded for education will be as specified in § 881.16a(a)(1) regardless of the actual time spent in acquiring the degree. At time of appointment, the following conditions must be met:

(1) The degree must have been conferred, or

(2) An authorized official of the educational institution awarding the degree must certify that the applicant has completed all of the requirements for the degree which will be conferred at a later specified date, and

(3) The degree must relate to the specialty in which appointment is being made.

(d) Persons who earn a degree for which constructive service is allowable, but who do so while in a commissioned status may, upon an authorized reappointment, be credited with either constructive service or their commissioned time for total years service date, but not both.

(e) Persons commissioned during a portion of the time spent in earning a degree may, upon an authorized reappointment, be awarded constructive service credit for education for the time not duplicated by commissioned service.

§ 881.16c Computing and recording total years service date (TYSD), promotion service date (PSD), and total Federal commissioned service date (TFCSD).

(a) *TYSD.* This date is computed by backdating the date of acceptance of appointment by the total amount of constructive credit awarded under § 881.16b.

NOTE: If an officer has prior commissioned service time for which he has not received constructive credit, such service is creditable as TYSD after determination of a grade in accordance with § 881.16a(c). However, in no case will any service be counted more than once in determining TYSD.

(1) Upon reappointment, generally TYSD will be recomputed from the effective date of reappointment to reflect the additional constructive credit allowable for education and/or experience under § 881.16b. Upon reappointment as a judge advocate under subpart D of this part, for example, credit for full-time experience as a lawyer accrues from date of graduation from law school or date of admission to the bar, whichever is later, to date of acceptance.

(2) To determine the actual period of time for which constructive service for education is given, backdate the applicable date of graduation or admission to the bar, whichever is later, by 3 years. Any commissioned service held during the period for which constructive service for education and experience is awarded may not be counted again for TYSD purposes. Unusual cases should be referred to USAFMPC (DPMRDS) for resolution.

(b) *PSD.* If the constructive service credit possessed by an applicant exceeds that required for the grade in which he is appointed, excess credit is subtracted from the date of his acceptance and is identified as his PSD. In no case will an officer be awarded a PSD which will make him immediately eligible for promotion. For example, an officer appointed as captain will not be awarded a PSD reflecting 7 or more years of promotion service.

(1) Upon reappointment as a judge advocate under subpart D of this part an officer's PSD will remain the same unless, on the basis of the additional constructive service awarded, he possesses constructive promotion service credit which will result in an earlier date.

(2) Upon reappointment as chaplain or an officer of the medical, dental, or veterinary corps, an individual is given a new grade (which may be the same, or a higher or lower grade) for which he qualifies by reason of education and experience. PSD will be recomputed to reflect constructive credit in excess of that required for the reappointed grade. Prior commissioned service as a line officer in the grade in which reappointed or any higher grade is not creditable unless authorized by law.

(c) *TFCSD.* This date is computed by backdating the date of an officer's acceptance by his prior commissioned service.

(d) *Entry in records.* These three dates will be entered on the file copy of the appointment documents and on records as TYSD, PSD, and TFCSD, respectively.

§ 881.16d U.S. Air Force (temporary) appointments.

TYSD and PSD will not be computed for officers holding only U.S. Air Force (temporary) appointments.

Subpart C—Application and Processing Procedures

§ 881.20 How to apply.

(a) Except for procedures that apply only to OTS and AFROTC, the documents in subparagraphs (1) through (21) of this paragraph, properly completed, constitute the application. Use of requirements below as a checklist to insure that all required information and papers have been included before forwarding application and thus preclude delays that would result from the return of incomplete applications. For officers on EAD applying for reappointment as judge advocate under subpart D of this part, items (3), (4), (5), (6), (9), (11), (12), (14), and (16) are not required. Officers already designated as judge advocates or assigned to the Judge Advocate General's Department who apply for reappointment under subpart D of this part need not submit items previously submitted if they are still current (that is, certificate of graduation from an accredited law school). Line of the Air Force officers desiring reappointment to the Medical Service Corps or the Biomedical Sciences Corps should submit application in letter form. Airmen on duty (active) need not submit subparagraphs (4) through (6) of this paragraph if a personnel security investigation has been completed. The document in subparagraph (19) of this paragraph is required instead of the investigation.

(1) AF Form 24, "Application for Appointment as Reserves of the Air Force or USAF Without Component," (in triplicate). In the upper right corner specify the specialty for which application for appointment is being made.

(2) Original or photostat of honorable discharge certificate or certificate of service, a copy of the orders effecting discharge, and statement of service, when applicable. Applicants with prior active military service will submit a photostatic copy of DD Form 214, "Armed Forces of the United States Report of Transfer or Discharge." For judge advocate appointees, a copy of the individual's certificate of graduation from an accredited law school and a copy of his certificate of admission to the bar of a Federal court or the highest court of a State, as applicable, will be forwarded to HQ USAF (JA), Washington, D.C. 20330.

(3) Completed SF 88, "Report of Medical Examination," and SF 89, "Report of Medical History," in duplicate.

(4) DD Form 398, "Statement of Personal History." Six copies for applicants requiring a background investigation under § 881.24(b). One copy of all others, including persons being considered for appointment on the basis of a prior or existing investigation.

(5) DD Form 98, "Armed Forces Security Questionnaire," in duplicate.

(6) Completed FD Form 258, "FBI Fingerprint Card", in duplicate, according to AFR 125–36.

(7) Transcripts of college work as evidence of educational level. Graduates of recognized colleges of dentistry, medicine, optometry, pharmacy, and veterinary medicine, and applicants for appointment in the Medical Service Corps may submit a photostatic or certified copy of college diploma in lieu of a transcript.

(8) Conditional release from another Armed Force or component in which appointment is currently held, if applicable.

(9) A certificate similar to the following, except for women and chaplain applicants:

I certify that I have not been ordered to report for induction under the Military Selective Service Act of 1967. After submitting application for appointment as a Reserve of the Air Force, I understand that any appointment, enlistment, or order to active military service in a branch of the service other than the Air Force automatically renders me ineligible to accept an appointment as a Reserve of the Air Force.

(10) Any other documents or information the applicant may desire to submit as evidence of his qualifications for appointment.

(11) For a civilian employee of the Federal Government, a "Certificate of Availability of Federal Employee," as required by part 888a of this subchapter.

(13) Persons applying under subparts D through H must submit the additional documents listed in those subparts.

(14) Men applicants, other than chaplains, physicians, dentists, and veterinarians, who have not attained their 26th birthday and who have had no prior military status, must submit the following statement:

In the event I am tendered an appointment as a Reserve of the Air Force, I understand that upon acceptance of appointment I am required by law to serve on active duty and in a Reserve component for a total of 6 years unless sooner discharged in accordance with regulations and standards prescribed by

the Secretary of Defense. I understand that although the appointment is tendered and accepted for an indefinite term, my obligated service will be for a period of 6 years. I understand that I may qualify for transfer to a standby reserve on completion of a combination of active duty and satisfactory ready reserve participation totaling at least 5 years or upon completion of my military service obligation, whichever is earlier. I further understand that if my appointment is contingent upon concurrent ready reserve assignment, I will be required to meet the participation requirements of the unit to which assigned. I understand that while I am serving in a draft-deferred status, I am subject to mandatory assignment. I have been counseled and understand that I will become subject to involuntary order to active duty for up to 24 months if I fail to satisfactorily perform training requirements.

(15) Physicians, dentists, and veterinarians, including those who have reached age 26 or over, whose appointments are contingent upon concurrent assignment to a ready reserve position, must sign the following statement and have it witnessed:

In the event I am tendered an appointment as a Reserve of the Air Force, I understand and agree to accept ready reserve status for a period of 5 years, or until age 35, whichever occurs first, effective on the date of my appointment. Provided that I satisfactorily participate as a member of a ready reserve unit, I will not be liable, as provided under 50 U.S.C.A. App. 454(i)(1) for active military service as the result of special draft calls.

I understand that I must participate in 48 inactive duty training periods or assemblies and up to 15 days' active duty training annually or as required by my reserve assignment, unless excused therefrom by proper authority.

I understand that if I fail or refuse to participate satisfactorily as determined by the Secretary of the Air Force, I may be discharged or referred to the appropriate Selective Service System Board for induction, as appropriate.

WITNESSED BY:

(Unit commander or authorized representative)

(Signature of applicant)

(16) For persons whose appointments are for inactive duty, AF Form 1288, "Application for Reserve Assignment" (in triplicate) and a statement from the commander of the ready reserve unit that a vacancy exists within the unit and the appointment of the applicant is requested to fill the vacancy.

(17) For an applicant who has been eliminated from a course of training leading to a commission, the commander or activity responsible for the preliminary processing of the application will obtain and attach DD Form 785, "Record of Disenrollment From Officer Candidate Type Training." AFR 53–5 tells where and how to obtain the DD Form 785. If the DD Form 785 does not provide sufficient information, send requests for additional facts to appropriate addresses indicated or to major commands responsible for precommission programs. The applicant's previous precommission training performance, aptitude for commissioned service, a summary of any derogatory information, and the academic record should be evaluated.

(18) Appropriate certificate required by § 881.16(b) when applicable.

(19) For airmen applicants on EAD, the servicing CBPO will furnish an AF Form 47 as evidence of completed security investigation.

(20) For those seeking appointment as a judge advocate, a report of interview by an active duty career judge advocate, prepared according to separate instructions issued by the Judge Advocate General, USAF.

(21) A recent 3″×5″ photograph (head and shoulders only).

(b) Applications and allied papers will be submitted according to § 881.21(g).

(c) Physicians and allied medical specialists allocated to the Air Force under special draft calls will be processed as follows:

(1) *Application components.* (i) DD Form 1548, "Preinduction Processing and Commissioning Data—Medical, Dental, and Allied Specialists Categories" (original), constitutes the application for appointment and active duty.

(ii) Standard Forms 88 and 89 will be submitted with the DD Form 1548. Armed Forces examining stations determine acceptability for physicians who are U.S. citizens, graduates of U.S. medical schools or approved schools of osteopathy, and who are considered by the examining physicians to be physically qualified. Reports of medical examinations are acceptable for 2 years from date of examination.

(iii) Graduates of foreign medical schools must furnish evidence of permanent certification by the Educational Council for Foreign Medical Graduates.

(2) *Processing.* (i) Within 10 days of receipt of the required forms, Reserve appointments will be tendered to qualified applicants whose forms indicate they are U.S. citizens and graduates of U.S. medical schools or approved schools of osteopathy. The Department of the Army will obtain a name check of FBI files for physicians determined to be qualified for commissioning as Reserve officers by the numbered CONUS Army Headquarters and forward, when possible, the results of such checks to the HQ USAF appointing authority within the time limit specified to tender Reserve commissions. Tenders of appointment will not be delayed solely for an uncompleted name check. A tender may be delayed, however, when a completed check indicates it may not be clearly consistent with the interests of national security. If a record of adverse information is found to exist, the Department of the Army will immediately communicate this fact to the appropriate HQ USAF appointing authority who will insure that the evaluation of adverse information is completed without delay.

(ii) DD Form 98 and other forms required to conduct the personnel security investigation as prescribed by § 881.24 are completed at the individual's first duty station. For officers ordered to active duty with TDY enroute to first permanent station, the TDY unit will request the investigation. ARPC will furnish each individual a blank DD Form 398 with instructions to have it completed before reporting to first duty station. Each physician will also be directed to have in his possession reproduced copies of medical school diploma and certificates of completion of residency training when reporting to the first duty station. First duty station will use these documents to verify professional background and immediately forward them to USAFMPC (DPMDRR) for inclusion in the individual's MPer RGp. When the outcome of the processing warrants the person will be discharged from his Reserve commission.

(iii) A physician who is not a U.S. citizen must be the subject of a favorable Background Investigation before he is appointed USAF (temporary). He must, therefore, include with his DD Form 1548 the documents listed in subparagraphs (4), (5), and (6) of paragraph (a) of this section.

§ 881.21 Processing applications to Air Force Academy and aircrew examining centers.

AFR 23–11 has a current listing of these centers.

(a) *CONUS, Alaska, and Hawaii.* The commander receiving applications under this part (except those specified in Rules 3 through 9, paragraph (g) of this section), will forward the applications to the Air Force Academy and aircrew examining center most convenient to the applicant. Before forwarding the application to the examining center for processing, screen it to insure that it is complete and that the applicant is basically qualified. Forward applications to the examining centers within 15 working days of receipt, except when additional information is required to complete an application.

(b) *Overseas.* The MAJCOM having jurisdiction over the oversea area where the applicant is located will (except as specified in Rules 3 through 9, paragraph (g) of this section) forward his application to the most appropriate Air Force Academy and aircrew examining center. MAJCOM's may prescribe administrative channels, for receiving applications. However, it is the responsibility of the major command to screen all applications to insure that they are complete and that applicants are basically qualified before their applications are forwarded to the examining center for processing. MAJCOM's will screen and forward applications within 15 working days of receipt except when additional information is required to complete an application.

(c) *Examining boards.* Examining boards will be appointed to make recommendations for individuals who have not held an appointment and are being considered above the grade of major under 10 U.S.C. 594. These boards will be appointed by the commander of the major command having appointment responsibility for specialties for which the individuals are applying, or, overseas, the

major commander having jurisdiction over the geographical area concerned. If required, examining boards may be convened at USAFMPC (DPMRDS).

(d) *Composition.* Examining boards will be composed of an uneven number of officers totaling not less than three, the majority of whom are Reserve officers and all of whom are in a grade equal to or higher than the grades for which applicants are being considered. When a woman applicant is being considered, one of the board members will be a woman officer. Reserve officers appointed to these boards may or may not be on active duty. However, an officer not on active duty will not be appointed without his or her consent. Reserve officers not on active duty will not be placed on active duty for this purpose. This paragraph does not constitute authority for additional personnel or funds. The recommendations of these boards will be forwarded to the Air Force Academy and aircrew examining centers for incorporation with the applicant's application and other allied papers.

(e) *Appointment without referral to a board of officers.* Any person who receives a notice of induction under the Military Selective Service Act of 1967 is allocated to the Air Force, and is otherwise qualified for appointment as a physician or dentist in a grade higher than major will be appointed in such grade without reference to a board of officers. If the overall Reserve grade ceiling established by law will be exceeded by his appointment, he will be tendered a temporary appointment.

(f) *Applications for appointment and concurrent Ready Reserve assignments under current procurement objectives.* These applications will not be sent to the Air Force Academy and aircrew examining centers for processing. The unit having the vacancies being applied for will process them.

(g) *Submitting applications.*

Rule	A. If applicant is—	B. Then he submits his application [1]—
1	A USAF airman or WO on active duty, except as in rule 7.	Through servicing CBPO to ARPC (DPRPR); except applicants standard OS send to appropriate MAJCOM.
2	USAF Reserve not on EAD.	Through commander of unit to which assigned to ARPC (DPRPR); except applicants standard OS send to appropriate MAJCOM.
3	A person seeking initial appointment as a judge advocate.	Through the USAF Recruiting Service to ATC, Randolph AFB TX 78148.
4	An officer on EAD applying for reappointment as a judge advocate.	Through servicing CBPO and major command to HQ USAF (JAF) and USAFMPC (DPMRDS), in turn.
5	An officer not on EAD applying for reappointment as a judge advocate.	Through Reserve channels to ARPC (DPRPR).
6	A person applying for appointment as a chaplain or chaplain candidate.	To USAFMPC (HCFE).
7	A person applying for appointment in the medical services under subparts F, G, and H, with concurrent active duty.[2]	To USAFMPC (SGPSS).
8	A person applying for appointment in the medical services under subparts F, G, and H, with concurrent assignment to the Ready Reserve.	Direct from unit to AFRES (SGR), Robins AFB GA 31093 and USAFMPC (SGPSS).
9	A line of the AF officers applying for reappointment of the Medical Service Corps or the Biomedical Sciences Corps and vice versa.	Through servicing CBPO and MAJCOM to USAFMPC (DPMREB) to forward to USAFMPC (SGPSS)—Officers on EAD; or through Reserve channels to USAFMPC (SGPSS) and USAFMPC (DPMRDS), in turn—officers not on EAD.
10	A former officer of the Regular Air Force.	To USAFMPC (DPMRDS).
11	A Reserve officer of another Armed Force other than 3, 6, 7, and 8 above.[3]	Through Reserve channels to ARPC (DPRPR).
12	A former rated officer of any of the services applying for appointment to fill an aircrew position in the Ready Reserve.	Through Reserve channels to ARPC (DPRPR).
13	A person applying for appointment for the purpose of assignment to the Retired Reserve.	As outlined in chapter 8, AFM 35-7, utilizing AF Form 131, "Application for Transfer to the Retired Reserve."
14	A person, including a Reserve of another Armed Force, applying for appointment or reappointment as a Reserve of the Air Force (ANGUS) in any category.	To the ANG servicing CBPO, the adjutant general of the State concerned, and the Chief, National Guard Bureau (NGFP), Washington, D.C. 20310, in turn.[4]
15	Former USAF officers discharged for pregnancy.	To AFMPC/DPMMPR, Randolph AFB TX 78148.[5]

[1] Approval of HQ USAF is required on all appointments above the grade of captain.
[2] Applications of airmen on active duty will be routed through the servicing CBPO for inclusion of AF Form 47 (subpar. (19), par. (a) of this section).
[3] Rule 11 pertains only to Reserve officers of other services not serving on EAD. Applications for the interservice transfer to Reserve officers of other services serving on EAD will be submitted in accordance with AFR 36-26.
[4] The Chief, National Guard Bureau (NGFP), will forward applications to appropriate HQ USAF agencies for final selection and appointment under procedures established by mutual agreement.
[5] Nurses and other medical service personnel will forward applications as specified in rule 7 or 8, as appropriate.

§ 881.22 Duties of the examining centers.

(a) *Notifying applicant of time and place of examination.* Within 15 workdays after the application is received from the major command, the Air Force Academy and aircrew examining center will notify the applicant of the time and place he must appear for processing and testing. Applicants not in the active military service must provide for travel, quarters, and meals at their own expense. Applicants will be scheduled so that, as far as practical, they will not have to spend more than 2 days at the place of processing. If an applicant fails to report for processing on the scheduled date, every reasonable attempt will be made to determine reasons for failure to report. A new reporting date will be established, if the applicant desires it.

(b) *Testing.* (1) The Air Force Officer Qualifying Test (AFOQT) will be administered to each applicant except former officers, officers covered by subparts E and F of this part, applicants for appointment under § 881.62, and applicants for appointment as dietitians, occupational therapists, and physical therapists under subpart H of this part. The test will be conducted according to current and appropriate instructions for administering and scoring the AFOQT battery, to derive the following:

(i) Pilot aptitude.
(ii) Navigator technical aptitude.
(iii) Officer quality.
(iv) Verbal aptitude.
(v) Quantitative aptitude.

(2) Testing requirements and the qualifying officer quality percentile score for AFROTC students is established in part 870 of subchapter H of this chapter.

(3) The AFOQT will be administered by a test control officer or by authorized personnel of the recruiting service. A certified record of aptitude scores will be attached to the application. If any applicant, except one in the OTS or AFROTC programs, and a BSC applicant under Subpart H, does not attain the minimum qualifying percentile score of 40 (60 for judge advocate applicants) on the officer quality portion of the test he will not be processed further.

(c) *Medical examination.* Each applicant will be given a medical examination according to AFM 160-1, if the examination has not already been accomplished.

(d) *Fingerprinting.* Examining centers will fingerprint each applicant. The FBI Fingerprint Card will be used and completed per AFR 125-36 except two copies of the fingerprint card will be submitted.

(e) *Forwarding applications and allied papers.* Applications with allied papers will be assembled and forwarded to the command (§ 881.21(g)) responsible for the appointment in the category for which the applicant is applying. The application will be forwarded within 15 workdays following the completion of the applicant's processing. The appropriate headquarters or major command will be sent a copy of the letter of transmittal of processed application, and the person's aptitude scores. If the applicant fails to comply with processing instructions, the appropriate headquarters or MAJCOM will be so advised and the application will be returned.

§ 881.23 Selection of applicants.

(a) Applicants will be selected as indicated in § 881.4.

(b) UOR of selected applicants will be initiated as prescribed in AFM 30-3, volume III, chapter 4.

§ 881.24 Personnel security investigations.

(a) U.S. citizen physicians allocated to the Air Force under Special Physicians' Draft Calls will be processed under § 881.20(c).

(b) Subparagraph (1) of this paragraph shows the personnel security investigative requirements for persons before they may be tendered an appointment.

(1) *Personnel security investigations.*

Rule	A. If an applicant—	B. Then he may not be tendered an appointment until—
1	Is an immigrant alien physician or dentist	A report of a Background Investigation (BI) under AFR 205-6 has been completed and a favorable report rendered.
2	Has a father, mother, sisters, brothers, spouse or children residing in one of the countries listed in AFR 205-6, attachment 3.	
3	Is a U.S. citizen and has resided or traveled in a country listed in AFR 205-6, attachment 3, after dates indicated for 30 or more continuous days.[1]	
4	Made entries on DD Form 98 that provide reasons for belief that the appointment may not be clearly consistant with the interest of national security.	
5	Is not listed in rules 1 through 4	A National Agency Check (NAC) has been completed and a favorable decision rendered.
6	Is an Air Force member under consideration for appointment with an LNAC.	
7	Has a break in service or employment after a prior investigation under AFR 205-6.	An NAC has been completed and a favorable decision rendered, if the break in service or employment exceeded 6 months.

[1] Travel or residence in these countries under the auspices of the U.S. Government will not be considered.

(c) Investigations conducted by DOD agencies as part of the preliminary processing of an applicant for initial appointment will be acceptable for 1 year. If the appointment cannot be tendered within the 1-year period, a current investigation will be requested before appointment is made.

(d) When an appointment action is to be taken on the basis of a prior or existing investigation, the appointing authority may request (from the appropriate repository indicated in AFR 205-6) verification of the existence of an entirely favorable report or specifically request that the identical report be furnished.

§ 881.25 Appointing and notifying appointees.

(a) Appointment of persons to grades above captain may be made only after final selection by HQ USAF.

(b) Appointments are made by letter or administrative orders.

(c) Each applicant must be notified of his appointment or nonselection.

(d) After appointment, a copy of the appointment letter or orders, oath of office, and application with attachments thereto, become a part of the appointee's MPerRGp.

(e) Appointments will be issued as of current date and will be effective from the date of acceptance.

(f) Persons who are found not qualified for appointment will be notified of their nonselection.

Subpart D—Appointment of Judge Advocate Officers

§ 881.30 Submitting applications.

Applicants for appointment as Reserves of the Air Force, Judge Advocate General's Department, must submit, in addition to the documents required by § 881.20(a):

(a) A certificate from proper court clerk indicating original date of admission and present standing at the bar of a Federal court or of the highest court of a State.

(b) An affidavit from the applicant containing a chronological statement of his full legal experience. Legal experience may include governmental, judicial, teaching (in accredited law schools), and military experience and private practice.

(c) [Reserved]

(d) For officers applying for reappointment as judge advocates, a statement that the applicant understands that:

(1) Upon reappointment his current Reserve commission will be vacated;

(2) His service credit will be subject to recomputation as provided in §§ 881.16 (d) and 881.16b.

(3) His total years service date and promotion service date will be adjusted accordingly; and counts toward mandatory transfer to the Retired Reserve under 10 U.S.C. chapter 863, as well as for appointment and promotion purposes under 10 U.S.C. chapter 837.

§ 881.31 Professional qualifications.

Applicants possessing the following professional qualifications for the grade concerned and who are otherwise qualified, may apply for appointment as a ResAF, Judge Advocate General's Department.

(a) *First Lieutenant.* For appointment as first lieutenant, the applicant must meet the age for grade requirements established by § 881.16(d) and be a graduate of an accredited law school and a member of the bar of a Federal court or of the highest court of a State. A graduate of an accredited law school may apply for appointment before admission to the bar, provided appointment will not be tendered until he submits documentary evidence of admission to the bar. A senior attending the accredited law school may apply for appointment on the basis of his current transcript but not more than 90 days before his scheduled date of graduation. Final transcript must be submitted as soon as possible. In no event will he be tendered an appointment until he graduates from law school and submits both his final transcript and evidence of admission to the bar.

(b) *Grade above first lieutenant.* For appointment in grades above first lieutenant, applicant must possess all the qualifications specified in paragraph (a) of this section and meet the age and legal experience requirements specified in § 881.16(d). Normally, appointments will not be made in field grades.

EXCEPTION. When the applicant has had the type of legal experience that, in the opinion of the Judge Advocate General, qualifies him to satisfactorily perform judge advocate duties in the grade sought and in a legal specialty critically required by the Air Force.

§ 881.32 Appointment and reappointment.

(a) *Appointment.* HQ USAF/JA is the reviewing and approval authority for all applicants. Original appointments in this specialty are contingent upon the applicant's consent to immediately enter EAD for 4 years, except for ANG applicants.

(b) *Reappointment.* Subject to the applicable provision of subpart B and this subpart, Reserve officers of the Air Force who are not in a deferred status under 10 U.S.C. 8368 may apply for reappointment as judge advocates under the following conditions:

(1) Reappointment of applicants on EAD or in the ANGUS component will be made by AFMPC/DPMMPR.

(2) Reappointment of USAFR applicants not on EAD will be made by ARPC.

(3) Reappointment is limited to officers below the permanent or temporary grade of major who qualify for appointment as judge advocates but are not designated as judge advocates or assigned to the Judge Advocate General's Department.

(4) Officers reappointed under provisions of this paragraph will be credited with constructive service under 10 U.S.C. 8353. This service counts for appointment and promotion and toward mandatory transfer to the Retired Reserve under 10 U.S.C., chapter 863.

(5) Applicants on EAD must be in career reserve status.

(6) Reappointment of non-EAD USAFR applicants who have not served on EAD as commissioned officers is authorized to fill EAD requirements. Applicants complete AF Form 125, "Application for Extended Active Duty With the USAF." Selection to enter AD is made on a competitive basis within authorized recall quotas for judge advocates. (See AFR 45-26 for reappointment of AFROTC graduates forecast to EAD to perform judge advocate duties.)

(7) Officers, except second lieutenants, holding Reserve grades lower than those to which they would be entitled by virtue of the additional constructive service credit are not eligible for reappointment.

Subpart E—Appointment of Chaplains

§ 881.40 Application for the Air Force Chaplaincy.

(a) *General.* (1) Those appointed will be awarded Air Force Specialty Code 8921.

(2) Applicants will be considered for appointment only when military and denominational authorizations exist within the Reserve quotas allocated by the Chief of Staff, HQ USAF.

(b) *Application procedures.* (1) Section 881.21(g) shows how to apply.

(2) Applications must include all applicable documents listed in Subpart C, plus the following:

(i) Ecclesiastical endorsement.

(ii) Certified scholastic transcripts.

(c) *Qualification and requirements*—(1) *Age and grade.* (i) Maximum age and grade for appointment are:

(*a*) Less than 34 years for first lieutenant.

(*b*) Less than 40 years for captain.

(ii) In times of national emergency or war, or when a continuing serious shortage of Air Force chaplains exists, the Chief of Air Force Chaplains may grant age waivers not to exceed the maximum age of appointment by more than 3 years.

(2) *Minimal educational requirements.* (i) Applicant must possess 120 undergraduate semester hours credit from a college or university accredited by one of the six regional accreditation agencies shown in the current issue of Part 3, Higher Education, Education Directory, published by the Department of Health, Education, and Welfare. An applicant who has completed work at a nonaccredited school is acceptable if he presents a statement or transcript from an accredited institution indicating that he has 120 semester hours credit acceptable to that institution.

(ii) Applicant must possess 90 semester hours of credit or an appropriate graduate degree from a theological seminary or from a graduate school of theology that is a component part of a university. The seminary or school of theology must be accepted as an accredited or associate member of the American Association of Theological Schools or accredited by one of the six regional accreditation agencies indicated in subdivision (i) of this subparagraph. An applicant who has completed work at a nonaccredited graduate theological school is acceptable if he presents a statement or transcript from an accredited graduate institution indicating that he has 90 graduate semester hours credit or a graduate degree acceptable to that institution.

(3) *Appointment in the grade of first lieutenant.* Applicants may be initially appointed in the grade of first lieutenant if they are less than 34 years of age; have completed 3 years of graduate study or have a graduate theological degree from an accredited or recognized theological seminary; have attained full ecclesiastical ordination status; and have the professional experience required by their denomination.

(4) *Appointment in the grade of captain.* Applicants may be initially appointed in the grade of captain if they are less than 40 years of age and can qualify under one of the following constructive service credit categories:

(i) Have completed 3 years of graduate study in an accredited or recognized theological seminary; have attained full ecclesiastical ordination status; and have had a minimum of 4 years of full-time active professional experience as a minister, priest, or rabbi, following completion of undergraduate study.

(ii) Have completed an additional year of graduate study in an accredited or recognized theological seminary beyond the regular seminary course or first seminary degree; have attained full ecclesiastical ordination status; and have had a minimum of 3 years of full-time active professional experience as a minister, priest, or rabbi, following completion of undergraduate study.

§ 881.41 Compensatory professional considerations.

Applicants from religious denominations that do not operate accredited or recognized theological seminaries may be considered by the Chief of Chaplains if they:

(a) Meet the requirement of § 881.40 (c)(2)(i).

(b) Have earned a minimum of 90 graduate semester hours credit in the social sciences, the humanities, or Christian theology (or a combination of all three) at an accredited or recognized institution of learning.

(c) Have attained full ordination status as required by their particular denomination.

(d) Are actively engaged full-time in their religious vocation at the time of appointment, and have had the professional experience required by their denomination.

§ 881.42 Ecclesiastical endorsement.

Applicants must request an endorsement from their ecclesiastical endorsing agency. The endorsing agency will submit the endorsement to USAFMPC (HCFE). Upon receipt of the endorsement, application forms with instructions will be forwarded to an applicant provided there is a quota vacancy for his denomination.

(a) The ecclesiastical endorsement will be considered valid only if it has been issued by a religious endorsing agency that has been formally recognized by the Armed Forces Chaplains Board of the Department of Defense. The appropriate endorsing agency must certify in the endorsement that the applicant:

(1) Is a fully ordained minister, priest, or rabbi of the denomination the agency is legitimately authorized to represent, giving day, month, year, and place of applicant's ordination.

(2) Is professionally qualified and authorized to be appointed as a Reserve of the Air Force with the specialty of chaplain.

(3) Is authorized to enter on extended active duty in the active establishment of the Air Force.

(4) Is engaged in the full-time pursuit of his religious vocation.

(5) Is best qualified intellectually, emotionally, and psychologically for the Air Force chaplaincy.

§ 881.43 The Chaplain Candidate Program.

(a) *Eligibility criteria.* In addition to being otherwise qualified, applicants seeking appointment as chaplain candidates must:

(1) Possess 120 undergraduate semester hours credit from an accredited or recognized college or university as outlined in § 881.40(c)(2)(i).

(2) Apply after completing the first semester of the first year but before the beginning of the last semester of the final year of study while enrolled as a full-time student in an accredited or recognized theological seminary or school of religion as outlined in § 881.40(c)(2)(ii).

(3) Possess the potential professional qualifications required for chaplains as stated in § 881.40.

(4) Secure ecclesiastical approval to enter the Chaplain Candidate Program from the endorsing agency of the denomination under whose auspices he will qualify himself as a fully ordained minister, priest, or rabbi.

(5) Be less than 30 years of age at the time of appointment.

(b) *Procedures.* The application procedure established in Subparts C and E apply. Additionally, the application must include a statement of ecclesiastical approval signed by the applicant's ecclesiastical endorsing agent.

(c) *Appointment.* Appointment is contingent upon a military authorization and a denominational quota vacancy as determined by the Chief of Chaplains.

(1) Approved applicants will be commissioned in the grade of second lieutenant, awarded AFSC 8921, designated a Ready Reservist and assigned to the Obligated Reserve Section (ORS) by ARPC. At the time of appointment each student will sign the following certificate, which becomes a part of this permanent record:

I understand that to retain my commission as a Reserve of the Air Force I must earn a minimum of 90 graduate semester hours credit or an appropriate graduate theological degree from a theological school accepted as a member of the American Association of Theological Schools, or from a graduate school which is a component part of a university accredited by an appropriate regional accrediting agency. I further understand that failure to complete this theological training satisfactorily will result in the termination of my commission as a Reserve of the Air Force (Authority: AFR 45–41). Upon meeting the qualifications outlined in AFM 36–5, paragraph 5–1c(3), I must submit an application for appointment as an Air Force Chaplain. I agree to serve a minimum of 3 full years on extended active duty as a chaplain if a quota for my denomination exists and if my services are required by the Department of the Air Force. If I am not ordered to extended active duty. I agree to accept a Ready Reserve assignment when one is available, or a CHAPAR assignment, and to actively participate in the Ready Reserve program for a minimum of 3 years unless ordered to active duty. Also, I agree to attend the Chaplain Orientation Course at the USAF Chaplain School as soon as possible after reappointment as chaplain, but not later than 1 year after I receive my commission as a chaplain.

(Signature of applicant)

(2) *Submission of application.* Applications are submitted direct to USAF MPC (HCFE) for final review, approval, and appointment.

(3) *Monitoring the Chaplain Candidate Program.* AFRES (HC) monitors this program. On or before 1 September each year the chaplain candidate must

submit to AFRES (HC) a certification by the registrar of the theological institution he is attending that he is a current student in good standing and has been accepted for enrollment for the ensuing academic year. The certification must include the estimated date of graduation.

(d) *Reappointment as chaplain.* A chaplain candidate applies for appointment as chaplain, first lieutenant, after he graduates from theological seminary and is ordained. An applicant will be approved if he is endorsed for appointment by his ecclesiastical endorsing agency and meets all requirements. If a denominational quota vacancy exists, the applicant must submit with his application an application for EAD (AF Form 125) for approval by USAFMPC (HCFE). If no active duty quota vacancy exists, or if his denomination requires professional experience, the applicant must obtain an ecclesiastical endorsement for reappointment as chaplain and assignment to the ready reserve. He will be required to actively participate in the ready reserve for a minimum of 3 years unless selected by his endorsing agency to fill an active duty quota vacancy. If reappointed as chaplain, he must agree to apply for the chaplain orientation course as soon as possible, but no later than 1 year after date of reappointment. If no vacancy exists in a Category A reserve unit or mobilization augmentation position, he may be assigned to the Chaplain Area Representative program (CHAPAR).

(e) *Title of chaplain candidate.* A chaplain candidate, when in military status, will be addressed as "lieutenant." He will show his written title as:

2d Lt, USAFR
Chaplain Candidate.

A chaplain candidate will not wear the chaplain insignia.

(f) *Termination of chaplain candidate status.* (1) The status of a chaplain candidate will be in force until his theological training has been completed, ordination rites have been conferred, and the candidate fully meets the requirements for appointment as an Air Force chaplain according to this part.

(2) A chaplain candidate's commission will be terminated under AFR 45–41, if:

(i) He fails to complete the required theological studies,

(ii) He does not qualify as a chaplain according to § 881.40(c)(3),

(iii) He is not appointed as chaplain in the ResAF,

(iv) His ecclesiastical approval is withdrawn, or

(v) He fails to apply for reappointment as chaplain, first lieutenant, upon completion of the last semester of the final year of study and full ordination.

Subpart F—Appointment of Physicians,[1] Dentists, Veterinarians, and Nurses

§ 881.50 How to apply.

Section 881.21(g) shows how to submit applications. In addition to the documents required by § 881.20(a), applicant must submit:

(a) Two photostats of license to practice, except when waivers are permitted. Nurses must have current registration in at least one State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States. Applications may be submitted before actual receipt of license, provided evidence of satisfactory completion of examination for licensure is included with the remainder of the required documents. Nurse anesthetists must submit documentary evidence of current certification by the American Association of Nurse Anesthetists.

(b) Nurses must submit one official copy of transcript of grades from all schools of nursing, colleges, or universities and of any postgraduate training, such as anesthesia.

§ 881.51 General qualifications for appointment.

(a) Appointments will be based on criteria established for each specialty. Waiver of the maximum age requirement may be granted by HQ USAF for persons concurrently requesting EAD.

(b) A Reserve first lieutenant or captain of the Medical or Dental Corps entering on active duty will be appointed to the grade of captain (temporary) effective the date of entry on active duty with the date of rank as of date of graduation from medical or dental school, as appropriate. Temporary appointment to the grade of captain is contingent upon the person's entry on active duty. Criteria for entry on EAD of Medical Corps officers in a temporary grade higher than captain are outlined in AFR 45–26.

(c) Appointments may be tendered to draft-liable physicians for assignment to a Reserve unit, including the Air National Guard of the United States, except during the period a special physicians' draft call is being filled by the Selective Service System. Processing of appointees must be completed, except for security clearance, before the date Selective Service requisitioning begins. HQ USAF (DPMRDS) will announce beginning and closing dates of special draft calls.

§ 881.52 Doctors of medicine.

(a) *Appointment as first lieutenant.* (1) For appointment as first lieutenant, the applicant must:

(i) Be a graduate of a medical school approved by the Surgeon General or of a foreign medical school, and furnish evidence of permanent certification by the Educational Council for Foreign Medical Graduates, or permanent and unrestricted licensure in a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States.

(ii) Have completed a 1-year internship and be engaged in the ethical practice of medicine.

(iii) Possess a license to practice medicine in a State or in the District of Columbia, or possess a diploma from the National Board of Medical Examiners.

(2) License and actual engagement in practice may be waived for graduates of approved medical schools and for those who have attained permanent certification by the Educational Council for Foreign Medical Graduates. Application for appointment must be made within 1 year after the completion of internship or residency training, provided formal postgraduate medical training has been continuous and uninterrupted since receipt of medical degree.

(b) *Reappointment as first lieutenant.* Regardless of the provisions of subdivisions (ii) and (iii) of paragraph (a)(1) of this section, reappointment as first lieutenant will be tendered to persons who successfully complete:

(1) The Senior Medical Student program.

(2) Medical school under the Air Force Early Commissioning program or the Medical Education of Reserve Air Force Officers program.

(c) *Appointment in higher grade.* Applicants must possess all the qualifications specified in paragraph (a) of this section and have had the minimum additional professional experience, including internship, residency, fellowship, or other graduate study at a hospital, public health agency, school of public health, research institute, laboratory, medical college, recognized teaching center, or similar institution shown in § 881.55 for the applicable grade.

§ 881.53 Doctors of osteopathy.

(a) *Appointment as first lieutenant.* (1) For appointment as first lieutenant, applicants must have completed:

(i) Three years of college work before entering a college of osteopathy.

(ii) A 4-year course and been awarded a degree of doctor of osteopathy, from a school of osteopathy (approved by the Surgeon General) whose graduates are eligible for licensure to practice medicine or surgery in a majority of the States and be licensed to practice medicine, surgery, or osteopathy in a State or territory of the United States or in the District of Columbia.

(iii) A 1-year internship and be engaged in the ethical practice of osteopathy.

(2) License and actual engagement in practice may be waived for graduates of approved schools of osteopathy providing application for appointment is made within 1 year after completion of internship or residency training. Formal postgraduate training must be continuous and uninterrupted since receipt of degree is osteopathy.

(b) *Appointment in higher grades.* Applicants must possess all the qualifications specified in paragraph (a) of this section and have the minimum additional professional experience, including internship, residency, fellowship, or other gradaute study at a hospital, public health agency, school of public health, research institute, laboratory, medical college, recognized teaching center, or a similar institution shown in § 881.55 for the applicable grade.

[1] For the purpose of this part, physicians include osteopaths.

§ 881.54 Doctors of dentistry.

(a) *Appointment as first lieutenant.* (1) For appointment as first lieutenant, applicants must:

(i) Possess a degree of doctor of dental surgery or doctor of dental medicine from a school of dentistry acceptable to the Surgeon General, USAF.

(ii) Possess a license to practice dentistry in a State or in the District of Columbia.

(iii) Actually be engaged in the ethical practice of dentistry.

(2) Waiver of license and actual engagement in practice may be made for graduates of approved dental schools, if application for appointment is made within 1 year after graduation or while undergoing appropriate postgraduate instruction or engaged in a dental internship.

(3) Applications from dental students may be accepted and processed before receipt of the qualifying degree. The applicant must furnish a statement from the institution indicating he had completed all the degree requirements or is expected to do so within 7 months. If otherwise qualified, the applicant will be tendered an appointment generally between 150 to 180 days before graduation. After appointment and following graduation, the officer must furnish evidence that the degree has been conferred and all other applicable requirements have been met. Officers so appointed who do not successfully complete their educational requirements or who fail to receive the qualifying degree will be discharged under AFR 45–41. At the time of application, each student must sign the following certificate, which will become a part of his permanent file:

I understand that if appointed, continuation in the appointment is contingent upon my completing the requirements of the appropriate degree and that failure to receive my graduate degree on _____ will result in the termination of my appointment as a Reserve of the Air Force (authority: AFR 45–41). Upon meeting the qualifications for appointment, I agree to serve a minimum of 2 full years on extended active duty unless sooner relieved by proper authority.

_____ _____
(Date) (Signature)

(4) Applications will not be accepted from senior dental students who will have an obligation for military service upon graduation unless they are:

(i) Applying for a sponsored internship.

(ii) Enrolled in the Early Commissioning program under part 906, of subchapter K of this chapter; the Senior Dental Student program, when offered; or any "extended leave" or "inservice arrangement" programs, when offered.

(iii) Allocated to the Air Force under the Armed Forces Reserve Dental Officer Allocation and Commissioning program.

(5) Unless authorized in subparagraph (4) of this paragraph, applications for reserve commissions from senior dental students who do not participate in the Armed Forces Reserve Dental Officer Allocation and Commissioning program will not be accepted until 4 months after their graduation or when they are allocated to the Air Force as the result of a special call for dentists.

(b) *Appointment in higher grades.* Applicants must possess all the qualifications specified in paragraph (a) of this section for the first lieutenant and have the additional minimum experience or training in environments normally associated with high professional standards as shown in § 881.55 for the applicable grade.

(c) *Substituting graduate study for professional experience.* Graduate study, not to exceed 3 years, may be substituted for professional experience on a year-for-year basis.

§ 881.55 Criteria for appointment of doctors of medicine, osteopathy, and dentistry to grades above first lieutenant.

Rule	A. If applicant possesses all the qualifications for a 1st lieutenant and—	B. Has had—	C. Then he is qualified for appointment as a—
1	Is engaged in the practice of his specialty (medicine, osteopathy, or dentistry) in an environment normally associated with high professional standards.	3 years' actual experience.	Captain.
2	Has had a period of intensive post graduate training in a medical or dental specialty sufficiently prolonged and of a caliber to insure the optimum in professional knowledge and technique, judged by the standards normally associated with recognized teaching centers.	10 years' actual experience and must ordinarily have been certified by one of the American specialty boards for his specialty.	Major.
3	Has achieved an unequivocal prominence that makes him an authority in his field (example: a person who is an outstanding contributor to scientific research and to the development of his specialty).	17 years' actual experience.	Lieutenant colonel.
4	----------	19 years' actual experience.	Colonel or lieutenant colonel.[1]

[1] A person who has achieved national prominence as an authority in his particular specialty may be appointed in the grade of colonel.

§ 881.56 Doctors of veterinary medicine.

(a) *Appointment as first lieutenant.* (1) For appointment as first lieutenant applicant must:

(i) Be a graduate of a school of veterinary medicine or veterinary surgery, approved by the Surgeon General, USAF.

(ii) Be licensed to practice veterinary medicine in a State or in the District of Columbia.

(iii) Be engaged in the ethical practice of veterinary medicine.

(2) License and actual engagement in practice may be waivered for graduates of approved schools of veterinary medicine or surgery who are commissioned immediately upon graduation.

(3) Appointment of veterinary students before graduation may be made as prescribed for dental students in § 881.54 (a) (3).

(b) *Appointment in other grades.* Applicants must qualify under subparagraph (1) of paragraph (a) of this section and be qualified by minimum periods of acceptable professional experience as follows:

(1) *Captain.* (i) Be engaged in practice of veterinary medicine, with a major portion of the practice being in environments normally associated with high professional standards.

(ii) Have 4 years of actual experience.

(2) *Major.* (i) Give evidence of sufficient independent experience to indicate mature judgment and ability to function in the specialty without professional supervision.

(ii) Ordinarily must have been certified by an American Veterinary Specialty Board.

(iii) Have 11 years of actual experience.

(3) *Lieutenant Colonel.* (i) Give evidence of having achieved an unequivocal prominence that makes him an authority in his particular field. (Example: A person who is an outstanding contributor to scientific research; an administrator and contributor to development of the specialty under consideration.)

(ii) Have 18 years of actual experience.

(4) *Colonel.* (i) Have achieved the type of background described in subdivision (i) of subparagraph (3) of this paragraph.

(ii) Have 20 years of actual experience.

§ 881.57 Appointments of nurses.

(a) *Appointment as second lieutenant.* (1) Applicant must:

(i) Be a graduate of a school of nursing that is accredited by the national professional agency recognized by the National Commission on Accrediting and acceptable to the Surgeon General, USAF.

(ii) Possess current registration in at least one State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States;

(iii) Be engaged in the ethical practice of nursing.

(2) An applicant who has a baccalaureate degree in nursing or an allied field may be granted 1 year of constructive service. However, if a year of constructive service is awarded for the degree, the same period of time may not be counted again as constructive experience.

(b) *Appointment in other grades.* Applicants must qualify under paragraph (a) of this section and be qualified by the indicated minimum number of years of professional experience and educational requirements outlined below. Constructive service in the amount of 1 year may be awarded to an applicant who has a baccalaureate degree; an additional year may be awarded for a master's degree. The period for which constructive service is granted for education may not again be counted toward meeting experience requirements. The period during which an applicant concurrently

earns a degree and acquires experience may be counted as constructive service either for education or experience but not for both.

(1) *First lieutenant.* Must have constructive education and experience totaling 3 years in one of the following combinations:

(i) Three years' appropriate professional experience, of which at least 6 months was spent either in active nursing or pursuing additional education in a field allied to nursing within the 12-month period prior to appointment.

(ii) Two years' appropriate professional experience and a baccalaureate degree in nursing or a field allied to nursing.

(iii) One year's appropriate professional experience and a master's degree in nursing, a nursing specialty, or a field allied to nursing.

(iv) Two years' appropriate professional experience and at least 1 year of anesthesia training and subsequent qualification by examination as a nurse anesthetist by the American Association of Nurse Anesthetists (AANA).

(v) One year's appropriate professional experience, a baccalaureate degree in nursing or a nursing specialty, and at least 1 year of anesthesia training and subsequent qualification by examination as a nurse anesthetist by the AANA.

NOTE: Applicants with more than 3 years of applicable experience who do not meet the qualifications for appointment in grade of captain will be given constructive service credit to which entitled under this part, except that in no case will the applicant be credited with more than 6 years.

(2) *Captain.* Must have constructive education and experience totaling 7 years in one of the following combinations:

(i) Six years' appropriate professional experience in addition to a baccalaureate degree in nursing or a field allied to nursing. (A minimum of 2 years of the required 6 years' professional experience must have been spent in public health, teaching, or an appropriate administrative position.)

(ii) Five years' appropriate professional experience plus a master's degree in nursing, a nursing specialty, or a field allied to nursing. Two years of the required 5 years' professional experience must have been spent teaching or in an appropriate administrative position.

(iii) Six years' appropriate professional experience and at least 1 year's anesthesia training and subsequent qualification by examination as a nurse anesthetist by the AANA. Applicant must have had at least 12 months' experience administering anesthetics within the 2-year period immediately prior to appointment.

(iv) Five years' appropriate professional experience, a baccalaureate degree in nursing or a nursing speciality, and at least 1 year's anesthesia training and subsequent qualification by examination as a nurse anesthetist by the AANA. Applicant must have had at least 12 months' experience in administering anesthetics within the 2-year period immediately prior to appointment.

NOTE: The maximum amount of constructive service that may be awarded upon appointment in grade of captain is 7 years.

(3) *Major or lieutenant colonel.* Appointees must possess outstanding qualifications for special positions determined by the Surgeon General, USAF, as requirements necessitate.

(c) *Appointment for training.* Applicants who meet appointment criteria may be appointed in the grade for which qualified and ordered to active duty for completion of final 12 months of degree requirements (see Part 905 of Subchapter K of this chapter). After appointment and following graduation, the officer must furnish evidence that the degree has been conferred and all other applicable requirements have been met. Officers so appointed who do not successfully complete their educational requirements or who fail to receive the qualifying degree will be discharged under AFR 36-12. At the time of application, each student must sign the following certificate, which will be filed in his unit personnel records as a permanent document:

I understand that if appointed, continuation in the appointment is contingent upon my completing the requirements of the appropriate degree and that failure to receive my degree will result in the termination of my appointment as a Reserve of the Air Force. (Authority: AFR 36-12.) Upon being ordered to active duty, I agree to serve a minimum of 4 full years unless sooner relieved by proper authority.

(Signature)

(Date)

Subpart G—Appointment of Officers in the Medical Service Corps

§ 881.60 Application, processing, and selection.

(a) Section 881.21(g) shows how to submit applications. In addition to documents required by § 881.20(a), each applicant must submit results of the AFOQT under § 881.22(b).

(b) Qualifying experience may include both active military and full-time civilian experience that is directly related to the specialty for which application is made. For appointment in grades higher than second lieutenant, the experience must have been gained after the qualifying degree was attained.

§ 881.61 Health services administrator (AFSC 9021).

(a) *Grade.* Appointments for duty in this specialty may be made in grades of second lieutenant through lieutenant colonel as determined under § 881.16(d) and § 881.16a.

(b) *Education.* The minimum educational requirement for qualification in this specialty is a baccalaureate degree in business administration, management, or a related or included field of administration or management. A master's degree in hospital administration or a related field is desirable.

(c) *Area of experience.* Qualifying experience must have been gained in administrative or management positions, including planning, organizing, and directing such activities as hospital administration, medical registration, personnel, finance, evacuation and debarkation of patients, recreation, welfare, and installation maintenance.

§ 881.62 Other applicants.

Reserve appointment, reappointment, or promotion list transfer to the Medical Service Corps with AFSC 9021:

(a) Will be made for the following:

(1) Students pursuing courses of study as physicians, osteopaths, dentists, veterinarians, or optometrists who apply and are selected for commissioning under Part 906 of Subchapter K of this chapter.

(2) Students selected for participation in the following programs (listed in Part 905 of Subchapter K of this chapter).

(i) The Senior Medical Student Program.

(ii) The Senior Optometry School Program.

(iii) Other health or health related fields.

(3) Persons selected for advanced training in medicine, dentistry, or veterinary medicine under Part 908 of Subchapter K of this chapter.

(b) May be made under subparagraph (1) of paragraph (a) of this section only in the grade of second lieutenant and under subparagraphs (2) and (3) of paragraph (a) of this section in grades not to exceed captain. Qualification for a grade higher than second lieutenant is based on prior commissioned service.

Subpart H—Appointment of Officers in the Biomedical Sciences Corps

§ 881.70 Application, processing, and selection.

(a) Section 881.21(g) shows how to submit applications. In addition to documents required by § 881.20(a), each applicant must submit:

(1) Results of the AFOQT specified in § 881.22(b) when applicable.

(2) One official copy of transcript of grades from college or university, plus one copy of certification in specialty, if applying for appointment as a dietitian, occupational therapist, or physical therapist.

(3) One photostat of license to practice if applying for appointments for duty in specialties requiring licensure, such as optometrists and pharmacists.

(b) Grades in which selected applicants are to be appointed will be determined according to the specific paragraph that deals with the specialty and §§ 881.16(d) and 881.16a.

(c) Qualifying experience may include both active military and full-time civilian experience that is directly related to the specialty for which application is made. For appointment in grades higher than second lieutenant, the experience must have been gained after the qualifying degree was attained.

(d) Biomedical therapist (podiatrist) and optometry officers who are not otherwise eligible for a higher grade

shall be appointed in the temporary grade of first lieutenant effective on the date of entry on active duty.

§ 881.71 Dietitian (AFSC 9216A).

(a) *Appointment as second lieutenant.* Applicant must:

(1) Possess a bachelor's degree from an approved college or university.

(2) Have completed an internship acceptable to the Surgeon General, USAF.

(b) *Appointment in higher grades.* Applicants must qualify under paragraph (a) of this section and be qualified in acceptable professional experience and training as follows:

(1) *First lieutenant.* At least 2 years' experience, exclusive of internship, one of which has been as dietitian in a hospital of 100 or more beds. Applicant with more than 3 years of applicable experience who do not meet the qualifications for appointment in grade of captain will be given constructive service credit to which entitled under this part, except that in no case will applicant be credited with more than 6 years of service.

(2) *Captain.* At least 6 years' experience exclusive of internship, including 3 years in administration of a dietetic department of a hospital of 100 or more beds. The maximum amount of constructive service that may be awarded upon appointment as captain is 7 years.

(3) *Major and lieutenant colonel.* Appointees must possess outstanding qualifications for special positions determined by the Surgeon General, USAF, as requirements necessitate.

§ 881.72 Occupational therapist (AFSC 9226).

(a) *Appointment as second lieutenant.* Applicant must:

(1) Possess a bachelor's degree from an approved college, university, or school.

(2) Have completed an occupational therapy course acceptable to the Surgeon General, USAF.

(b) *Appointment in higher grades.* Applicant must possess all the qualifications in paragraph (a) of this section and be further qualified by acceptable professional experience and training as follows:

(1) *First lieutenant.* At least 2 years' professional experience in medical institutions following certification. Applicants with more than 3 years' applicable experience who do not meet the qualifications for appointment in grade of captain will be given constructive service credit to which entitled under this part, except that in no case will the applicant be credited with more than 6 years' service.

(2) *Captain.* At least 6 years' professional experience in medical institutions following certification, 3 of which must have been in a supervisory or administrative capacity. The maximum amount of constructive service that may be awarded upon appointment as captain is 7 years.

(3) *Major and lieutenant colonel.* Appointees must possess outstanding qualifications for special positions determined by the Surgeon General, USAF, as requirements necessitate.

§ 881.73 Physical therapist (AFSC 9236).

(a) *Appointment as second lieutenant.* Applicant must:

(1) Possess a bachelor's degree from an approved college, university, or school.

(2) Have completed a physical therapy training course acceptable to the Surgeon General, USAF.

(b) *Appointment in higher grades.* Applicant must possess all the qualifications in paragraph (a) of this section and be further qualified by acceptable professional experience and training as follows:

(1) *First lieutenant.* At least 2 years' professional experience in medical institutions following certification. Applicants with more than 3 years' applicable experience who do not meet the qualifications for appointment in the grade of captain will be given constructive service credit to which entitled under this part, except that in no case will the applicant be credited with more than 6 years' service.

(2) *Captain.* At least 6 years' professional experience in medical institutions following certification, 3 of which must have been in a supervisory or administrative capacity. The maximum amount of constructive service that may be awarded upon appointment as captain is 7 years.

(3) *Major and lieutenant colonel.* Appointees must possess outstanding qualifications for special positions determined by the Surgeon General, USAF, as requirements necessitate.

§ 881.74 Appointment for training.

Applicants who are 21 but not 28 years of age may be appointed as second lieutenants and ordered to active duty to complete training in one of the following courses:

(a) *Dietetic training.* Applicant must possess a bachelor's degree and have been accepted for an approved dietetic internship.

(1) Dietetic students may be appointed before graduation in substantially the same way that dental students are under § 881.54(a)(3). At the time of application, each student must sign the following certificate, which will be filed in his unit personnel records as a permanent document:

I understand that if appointed, continuation in the appointment is contingent upon my completing the requirements for a baccalaureate degree and an approved dietetic internship. Failure to complete requirements will result in termination of my appointment as a Reserve of the Air Force. (Authority: AFR 36–12.) Upon being ordered to active duty, I agree to serve a minimum of 4 full years unless sooner relieved by proper authority.

Active duty will consist of the following:

12 months—Dietetic internship.

6 months—Additional dietetic training at a USAF hospital.

30 months—Duty assignment as a dietitian at a USAF hospital.

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(Date) (Signature)

(b) *Occupational therapy training.* Applicant must be enrolled in the final year of an approved course leading to a bachelor's degree in occupational therapy or possess a bachelor's degree and have completed all but the final year of an approved certificate course in occupational therapy.

(c) *Physical therapy training.* Applicant must possess a bachelor's degree and have been accepted for an approved certificate course in physical therapy or be enrolled in the final year of an approved course leading to a bachelor's degree in physical therapy.

(d) *Qualifying evidence.* After appointment and following graduation, each officer who has been appointed under paragraphs (b) and (c) of this section must furnish evidence that the applicable degree has been conferred and all other applicable requirements have been met. Officers so appointed who do not successfully complete their educational requirements, or who fail to receive the qualifying degree, will be discharged under AFR 36–12. At the time of application, each student must sign the following certificate which will be filed in his unit personnel records as a permanent document:

I understand that if appointed, continuation in the appointment is contingent upon my completing the requirements for certification in (physical/occupational) therapy. Failure to meet certification requirements will result in the termination of my appointment as a Reserve of the Air Force. (Authority: AFR 36–12.) Upon being ordered to active duty, I agree to serve a minimum of 4 full years unless sooner relieved by proper authority.

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(Date) (Signature)

§ 881.75 Pharmacy officer (AFSC 9241).

(a) *Grade.* Appointments may be made in grades of second lieutenant through colonel as determined under §§ 881.16(d) and 881.16a.

(b) *Education.* The minimum educational requirement is a baccalaureate degree in pharmacy.

(c) *Area of experience.* Qualifying experience must have been gained in pharmacy positions, including conducting laboratory tests, manufacturing medications, and directing pharmacy personnel. A current license to practice pharmacy is mandatory. Licensure may be waived for individuals appointed within 1 year after date of graduation to fill an active duty requirement.

§ 881.76 Optometry officer (AFSC 9251).

(a) *Grade.* Appointments may be made in grades of second lieutenant through colonel as determined under §§ 881.16(d) and 881.16a. Students may be appointed before they attain the qualifying degree in the same that dental students are under § 881.54(a)(3)

(b) *Education.* The minimum educational requirement is a degree in optometry from an accredited school of optometry.

(c) *Area of experience.* Qualifying experience must have been gained in optometry positions, including conducting

examinations of the eye to determine the presence of visual defects; prescribing lenses and orthoptic therapy to correct, conserve, or improve vision; and examining and testing lenses for workmanship and conformance to prescriptions. Must posses a current license to practice optometry in a State or the District of Columbia or certification of the successful passing of all parts of the examination of the National Board of Examiners in optometry. Licensure may be waivered for individuals appointed within 1 year after date of graduation to fill an active duty requirement.

§ 881.77 Bioenvironmental engineer (AFSC 9121).

(a) *Grade.* Appointments may be made in grades of second lieutenant through major as determined under §§ 881.16(d) and 881.16a.

(b) *Education.* The minimum educational requirement is a baccalaureate degree in civil, chemical, sanitary, electrical, mechanical, or industrial hygiene engineering.

(c) *Area of experience.* Qualifying experience must have been gained in a professional capacity, including design, management, investigation, or construction of works or programs for water supply, treatment, and disposal of community wastes (that is, sanitary sewage, industrial wastes, and refuse including salvage and reclamation of useful components of such wastes); the control of pollution of surface waterways and ground waters, and of surface and subsurface soils, milk, and food facilities, housing, hospital, and institutional facilities; insect and vermin control or eradication; rural, camp, and recreation place facilities; the control of atmospheric pollution and air quality, and of light, noise, vibration, and toxic materials, including application to work spaces in industrial establishments; the prevention of radiation exposure; professional research and development work; and responsible teaching positions in engineering subjects in educational institutions of recognized standing.

§ 881.78 Medical entomologist (AFSC 9131).

(a) *Grade.* Appointments may be made in grades of second lieutenant through colonel as determined under §§ 881.16(d) and 881.16a.

(b) *Education.* The minimum educational requirement is a baccalaureate degree in entomology. A master's degree is desirable.

(c) *Area of experience.* Qualifying experience must have been gained in medical entomology positions, including formulating policies and procedures, directing personnel engaged in medical entomological activities, and conducting field and laboratory studies on development, testing, and application of insect control measures.

§ 881.79 Biomedical laboratory officer (AFSC 9151).

(a) *Grade.* Appointments may be made in grades of second lieutenant through colonel as determined under §§ 881.16(d) and 881.16a.

(b) *Education.* The minimum educational requirement is a baccalaureate degree in medical technology, bacteriology, parasitology, chemistry, biochemistry, pharmaceutical chemistry, pharmacology, hematology, serology, or virology. A master's or Ph. D. degree with a major study in one of the referenced fields is desirable.

(c) *Area of experience.* Experience must have been gained in clinical laboratory positions, including conducting clinical laboratory tests and developing and applying procedures in serology, bacteriology, parasitology, hematology, biochemistry, and tissue pathology.

§ 881.80 Aerospace physiologist (AFSC 9161).

(a) *Grade.* Appointments may be made in grades of second lieutenant through colonel as determined under §§ 881.16(d) and 881.16a.

(b) *Education.* The minimum educational requirement is a baccalaureate degree in physiology, biophysics, biochemistry, or zoology. A master's degree or Ph. D. with a major study in one of the referenced fields is desirable.

(c) *Area of experience.* Qualifying experience must have been gained in aviation physiological or related positions. Experience in physiological research and the development of physiological aids for aircrew personnel is desirable.

§ 881.81 Health physicist (AFSC 9171).

(a) *Grade.* Appointments may be made in grades of second lieutenant through colonel as determined under §§ 881.16(d) and 881.16a.

(b) *Education.* The minimum educational requirement is a master's degree in health physics, nuclear physics, radiobiology, radiological physics, or biophysics.

(c) *Area of experience.* Qualifying experience must have been gained in controlling, shipping, and disposing of radiological materials; conducting radiological protection surveys; monitoring the treatment and disposal of radioactive wastes; calibrating instruments; instructing in health physics, and supervising and directing health physics programs.

§ 881.82 Clinical phychologist (AFSC 9181).

(a) *Grade.* Appointments may be made in grades of second lieutenant through colonel as determined under §§ 881.16(d) and 881.16a.

(b) *Education.* An applicant may qualify in either of two ways:

(1) A doctoral degree with a major and dissertation in clinical psychology from an approved university and completion of internship in a medical setting, is mandatory for a fully qualified appointment.

(2) Persons with master's degree in clinical psychology who are doctoral candidates within 2 years of completing academic requirements toward the doctoral degree may be offered an appointment and sponsorship under an AFIT program to complete requirements for the doctoral degree.

(c) *Area of experience.* Qualifying experience must have been gained in clinical psychological positions, including formulating plans and policies for and directing personnel engaged in clinical psychology activities; administering psychotherapy in typical cases; selecting and interpreting results of psychological tests; and counseling maladjusted personnel on education and vocational problems.

§ 881.83 Social worker (AFSC 9191).

(a) *Grade.* Appointments may be made in grades of second lieutenant through colonel as determined under §§ 881.16(d) and 881.16a.

(b) *Education.* The minimum educational requirement is a master's degree in social work.

(c) *Area of experience.* Qualifying experience must have been gained in psychiatric case work positions, including administration of psychiatric social work programs as a member of the psychiatric team.

§ 881.84 Biomedical therapist (AFSC 9261).

(a) *Grade.* Appointments may be made in grades of second lieutenant through lieutenant colonel as determined under §§ 881.16(d) and 881.16a.

(b) *Education.* For podiatrists (AFSC 9261A), the minimum educational requirement is a Doctor of Podiatry degree from a school or college of podiatry. For all other subspecialties (AFSC 9261B, audiologist; AFSC 9261C, speech therapist; and AFSC 9261D, special), the minimum educational requirement is a master's degree in the appropriate specialty. All degrees must be from accredited institutions of higher learning acceptable to the Surgeon General, USAF.

(c) *Area of experience.* Qualifying experience must have been gained in full-time positions as a podiatrist, audiologist, speech pathologist, rehabilitation therapist (including providing care and treatment for human ailments), or planning, directing, and conducting research in the pertinent professional area of practice. License to practice in the pertinent specialty, when appropriate, or registration or certification by the special national accreditation body is mandatory. Licensure, registration, or certification may be waived for individuals appointed within 1 year after date of graduation.

By order of the Secretary of the Air Force.

JOHN W. FAHRNEY,
Colonel, U.S. Air Force, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.72-20536 Filed 11-29-72;8:47 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

[CGD 72-13R]

PART 110—ANCHORAGE GROUNDS

Puget Sound Area, Wash.

This amendment to the anchorage regulations disestablishes the Port Madison Explosives Anchorage as published in 33 CFR 110.230(a)(5). The reason for the termination is that the anchorage no longer meets the minimum quantity/distance standards.

This amendment is based on a notice of proposed rule making published in the Thursday, February 3, 1972, issue of the FEDERAL REGISTER (37 F.R. 2587) and Public Notice 71-L-03 issued by the Commander, Thirteenth Coast Guard District.

No comments concerning the disestablishment of the explosives anchorage were received.

In consideration of the foregoing, § 110.230(a) is amended by deleting subparagraph (5).

§ 110.230 Puget Sound Area, Wash.

(a) * * *

(5) [Deleted]

* * * * *

(Sec. 7, 38 Stat. 1053, as amended, sec. 6(g)(1)(A), 80 Stat. 937; 33 U.S.C. 471, 49 U.S.C. 1655(g)(1)(A); 49 CFR 1.46(c)(1), 33 CFR 1.05-1(c)(1) (36 F.R. 19160))

Effective date. This amendment shall become effective on December 1, 1972.

Dated: November 24, 1972.

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

[FR Doc.72-20592 Filed 11-29-72;8:51 am]

Title 35—PANAMA CANAL

Chapter I—Canal Zone Regulations

SUBCHAPTER B—GENERAL REGULATIONS

PART 67—CANAL ZONE POSTAL SERVICE

Armed Forces Mail

Effective on publication in the FEDERAL REGISTER (11-30-72), Part 67 of Title 35, Code of Federal Regulations is amended to read as follows:

1. The index of Part 67 is amended as follows:

Subpart D—Mail Classification and Rates

Sec.

67.171 Mail addressed to military post offices overseas and mail privileges for members of the U.S. Armed Forces and friendly foreign nations in the Canal Zone.

2. Section 67.171(a) is revised to read as follows:

§ 67.171 Mail addressed to military post offices overseas and mail privileges for members of the U.S. Armed Forces and friendly foreign nations in the Canal Zone.

(a) Airlift mail: The following items of Armed Forces personnel mail, when addressed to locations where U.S. domestic postage rates apply, are given airlift on a space available basis between the Canal Zone and the point of embarkation within the United States and to final destination, except as otherwise provided herein:

(1) First-class letter mail, including postal and post cards.

(2) Sound recorded communications having the character of personal correspondence. The provisions of 39 CFR, relating to the markings required on this category of mail in the United States, are applicable to and within the Canal Zone.

(3) Second-class publications published once each week or more frequently and featuring principally current news of interest to members of the Armed Forces and the general public, except that such mail shall be transported by surface means within the 48 contiguous States of the United States.

(4) Parcels of any class paid at surface postage rate, not exceeding 15 pounds in weight and 60 inches in length and girth combined when addressed to an Armed Forces post office located outside of the 48 contiguous States of the United States and mailed by persons not members of the Armed Forces of the United States and of friendly foreign nations, except that such parcels shall be transported by surface means within the 48 contiguous States of the United States. These parcels shall be marked with large letters SAM (space available mail) on the address side, preferably below the postage and above the name of the addressee. Postal employees shall place these letters on all such parcels at the time of acceptance.

(5) Parcels of any class paid at surface postage rates not exceeding 70 pounds in weight and not exceeding 100 inches in length and girth combined when mailed by members of the Armed Forces of the United States and of friendly foreign nations, except that such parcels shall be transported by surface means within the 48 contiguous States of the United States. These parcels must be marked with large letters SAM (space available mail) on the address side, preferably below the postage and above the name of the addressee. Postal employees shall place these letters on all such parcels at the time of acceptance.

(6) Parcels, other than parcels mailed at a rate of postage requiring priority of handling and delivery, not exceeding 30 pounds in weight and not exceeding 60 inches in length and girth combined, shall be transported by air on a space available basis to final destination upon payment of a fee in addition to regular surface rate of postage. These parcels must be marked with large letters PAL (Parcel Air Lift) on the address side, preferably below the postage and above the name of the addressee. Postal employees shall place these letters on all such parcels at the time of acceptance. The provisions of 39 CFR, relating to the fee charged for PAL parcels marked in the United States are applicable to and within the Canal Zone.

* * * * *

(2 C.Z.C. 1131-1132, 76A Stat. 38-9)

Date signed: November 14, 1972.

DAVID S. PARKER,
Governor of the Canal Zone.

[FR Doc.72-20520 Filed 11-29-72;8:46 am]

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER E—PESTICIDES PROGRAMS

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

Coordination Product of Zinc Ion and Maneb

Correction

In F.R. Doc. 72-19541, appearing on page 24112, in the issue of Tuesday, November 14, 1972, in the 11th line of the first paragraph, insert the preposition "on" preceding the words "corn grain".

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 3—Department of Health, Education, and Welfare

PART 3-16—PROCUREMENT FORMS

Negotiated Cost-Reimbursement Contracts

On April 25, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 8079-8085) stating that the Department of Health, Education, and Welfare was considering an amendment to 41 CFR Chapter 3 by adding a new § 3-16.950-315 under Subpart 3-16.9, Illustration of Forms. The purpose of the amendment is to illustrate the revised form HEW 315, General Provisions (Negotiated Cost-Reimbursement Contract). The form HEW 315 has been revised by making it two separate forms. Form 315 is to be used with cost-reimbursement contracts with educational institutions and form HEW 315A is to be used with cost-reimbursement contracts with nonprofit institutions other than educational institutions. These General Provisions include certain clauses prescribed by the Federal Procurement Regulations (41 CFR Ch. 1).

These clauses are not being repeated herein, but are identified by an appropriate cross reference to the applicable FPR.

Interested persons were invited to submit written data, views, or comments, within 30 days after publication. Written comments were received, and after due consideration of the views presented, the regulation is revised and adopted as set forth below.

(5 U.S.C. 301; 40 U.S.C. 486(c))

Effective date. This amendment shall become effective 90 days after publication in the FEDERAL REGISTER.

Dated: November 22, 1972.

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

1. The table of contents for Part 3–16 is amended by adding the following entries:

Subpart 3–16.9—Illustration of Forms

Sec.

3–16.950–315 Form HEW 315 (Rev. 12/72), general provisions (negotiated cost-reimbursement contract with educational institutions).

3–16.950–315A Form HEW 315A (12/72), general provisions (negotiated cost-reimbursement contract with nonprofit institutions other than educational institutions).

2. Part 3–16 is amended by adding §§ 3–16.950–315 and 3–16.950–315A to read as follows:

§ 3–16.950–315 Form HEW–315 (Rev. 12/72), general provisions (negotiated cost-reimbursement contract with educational institutions).

GENERAL PROVISIONS (NEGOTIATED COST-REIMBURSEMENT CONTRACT WITH EDUCATIONAL INSTITUTIONS)

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health, Education, and Welfare; and the term "his duly authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) The term "Project Officer" means the person representing the Government for the purpose of technical direction of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the period of this contract.

(d) The term "Department" means the Department of Health, Education, and Welfare.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

2. DISPUTES

(Text of this clause is set forth in FPR 1–7.101–12).

3. LIMITATION OF COST

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in this contract and the Contractor agrees to use its best efforts to perform all work and all obligations under this contract within such estimated costs. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost set forth in the contract, or, if at any time, the Contractor has reason to believe that the total cost to the Government, for the performance of this contract, will be substantially greater or less than the estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the contract and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of such estimated cost unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in this contract has been increased by the Contracting Officer in writing, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

4. ALLOWABLE COST

(a) *Compensation for Contractor's performance.* Payment for the allowable cost, as herein defined and as actually incurred by the Contractor shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Allowable cost.* The allowable cost of performing the work under this contract shall be the cost actually incurred by the Contractor, either directly incident or properly allocable to the contract, in the performance of this contract in accordance with its terms. The allowable cost, direct and indirect, including acceptability of cost allocation methods, shall be determined by the Contracting Officer in accordance with:

(1) Subpart 1–15.3 of the Federal Procurement Regulations (41 CFR 1–15.3) as in effect on the date of this contract.

(2) The terms of this contract.

5. NEGOTIATED OVERHEAD RATES

(i) The following provisions shall be applicable when post determined rates are used:

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost" the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible, but not later than six (6) months after the close of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Subpart 1–15.3 of the Federal Procurement Regulations (41 CFR 1–15.3) as in effect on the date of contract.

(d) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the contract, or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustments when the final rates for that period are established. To prevent substantial over or under payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party, be revised by mutual agreement, and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision of negotiated provisional rates specified in the contract shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(g) Submission of proposed provisional and/or final overhead rates, together with appropriate data in support thereof to the Secretary or his duly authorized representative, and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of (b), (d), and (e) above.

(ii) The following provisions shall be applicable with educational institutions when predetermined rates are used:

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost," the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties, as specified below:

(b) The Contractor, as soon as possible but not later than three (3) months after the close of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed predetermined overhead rate or rates based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation or predetermined overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Subpart 1–15.3 of the Federal Procurement Regulations (41

CFR 1-15.3) as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed predetermined overhead rates, (2) the bases to which rates apply, (3) the fiscal year unless the parties agree to a different period for which the rates apply, and (4) the specific items treated as direct cost or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of predetermined overhead rates for the initial period of contract performance, or for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at (1) the rates fixed for the previous fiscal year or other period, or (2) billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period of contract performance the parties fail to agree to a predetermined overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates-Postdetermined" clause set forth in § 1-3.704-2(a) of the Federal Procurement Regulations (41 CFR 1-3.704-2(a)), as in effect on the date of this contract.

(g) Submission of proposed provisional and/or final overhead rates together with appropriate data in support thereof to the Secretary or his duly authorized representative and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his duly authorized representative as evidenced by Negotiated Overhead Rate Agreements, signed by both parties, shall be deemed to satisfy the requirements of (b), (d), and (e), above.

(iii) The following provisions shall be applicable when fixed rates subject to carryforward adjustments are used.

(a) Notwithstanding the provisions of the clause of this contract entitled, "Allowable Cost," the allowable indirect costs under this contract shall be obained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties; as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. When the application of the negotiated fixed rates against the actual base(s) during a given fiscal period produces an amount greater or less than the indirect costs determined for such period, such greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The Contractor, as soon as possible but no later than six (6) months after the close of his fiscal year, or such other period as may be specified in the contract, shall submit to the Secretary or his duly authorized representatives, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the Contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carryforward adjustments, if any, by the Contractor and the Secretary, or his duly authorized representative, shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Subpart 1-15.3 of the Federal Procurement Regulations (41 CFR 1-15.3), as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed overhead rate or rates or to the amount of any carryforward adjustment under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates-Postdetermined" clause set forth in section 1-3.704-2(a) of the Federal Procurement Regulations, as in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or his duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the Contractor and the Secretary or his duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of (b), (d), and (e), above.

6. PAYMENT

(a) *Payment on account of allowable costs.* Once each month (or at more frequent intervals if approved by the Contracting Officer) the Contractor may submit to the Contracting Officer, in such form and reasonable detail as may be required, an invoice or voucher supported by a statement of costs incurred by the Contractor in the performance of this contract and claimed to constitute allowable costs. Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (b) below, make payment thereon as approved by the Contracting Officer.

(b) *Audit adjustments.* At any time or times prior to settlement under this contract the Contracting Officer may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayment, or increased for underpayments, on preceding invoices or vouchers.

(c) *Completion voucher.* On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and provisions of (d) below) the Government shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 6 months (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(d) *Applicable credits.* The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer.

(e) *Financial settlement.* Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in affect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are susceptible to exact statement by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided*, That such claims are not known to the contractor on the date of the execution of the release: *And provided further*, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

7. EXAMINATION OF RECORDS

(a) This clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States and the Secretary, or any of their duly authorized representatives, shall until expiration of 3 years after final payment under this contract or of the time period for the particular records in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever

expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States, or his duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services of rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above, for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation of the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigations, claims, or exceptions have been disposed of.

8. INSPECTION AND REPORTS

(a) *Inspection of work.* The Government shall have the right to inspect the work and activities under this contract, including, without limitation, premises where any Government property may be located, at such reasonable times and in such manner as it may deem appropriate and the Contractor shall afford the Government proper facilities and assistance for such inspection.

(b) *Reports.* The Contractor shall furnish such progress reports, schedules, financial and cost reports, and other reports concerning the work under this contract as specified elsewhere in this contract. Cost and other financial data and projections furnished pursuant to this paragraph (b) shall not relieve the Contractor of the requirements for furnishing notice specified in the clause of this contract entitled, "Limitation of Cost."

9. SUBCONTRACTING

(a) *Prior approval required.* Except as provided in (c) below, the Contractor shall not enter into any subcontract or purchase order not otherwise expressly authorized elsewhere in this contract without the prior written approval of the Contracting Officer and subject to such conditions as the Contracting Officer may require.

(b) *Request for approval.* The Contractor's request for approval to enter into a subcontract pursuant to this clause shall include:

(1) A description of the supplies or services to be called for by the subcontractor;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(4) Identification of the type of subcontract to be used;

(5) A copy or draft of the proposed subcontract, if available; and

(6) Any other information which the Contracting Officer may require.

(c) *Certain purchases of property and services.* Prior written approval shall not be required for firm fixed-price subcontracts for the purchase or rental of any item of permanent research equipment having an acquisition cost of less than $1,000 or for the purchase or rental of any other item of personal property having a unit acquisition cost of less than $200 or an expected service life of less than 1 year, or for other firm fixed-price subcontracts in a total amount less than $1,000, unless otherwise specified elsewhere in this contract.

(d) *Contractor's procurement system.* The Contractor shall use methods, practices or procedures in subcontracting or purchasing (hereinafter referred to as the Contractor's "procurement system") acceptable to the Contracting Officer. The Contracting Officer may, at any time during the performance of this contract, require the Contractor to provide information concerning its procurement system.

(e) *Effect of subcontracting.* Subcontracts shall be made in the name of the Contractor and shall not bind nor purport to bind the Government. The making of subcontracts hereunder shall not relieve the Contractor of any requirement under this contract (including, but not limited to, the duty to properly supervise and coordinate the work of subcontractors, and the duty to maintain and account for property pursuant to the clause of this contract entitled "Government Property"). Approval of the provisions of any subcontract by the Contracting Officer shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost. In no event shall approval of any subcontract by the Contracting Officer be construed as effecting any increase in the estimated cost set forth in this contract. No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

10. ACCOUNTS, AUDIT, AND RECORDS

(a) The Contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitutes "records" for the purposes of this clause.

(b) The Contractor's facility(ies) or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable time to inspection and audit by the Contracting Officer of his authorized representatives.

(c) The Contractor shall preserve and make available his records (1) until the expiration of 3 years from the date of final payment under this contract, or the time periods for the particular records specified in 41 CFR Part 1–20, whichever expires earlier, and (2) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (i) or (ii) below:

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract to which exception has been taken by the Contracting Officer or any of his duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract hereunder that is not firm fixed-price or fixed-price with escalation. When so inserted, changes shall be made to designate the higher-tier subcontractor at this level involved in place of the Contractor; to add "of the Government prime contract," in place of "this contract" in (B) of subparagraph (c) (ii) above.

11. GOVERNMENT PROPERTY

(a) *Government furnished property.* (1) The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described elsewhere in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (such property to be referred to as "Government furnished property").

In the event that Government furnished property is not delivered to the contractor by such time or times as stated, or if not stated, in sufficient time to enable the contractor to meet such delivery or performance dates under this contract, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and make appropriate equitable adjustments to any contractual provisions affected by any such delay in accordance with the provisions of the clause of this contract entitled "Changes."

In the event that Government furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, immediately upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer either (i) return or otherwise dispose of such property, or (ii) effect repairs or modifications thereto. Upon completion of (i) or (ii) above, the Contracting Officer, upon timely written request of the Contractor, shall make appropriate equitable adjustments to any contractual provisions affected thereby in accordance with the provisions of the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Title.* (For title provision applicable to contracts for scientific research see paragraph (h) below.)

(1) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract; or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph are subject to the provisions of this clause and are

hereinafter collectively referred to as "Government property."

(2) Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty.

(c) *Use of Government property.* Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(d) *Property management and control.* The Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation, control of and accountability for Government property, so as to assure its full availability and usefulness for the performance of this contract. The Contractor agrees to promptly receipt for all Government property in a form and manner as prescribed by the Contracting Officer. The Contractor further agrees to take all reasonable steps to comply with all directions or instructions which the Contracting Officer may prescribe regarding the management and control of Government property.

(e) *Risk or loss.* The Contractor shall not be liable for any loss of or damage to Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's direction or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (A) all or substantially all of the Contractor's operations at any one plant, laboratory or separate location in which this contract is being performed or (B) a separate and complete major organization, industrial or otherwise, in connection with the performance of this contract;

(ii) Which results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of any of its directors, officers or other representatives mentioned in subparagraph (i) above, (A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by paragraph (d) hereof, or (B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (4) hereof;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement: *Provided,* That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) If the Contractor transfers Government property to the possession and control of a subcontractor the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to Government property as set forth in (1) above. The Contractor shall require the subcontractor to assume the risk of and be responsible for any loss or destruction of or damage to Government property while in the latter's possession, or control, and the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received (except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract). *Provided, however,* That the subcontractor may be relieved from such liability only to the extent that the subcontract, with the prior approval of the Contracting Officer, so provides.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provisions for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(4) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other actions as the Contracting Officer directs.

(5) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(f) *Disposition of Government property.* (1) During the period of performance of this contract, the Contractor shall promptly and regularly report to the Contracting Officer, in such form and manner as the Contracting Officer may direct, concerning the status of Government property under the contract, including all Government property in the Contractor's possession which is not in use or which is excess to the needs of the contract. The Contractor shall make such disposition of Government property as the Contracting Officer may direct. The Contractor shall in no way be relieved of responsibility for Government property without the prior written approval of the Contracting Officer.

(2) Upon completion or expiration of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall render an accounting as prescribed by the Contracting Officer, of all Government property which had come into the possession or custody of the Contractor under this contract. Such accounting shall include inventory schedules covering all items of Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, or for which the Contractor has not otherwise been relieved of responsibility. The Contractor shall deliver or make such other disposition of Government property covered in such inventory schedules as the Contracting Officer may direct.

(3) The net proceeds of any disposition of Government property, in accordance with (1) and (2) above, shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct.

(g) *Restoration of premises.* Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's facility or any portion thereof which is affected by removal of any Government property.

(h) *Title to property under contracts with educational institutions for scientific research.* If this is a contract with a nonprofit educational institution for scientific research, as determined by the Contracting Officer elsewhere in this contract, the following title provision shall replace paragraph (b) above and the following is added to paragraph (d),

Title. (i) Title to all Government-furnished property shall remain in the Government.

(ii) Except as otherwise expressly provided elsewhere in this contract, title to all material, supplies, and equipment purchased or otherwise acquired by the Contractor, for the cost of which the Contractor is to be reimbursed as a direct item of cost, shall be and remain in the Contractor subject to the provisions of subparagraph (iii) below: *Provided, however,* That the Contractor shall not, under any Government contract or subcontract thereunder or, under any Government grant, charge for any depreciation, amortization, or use of any property title to which remain in the Contractor pursuant to this subparagraph. The Contractor agrees to use such materials, supplies, and equipment for the benefit of research under this contract and any extension or successor contracts thereto and to continue to use such property for the benefit of research of interest to the Government.

(iii) With respect to items of equipment having an acquisition cost of $1,000 or more, title to which vests in the Contractor pursuant to subparagraph (ii) above, the Contractor agrees:

(A) To report such items to the Contracting Officer from time to time as they are acquired and to maintain a control system which will permit their ready identification and location; and

(B) To transfer title to any such items to the Government or to a third party designated by the Government, when third party is eligible under existing statutes, in accordance with any written request therefor issued by the Contracting Officer at any time prior to final payment under this contract.

(iv) All Government-furnished property, together with all property acquired by the Contractor, title to which vests in the Government pursuant to any other express provision of this contract, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(d) Whether or not title to property is vested in the Contractor, the Contractor is responsible for maintaining property acquired from contract funds available for the performance of the contract except for property which through normal use becomes unserviceable and uneconomically repairable.

12. CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following:

(a) Drawings, designs, or specifications; (b) method of shipment or packing; (c) place of inspection, delivery, or acceptance; and (d) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of this contract, or otherwise affects any other provisions of this contract, whether changed or not by any such order, an equitable adjustment shall be made (a) in the estimated cost or delivery schedule, or both, and (b) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled, "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

13. NOTICE TO THE GOVERNMENT OF DELAYS

Whenever the Contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes, is delaying or threatens to delay the timely performance of the work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

14. TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT

(Text of this clause is set forth in FPR 1-8.704-1.)

15. RIGHTS IN DATA

(a) *Subject Data.* As used in this clause, the term "Subject Data" means writings, sound recordings, pictorial reproductions, drawings, designs or other graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) *Government rights.* Subject only to the proviso of (c) below, the Government may use, duplicate, or disclose in any manner and for any purpose whatsoever, and have or permit others to do so, all subject data delivered under this contract.

(c) *License to copyrighted data.* In addition to the Government rights as provided in (b) above, with respect to any subject data which may be copyrighted the Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license throughout the world to use, duplicate, or dispose of such data in any manner and for any purpose whatsoever, and to have or permit to do so: *Provided, however*, That such license shall be only to the extent that the Contractor now has or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Marking and identification.* The Contractor shall mark all subject data with the number of this contract and the name and address of the contractor or subcontractor who generated the data. The Contractor shall not affix any restrictive markings upon any subject data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(f) *Subcontractor data.* Whenever any subject data is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's rights in that subcontractor subject data.

(g) *Deferred ordering and delivery of data.* The Government shall have the right to order, at any time during the performance of this contract, or within 2 years from either acceptance of all items (other than data) to be delivered under this contract or termination of this contract, whichever is later, any subject data and any data not called for in the schedule of this contract but generated in performance of the contract, and the Contractor shall promptly prepare and deliver such data as is ordered. If the principal investigator is no longer associated with the contractor, the contractor shall exercise its best efforts to prepare and deliver such data as is ordered. The Government's right to use data delivered pursuant to this paragraph (g) shall be the same as the rights in subject data as provided in (b) above.

The Contractor shall be relieved of the obligation to furnish data pertaining to an item obtained from a subcontractor upon the expiration of 2 years from the date he accepted such items. When data, other than subject data, is delivered pursuant to this paragraph (g), payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it or preparing it for delivery.

16. REPORTING OF ROYALTIES

If this contract involves any royalty payments in excess of $250 or if the amount of any royalty payment in excess of $250 is reflected in the estimated cost, the Contractor shall report in writing to the Contracting Officer, as soon as practicable during the performance of this contract, the amount of any royalties paid or to be paid by it directly to others in connection with the performance of this contract, together with (a) the names and addresses of licensors to whom such payments are made; (b) the patent numbers or patents application serial numbers (with filing dates) involved or other identification of the basis of such royalties; and (c) information concerning the manner of computation of such royalties.

17. AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto, or any subcontract hereunder (including any lower tier subcontract).

18. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

(Text of this clause is set forth in FPR 1-7.101-13)

19. PUBLICATION AND PUBLICITY

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish and make available through accepted channels the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other work is published and furnish a copy of it as finally published.

(b) The Contractor shall acknowledge the support of the Department of Health, Education, and Welfare whenever publicizing the work under this contract in any media. To effectuate the foregoing, the Contractor shall include in any publication resulting from work performed under this contract an acknowledgement substantially as follows: "The work upon which this publication is based was performed pursuant to contract (insert number) with the (insert name of constituent agency), Department of Health, Education, and Welfare."

20. PATENT RIGHTS

(a) *Definitions.* As used in this clause, the term (1) "Invention" or "Invention or discovery" includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States; and (2) "Made," when used in relation to any invention or discovery, means the conception or first actual or constructive reduction to practice of such invention.

(b) *Disclosure.* Whenever an invention or discovery is made by the Contractor or its employees in the course of or under this contract, the Contractor shall immediately give the Contracting Officer written notice thereof and shall promptly thereafter furnish the Contracting Officer with complete information thereon, including as a minimum (1) a complete written disclosure of each such invention, and (2) information in writing as soon as practicable, concerning the date and identity of any public use, sale, or publication of such invention made by or known to the Contractor.

(c) *Determination of rights.* The Secretary, or his duly authorized representative, shall have the sole and exclusive power to determine whether or not and where a patent application shall be filed and to determine the disposition of all rights in any

invention made under this contract, including title to and rights under any patent application or patent which may issue thereon. The Secretary, or his duly authorized representative, may, upon the request of the Contractor, determine to exercise his option to waive rights to any such invention in foreign countries. The determination of the Secretary, or his duly authorized representative, on all these matters shall be accepted as final and the provisions of the clause of this contract entitled "Disputes" shall not apply. The Contractor shall use his best efforts to assure that all of its employees who may be the inventors of any such invention will execute all documents and do all things necessary or proper to effectuate the determination of the Secretary, or his duly authorized representative, or to vest in the Government the rights granted to it under this clause and to enable the Government to apply for and prosecute any patent application, in any country, covering such invention where the Government has the right under this clause to file such application.

(d) *Contractor employee and subcontractors.* The Contractor shall:

(1) Obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract and may be reasonably expected to make inventions.

(2) Insert in each subcontract having experimental, developmental or research work as one of its purposes, a provision making this clause applicable to the subcontractor and its employees.

(e) *Reports.* The Contractor shall furnish the Contracting Officer, in addition to the information called for in paragraph (b) of this clause:

(1) Interim reports on the first anniversary of the contract, where extended or renewed, and every year thereafter listing all inventions made during the period, whether or not previously reported, or certifying that no inventions were made during the applicable period; and

(2) A final report, prior to final settlement of this contract, listing all such inventions made in the course of or under this contract, including all those previously listed in interim reports, or certifying that there are no such unreported inventions.

(f) *Withholding payment for failure to comply.* At any time during the performance of this contract, the Contracting Officer may direct that payment be withheld in the amount of 10 percent of the total amount obligated by the Government with respect to this contract or $10,000, whichever is less, if the Contracting Officer determines that the Contractor has failed to furnish any of the written notices, disclosures, or reports required by paragraphs (b) and (e) above, until such time as the Contractor shall have corrected such failure. The withholding of any amount or subsequent payment thereof to the Contractor or the failure to withhold any amount shall not be construed as a waiver of any rights accruing to the Government under the contract. This paragraph shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g) *Acknowledgment.* With respect to any patent application on any invention made in the course of or under this contract, the Contractor shall incorporate in the first paragraph of the patent specification, and prominently in any patent issued thereon, the following statement:

"The invention described herein was made in the course of or under a contract with the U.S. Department of Health, Education, and Welfare."

21. KEY PERSONNEL

Where "key personnel" have been identified in this contract, it has been determined that such named personnel are necessary for the successful performance of the work under this contract; and the Contractor agrees to assign such personnel to the performance of the work under this contract and shall not remove or replace any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned personnel is unavailable for work under this contract during a continuous period in excess of three months, or is expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the Contracting Officer to that effect and shall, subject to the approval of the Contracting Officer without formal modification to the contract, replace such personnel with personnel of substantially equal ability and qualifications. *Provided, however,* in the event the Contracting Officer determines that suitable replacement of key personnel is not feasible or that the reduction of effort would be so substantial as to impair the successful prosecution of the work, the Contracting Officer may direct that the contract be changed or terminated, pursuant to the clauses of this contract entitled "Changes" or "Termination for the Convenience of the Government," or may take such other action with respect thereto that he deems appropriate.

22. LITIGATION AND CLAIMS

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost." Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy or insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractors; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof, to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

23. REQUIRED INSURANCE

(a) The Contractor shall procure and maintain such insurance as is required by law or regulation, including but not limited to, the requirements of subpart 1–10.5 of the Federal Procurement Regulations (41 CFR 1–10.5), or by the written direction of the Contracting Officer. Prior written approval of the Contracting Officer shall be required with respect to any insurance policy the premiums for which the Contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the Contracting Officer for approval upon request.

(b) Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government property.

24. OVERTIME

Except as authorized by section 1–12.102–5 of the Federal Procurement Regulations as in effect on the effective date of this contract or otherwise provided in this contract, the contractor shall not perform overtime work under or in connection with this contact for which premium compensation is required to be paid, without specific written approval from the contracting officer.

25. FOREIGN TRAVEL

Foreign travel shall not be performed without the prior written approval of the contracting officer. As used in this clause "Foreign Travel" means travel outside the United States, its Territories and Possessions, and Canada.

26. QUESTIONNAIRES AND SURVEYS

In the event the performance of this contract involves the collection of information upon identical items from 10 or more persons, other than Federal employees, the contractor shall obtain written approval from the contracting officer, prior to the use thereof, of any forms, schedules, questionnaires, survey plans or other documents, and any revisions thereto, intended to be used in such collection.

27. PRINTING

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, any printing (as that term is defined in title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: *Provided, however,* That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10½ inches, one side only, one color.

28. SERVICES OF CONSULTANTS

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled "Subcontracting," the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or; if no amount is set forth, $100, exclusive of travel costs, or where the services of any consultant under this contract will exceed 10 days in any calendar year.

Whenever contracting officer approval is required, the contractor will obtain and furnish to the contracting officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

29. ASSIGNMENT OF CLAIMS

(Text of this clause is set forth in FPR 1-30.703.)

30. CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION

(Text of this clause is set forth in FPR 1-12.303.)

31. WALSH-HEALY PUBLIC CONTRACTS ACT

(Text of this clause is set forth in FPR 1-12.605.)

32. EQUAL OPPORTUNITY

(Text of this clause is set forth in FPR 1-12.802-2.)

33. CONVICT LABOR

(Text of this clause is set forth in FPR 1-12.203.)

34. OFFICIALS NOT TO BENEFIT

(Text of this clause is set forth in FPR 1-7.101-19.)

35. COVENANT AGAINST CONTINGENT FEES

(Text of this clause is set forth in FPR 1-1.503.)

36. BUY AMERICAN ACT SUPPLY AND SERVICE CONTRACTS

(Text of this clause is set forth in FPR 1-6.104-5.)

37. UTILIZATION OF SMALL BUSINESS CONCERNS

(Text of this clause is set forth in FPR 1-1.710-3(a).)

38. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(Text of this clause is set forth in FPR 1-1.805-3(a).)

39. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(Text of this clause is set forth in FPR 1-1.1310-2.)

40. PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS

(Text of this clause is set forth in FPR 1-1.322.)

41. LISTING OF EMPLOYMENT OPENINGS

(Text of this clause is set forth in FPR 1-12.1102-2.)

§ 3-16.950-315A Form HEW-315A (12/72), general provisions (negotiated cost-reimbursement contract with nonprofit institutions other than educational institutions).

GENERAL PROVISIONS

(NEGOTIATED COST-REIMBURSEMENT CONTRACT)

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health, Education, and Welfare; and the term "his duly authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) The term "Project Officer" means the person representing the Government for the purpose of technical direction of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the period of this contract.

(d) The term "Department" means the Department of Health, Education, and Welfare.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

2. DISPUTES

(Text of this clause is set forth in FPR 1-7.101-12.)

3. LIMITATION OF COST

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in this contract and the contractor agrees to use its best efforts to perform all work and all obligations under this contract within such estimated costs. If at any time the contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost set forth in the contract, or, if at any time the Contractor has reason to believe that the total cost to the Government, for the performance of this contract, will be substantially greater or less than the estimated cost thereof, the contractor shall notify the contracting officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the contractor for costs incurred in excess of the estimated cost set forth in the contract and the contractor shall not be obligated to continue performance under the contract or to incur costs in excess of such estimated cost unless and until the contracting officer shall have notified the contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in this contract has been increased by the contracting officer in writing, any costs incurred by the contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

4. ALLOWABLE COST

(a) *Compensation for Contractor's performance.* Payment for the allowable cost, as herein defined and as actually incurred by the contractor shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Allowable cost.* The allowable cost of performing the work under this contract shall be the cost actually incurred by the Contractor, either directly incident or properly allocable to the contract, in the performance of this contract in accordance with its terms. The allowable cost, direct and indirect, including acceptability of cost allocation methods, shall be determined by the Contracting Officer in accordance with:

(1) (i) "A Guide for Nonprofit Institutions Establishing Indirect Cost Rates for Research Grants and Contracts with the Department of Health, Education, and Welfare, DHEW Publication OASC-5," *or* (i) "A Guide for Hospitals, Establishing Indirect Cost Rates for Research Grants and Contracts with the Department of Health, Education, and Welfare, DHEW Publication OASC-3," *or* (i) Subpart 1-15.7 of the Federal Procurement Regulations (41 CFR 1-15.7) if the contract is with a State or local Government Agency.

(2) The terms of the contract.

5. NEGOTIATED OVERHEAD RATES

(a) Notwithstanding the provisions of the clause of this contract entitled, "Allowable Cost," the allowable indirect costs shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible, but not later than six (6) months after the expiration of each of the Contractor's financial years or such period as may mutually be agreed upon by the Government and the Contractor, shall submit to the Contracting Officer, with a copy to the cognizant audit agency, a proposed final overhead rate or rates for that period based on the Contractor's cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the cost principles set forth in paragraph (b) (i) of Clause 4, as in effect on the date of this contract, and the same hereby incorporated herein by reference.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed final rate, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in this contract or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this contract shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the clause of this contract entitled "Disputes."

(g) Submission of proposed provisional and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or his duly authorized representative, and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of (b), (d), and (e) above.

6. PAYMENT

(a) *Payment on account of allowable costs.* Once each month (or at more frequent intervals if approved by the Contracting Officer) the Contractor may submit to the Contracting Officer, in such form and reasonable detail as may be required, an invoice or voucher supported by a statement of costs incurred by the Contractor in the performance of this contract and claimed to constitute allowable costs. Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (b) below, make payment thereon as approved by the Contracting Officer.

(b) *Audit adjustments.* At any time or times prior to settlement under this contract the Contracting Officer may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayment, or increased for underpayments on preceding invoices or vouchers.

(c) *Completion voucher.* On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and provisions of (d) below) the Government shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 6 months (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(d) *Applicable credits.* The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest athereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer.

(e) *Financial settlement.* Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government in form and substance satisfactory to the contracting officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the contractor has been reimbursed by the Government under this contract, and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are susceptible to exact statement by the contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract: *Provided*, That such claims are not known to the contractor on the date of the execution of the release: *And provided further*, That the contractor gives notice of such claims in writing to the contracting officer not more than 6 years after the date of the release or the date of any notice to the contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents.

7. EXAMINATION OF RECORDS

(a) This clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The contractor agrees that the Comptroller General of the United States and the Secretary, or any of their duly authorized representatives, shall until expiration of 3 years after final payment under this contract or of the time period for the particular records in part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor involving transactions related to this contract.

(c) The contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States, or his duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20) whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above, for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

8. INSPECTION AND REPORTS

(a) *Inspection of work.* The Government shall have the right to inspect the work and activities under this contract, including, without limitation, premises where any Government property may be located, at such reasonable times and in such manner as it may deem appropriate and the contractor shall afford the Government proper facilities and assistance for such inspection.

(b) *Reports.* The contractor shall furnish such progress reports, schedules, financial and cost reports, and other reports concerning the work under this contract as specified elsewhere in this contract. Cost and other financial data and projections furnished pursuant to this paragraph (b) shall not relieve the Contractor of the requirements for furnishing notice specified in the clause of this contract entitled "Limitation of Cost."

9. SUBCONTRACTING

(a) *Prior approval required.* Except as provided in (c) below, the contractor shall not enter into any subcontract or purchase order not otherwise expressly authorized elsewhere in this contract without the prior written approval of the contracting officer and subject to such conditions as the contracting officer may require.

(b) *Request for approval.* The contractor's request for approval to enter into a subcontract pursuant to this clause shall include: (1) a description of the supplies or services to be called for by the subcontract; (2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained; (3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof; (4) identification of the type of subcontract to be used; (5) a copy or draft of the proposed subcontract, if available, and (6) any other information which the contracting officer may require.

(c) *Certain purchases of property and services.* Prior written approval shall not be required for firm fixed-price subcontracts for the purchase or rental of items of personal property having a unit acquisition cost of less than $200 or for subcontracts in a total amount less than $1,000 unless otherwise specified elsewhere in this contract: *Provided, however*, That advance notification shall be given by the contractor of any subcontract which exceeds in dollar amount 5 percentum of the total estimated cost of this contract.

(d) *Contractor's procurement system.* The contractor shall use methods, practices or procedures in subcontracting or purchasing (hereinafter referred to as the contractor's "procurement system") acceptable to the contracting officer. The contracting officer may, at any time during the performance of this contract, require the contractor to provide information concerning its procurement system.

(e) *Effect of subcontracting.* Subcontracts shall be made in the name of the contractor and shall not bind nor purport to bind the Government. The making of subcontracts hereunder shall not relieve the contractor of any requirement under this contract (including, but not limited to, the duty to properly supervise and coordinate the work of subcontractors, and the duty to maintain and account for property pursuant to the clause of this contract entitled "Government Property"). Approval of the provisions of any subcontract by the contracting officer shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost. In no event shall approval of any subcontract by the contracting officer be construed as effecting any increase in the estimated cost set forth in this contract. No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(f) *Procurements from contractor-controlled sources.* Procurement or transfer of equipment, materials, supplies, or services from a contractor-controlled source (any division or other organizational component of the prime contractor, exclusive of the contracting component, and any subsidiary or affiliate of the contractor under a common control) shall be considered a subcontract for the purposes of this clause.

10. ACCOUNTS, AUDIT, AND RECORDS

(a) The contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitutes "records" for the purposes of this clause.

(b) The contractor's facility(ies), or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable times to inspection and audit by the contracting officer or his authorized representatives.

(c) The contractor shall preserve and make available his records (1) until the expiration of 3 years from the date of final payment under this contract, or the time periods for the particular records specified in 41 CFR Part 1–20, whichever expires earlier and (2) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (i) or (ii) below.

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract to which exception has been taken by the contracting officer or any of his duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract hereunder that is not firm fixed-price or fixed-price with escalation. When so inserted, changes shall be made to designate the higher-tier subcontractor at this level involved in place of the contractor; to add "of the Government prime contract" in place of "this contract" in (B) of subparagraph (c)(ii) above.

11. GOVERNMENT PROPERTY

(a) *Government furnished property.* (1) The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(2) The Government shall deliver to the contractor, for use in connection with and under the terms of this contract, the property described elsewhere in this contract, together with such related data and information as the contractor may request and as may reasonably be required for the intended use of such property (such property to be referred to as "Government furnished property").

In the event that Government furnished property is not delivered to the contractor by such time or times as stated, or if not stated, in sufficient time to enable the contractor to meet such delivery or performance dates under this contract, the contracting officer shall, upon timely written request made by the contractor, make a determination of the delay occasioned the contractor and make appropriate equitable adjustments to any contractual provisions affected by any such delay in accordance with the provisions of the clause of this contract entitled "Changes."

In the event that Government furnished property is received by the contractor in a condition not suitable for the intended use, the Contractor shall, immediately upon receipt thereof, notify the contracting officer of such fact and, as directed by the contracting officer either (i) return or otherwise dispose of such property, or (ii) effect repairs or modifications thereto. Upon completion of (i) or (ii) above, the contracting officer, upon timely written request of the contractor, shall make appropriate equitable adjustments to any contractual provisions affected thereby in accordance with the provisions of the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Title.* (1) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the contractor, the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government furnished property, together with all property acquired by the contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property."

(2) Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty.

(c) *Use of Government property.* Government property shall, unless otherwise provided herein or approved by the contracting officer, be used only for the performance of this contract.

(d) *Property management and control.* The contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation, control of and accountability for Government property, so as to assure its full availability and usefulness for the performance of this contract. The contractor agrees to promptly receipt for all Government property in a form and manner as prescribed by the contracting officer. The contractor further agrees to, take all reasonable steps to comply with all directions or instructions which the contracting officer may prescribe regarding the management and control of Government property.

(e) *Risk or loss.* (1) The contractor shall not be liable for any loss of or damage to Government property, or for expenses incidental to such loss or damage, except that the contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (A) all or substantially all of the contractor's operations at any one plant, laboratory or separate location in which this contract is being performed or (B) a separate and complete major organization, industrial or otherwise in connection with the performance of this contract;

(ii) Which results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (i) above, (A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by paragraph (d) hereof, or (B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (4) hereof;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement: *Provided,* That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) If the Contractor transfers Government property to the possession and control of a subcontractor the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to Government property as set forth in (1) above. The Contractor shall require the subcontractor to assume the risk of and be responsible for any loss or destruction of or damage to Government property while in the latter's possession or control, and the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received (except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract). *Provided, however,* That the subcontractor may be relieved from such liability only to the extent that the subcontract, with the prior approval of the Contracting Officer, so provides.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provisions for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(4) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property, or take such other action as the Contracting Officer directs.

(5) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(f) *Disposition of Government property.* (1) During the period of performance of this contract, the Contractor shall promptly and regularly report to the Contracting Officer, in such form and manner as the Contracting Officer may direct, concerning the status of Government property under the contract, including all Government property in the Contractor's possession which is not in use or which is excess to the needs of the contract. The Contractor shall make such disposition of Government property as the Contracting Officer may direct. The Contractor shall in no way be relieved of responsibility for Government property without the prior written approval of the Contracting Officer.

(2) Upon completion or expiration of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government property which had come into the possession or custody of the Contractor under this contract. Such accounting shall include inventory schedules covering all items of Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, or for which the Contractor has not otherwise been relieved of responsibility. The Contractor shall deliver or make such other disposition of Government property covered in such inventory schedules as the Contracting Officer may direct.

(3) The net proceeds of any disposition of Government property, in accordance with (1) and (2) above, shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct.

(g) *Restoration of premises.* Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's facility or any portion thereof which is affected by removal of any Government property.

12. CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (a) Drawings, designs, or specifications; (b) method of shipment or packing; (c) place of inspection, delivery, or acceptance; and (d) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of this contract, or otherwise affects any other provisions of this contract, whether changed or not by any such order, an equitable adjustment shall be made (a) in the estimated cost of delivery schedule, or both, and (b) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled, "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

13. NOTICE TO THE GOVERNMENT OF DELAYS

Whenever the Contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes, is delaying or threatens to delay the timely performance of the work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

14. TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT

(Text of this clause is set forth in FPR 1–8.704–1.)

15. RIGHTS IN DATA

(a) *Subject data.* As used in this clause, the term "Subject Data" means writings, sound recordings, pictorial reproductions, drawings, designs, or other graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) *Government rights.* Subject only to the proviso of (c) below, the Government may use, duplicate or disclose in any manner and for any purpose whatsoever, and have or permit others to do so, all subject data delivered under this contract.

(c) *License to copyrighted data.* In addition to the Government rights as provided in (b) above, with respect to any subject data which may be copyrighted the Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive, and irrevocable license throughout the world to use, duplicate or dispose of such data in any manner and for any purpose whatsoever, and to have or permit others to do so: *Provided, however,* That such license shall be only to the extent that the Contractor now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Marking and identification.* The Contractor shall mark all Subject Data with the number of this contract and the name and address of the contractor or subcontractor who generated the data. The Contractor shall not affix any restrictive markings upon any Subject Data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(f) *Subcontractor data.* Whenever any Subject Data is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's rights in that subcontractor Subject Data.

(g) *Deferred ordering and delivery of data.* The Government shall have the right to order, at any time during the performance of this contract, or within 2 years from either acceptance of all items (other than data) to be delivered under this contract or termination of this contract, whichever is later, any Subject Data and any data not called for in the schedule of this contract but generated in performance of the contract, and the Contractor shall promptly prepare and deliver such data as is ordered. If the principal investigator is no longer associated with the Contractor, the Contractor shall exercise its best efforts to prepare and deliver such data as is ordered. The Government's right to use data delivered pursuant to this paragraph (g) shall be the same as the rights in Subject Data as provided in (b) above. The Contractor shall be relieved of the obligation to furnish data pertaining to an item obtained from a subcontractor upon the expiration of 2 years from the date he accepts such items. When data, other than Subject Data, is delivered pursuant to this paragraph (g), payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it or preparing it for delivery.

16. REPORTING OF ROYALTIES

If this contract involves any royalty payments in excess of $250 or if the amount of any royalty payment in excess of $250 is reflected in the estimated cost, the Contractor shall report in writing to the Contracting Officer, as soon as practicable during the performance of this contract, the amount of any royalties paid or to be paid by it directly to others in connection with the performance of this contract, together with (a) the names and addresses of licensors to whom such payments are made; (b) the patent numbers or patents application serial numbers (with filing dates) involved or other identification of the basis of such royalties; and (c) information concerning the manner of computation of such royalties.

17. AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto, or any subcontract hereunder (including any lower tier subcontract).

18. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

(Text of this clause is set forth in FPR 1–7.101–13.)

19. PUBLICATION AND PUBLICITY

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish

and make avialable through accepted channels the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other work is published and furnish a copy of it as finally published.

(b) The Contractor shall acknowledge the support of the Department of Health, Education, and Welfare whenever publicizing the work under this contract in any media. To effectuate the foregoing, the Contractor shall include in any publication resulting from work performed under this contract an acknowledgement substantially as follows:

"The work upon which this publication is based was performed pursuant to Contract (insert number) with the (insert name of constituent agency), Department of Health, Education, and Welfare."

20. PATENT RIGHTS

(a) *Definitions.* As used in this clause, the term (1) "Invention" or "Invention or discovery" includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States; and (2) "Made," when used in relation to any invention or discovery, means the conception or first actual or constructive reduction to practice on such invention.

(b) *Disclosure.* Whenever an invention or discovery is made by the Contractor or its employees in the course of or under this contract, the Contractor shall immediately give the Contracting Officer written notice thereof and shall promptly thereafter furnish the Contracting Officer with complete information thereon, including a minimum (1) a complete written disclosure of each such invention, and (2) information in writing, as soon as practicable, concerning the data and identity of any public use, sale, or publication of such invention made by or known to the Contractor.

(c) *Determination of rights.* The Secretary, or his duly authorized representative, shall have the sole and exclusive power to determine whether or not, and where a patent application shall be filed and to determine the disposition of all rights in any invention made under this contract, including title to, and rights under, any patent application or patent which may issue thereon. The Secretary, or his duly authorized representative, may, upon the request of the Contractor, determine to exercise his option to waive rights to any such invention in foreign countries. The determination of the Secretary, or his duly authorized representative, on all these matters shall be accepted as final and the provisions of the clause of this contract entitled, "Disputes" shall not apply. The Contractor shall use his best efforts to assure that all of its employees who may be the inventors of any such invention will execute all documents and do all things necessary or proper to effectuate the determination of the Secretary, or his duly authorized representative, to vest in the Government the rights granted to it under this clause and to enable the Government to apply for and prosecute any patent application, in any country, covering such invention where the Government has the right under this clause to file such application.

(d) *Contractor employees and subcontractors.* The Contractor shall:

(1) Obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract and may be reasonably expected to make inventions.

(2) Insert in each subcontract having experimental, developmental, or research work as one of its purposes, a provision making this clause applicable to the subcontractor and its employees.

(e) *Reports.* The Contractor shall furnish the Contracting Officer, in addition to the information called for in paragraph (b) of this clause:

(1) Interim reports on the first anniversary of the contract, where extended or renewed, and every year thereafter listing all inventions made during the period, whether or not previously reported, or certifying that no inventions were made during the applicable period; and

(2) A final report, prior to final settlement of this contract, listing all such inventions made in the course of or under this contract, including all those previously listed in interim reports, or certifying that there are no such unreported inventions.

(f) *Withholding payment for failure to comply.* At any time during the performance of this contract, the Contracting Officer may direct that payment be withheld in the amount of 10 percent of the total amount obligated by the Government with respect to this contract or $10,000 whichever is less. If the Contracting Officer determines that the Contractor has failed to furnish any of the written notices, disclosures, or reports required by paragraphs (b) and (e) above, until such time as the Contractor shall have corrected such failure. The withholding of any amount or subsequent payment thereof to the Contractor or the failure to withhold any amount shall not be construed as a waiver of any rights accruing to the Government under the contract. This paragraph shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g) *Acknowledgement.* With respect to any patent application on any invention made in the course of or under this contract, the Contractor shall incorporate in the first paragraph of the patent specification, and prominently in any patent issued thereon, the following statement:

"The invention described herein was made in the course of or under a contract with the U.S. Department of Health, Education, and Welfare."

21. KEY PERSONNEL

Where "key personnel" have been identified in this contract, it has been determined that such named personnel are necessary for the successful performance of the work under this contract; and the Contractor agrees to assign such personnel to the performance of the work under this contract, and shall not reassign or remove any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned personnel is unavailable for assignment for work under the contract, the Contractor shall immediately notify the Contracting Officer to that effect and shall, subject to the approval of the Contracting Officer without formal modification to the contract, replace such personnel with personnel of substantially equal ability and qualifications.

22. LITIGATION AND CLAIMS

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to, the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost." Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractors; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof, to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the contractor shall be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

23. REQUIRED INSURANCE

(a) The contractor shall procure and maintain such insurance as is required by law or regulation including, but not limited to, the requirements of subpart 1–10.5 of the Federal Procurement Regulations (41 CFR 1–10.5), or by the written direction of the contracting officer. Prior written approval of the contracting officer shall be required with respect to any insurance policy the premiums for which the contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor shall not procure or maintain for its own protection, any insurance covering loss or destruction of or damage to Government property.

24. OVERTIME

Except as authorized by Section 1–12.102–5 of the Federal Procurement Regulations as in effect on the effective date of this contract or otherwise provided in this contract, the Contractor shall not perform overtime work under or in connection with this contract for which premium compensation is required to be paid, without specific written approval from the Contracting Officer.

25. FOREIGN TRAVEL

Foreign travel shall not be performed without the prior written approval of the contracting officer. As used in this clause "Foreign Travel" means travel outside the United States, its Territories and Possessions, and Canada.

26. QUESTIONNAIRES AND SURVEYS

In the event the performance of this contract involves the collection of information upon identical items from 10 or more persons, other than Federal employees, the contractor shall obtain written approval from the contracting officer, prior to the use thereof, of any forms, schedules, questionnaires, survey plans or other documents, and any revisions thereto, intended to be used in such collection.

27. PRINTING

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, any printing (as that term is defined in title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: *Provided, however,* That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10½ inches, one side only, one color.

28. SERVICES OF CONSULTANTS

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled "Subcontracting," the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the Contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $100, exclusive of travel costs, or where the services of any consultant under this contract will exceed 10 days in any calendar year.

Whenever Contracting Officer approval is required, the contractor will obtain and furnish to the contracting officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

29. ASSIGNMENT OF CLAIMS

(Text of this clause is set forth in FPR 1-30.703.)

30. CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION

(Text of this clause is set forth in FPR 1-12.303.)

31. WALSH-HEALEY PUBLIC CONTRACTS ACT

(Text of this clause is set forth in FPR 1-12.605.)

32. EQUAL OPPORTUNITY

(Text of this clause is set forth in FPR 1-12.803-2.)

33. CONVICT LABOR

(Text of this clause is set forth in FPR 1-12.203.)

34. OFFICIALS NOT TO BENEFIT

(Text of this clause is set forth in FPR 1-7.101-19.)

35. COVENANT AGAINST CONTINGENT FEES

(Text of this clause is set forth in FPR 1-1.503.)

36. BUY AMERICAN ACT SUPPLY AND SERVICE CONTRACTS

(Text of this clause is set forth in FPR 1-6.104-5.)

37. UTILIZATION OF SMALL BUSINESS CONCERNS

(Text of this clause is set forth in FPR 1-1.710-3(a).

38. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(Text of this clause is set forth in FPR 1-1.805-3(a).

39. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(Text of this clause is set forth in FPR 1-1.1310-2.)

40. PAYMENT OF INTEREST ON CONTRACTOR'S CLAIMS

(Text of this clause is set forth in FPR 1-1.322.)

41. LISTING OF EMPLOYMENT OPENINGS

(Text of this clause is set forth in FPR 1-12.1102-2.)

[FR Doc.72-20564 Filed 11-29-72;8:51 am]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER D—TARIFFS AND SCHEDULES

[Docket No. 35613]

PART 1300—FREIGHT SCHEDULES; RAILROADS

PART 1303—PASSENGER SERVICE SCHEDULES; RAIL AND WATER CARRIERS

PART 1304—EXPRESS COMPANIES SCHEDULES AND CLASSIFICATIONS

PART 1306—PASSENGER AND EXPRESS TARIFFS AND SCHEDULES OF MOTOR CARRIERS

PART 1307—FREIGHT RATE TARIFFS, SCHEDULES, AND CLASSIFICATIONS OF MOTOR CARRIERS

PART 1308—FREIGHT TARIFFS AND SCHEDULES OF WATER CARRIERS

PART 1309—TARIFFS AND CLASSIFICATIONS OF FREIGHT FORWARDERS

Transmission of Tariffs and Schedules to Subscribers and Other Interested Parties

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 20th day of November 1972.

It appearing, that by order entered August 28, 1972, the Commission, Division 2, instituted regulations for the transmission of tariff and schedule publications to subscribers and other interested parties, such regulations to be incorporated into all of the Commission's tariff circulars;

It further appearing, that a petition filed jointly by Traffic Executive Association—Eastern Railroads, Southern Freight Association, and Executive Committee—Western Railroad Traffic Association and petitions filed by Freight Forwarders Tariff Bureau, Inc., and its members and by Sea-Land Service, Inc., request: (1) The reconsideration of the order entered August 28, 1972, (2) that the matter be considered under a notice of proposed rulemaking, (3) that the Commission find that it does not have jurisdiction in this matter, and (4) that the order be stayed or postponed pending final disposition;

It further appearing, that by notice entered October 17, 1972, the Commission announced that the order had been stayed pending disposition of the petitions;

It further appearing, that a reply to all petitions has been filed by the National Industrial Traffic League and a reply to the petition filed jointly by Traffic Executive Association—Eastern Railroads and others has been filed by the Board of Trade of Kansas City, Mo.;

And it further appearing, that upon reconsideration of all the matters and things involved in the order entered August 28, 1972, and upon consideration of the petitions and replies, which petitions and replies are hereby referred to and made a part hereof, sufficient justification for the actions requested has not been shown.

It is ordered, That the petitions, be, and they are hereby, denied.

It is further ordered, That the order entered August 28, 1972, shall become effective 30 days after publication of this order (entered November 20, 1972) in the FEDERAL REGISTER (11-30-72).

It is further ordered, That, in all other respects, the terms of the order entered August 28, 1972, shall remain the same.

(Sec. 12, 24 Stat. 383, as amended; secs. 5, 6, 12, 24 Stat. 380, as amended; sec. 20, 24, Stat. 386, as amended; 49 Stat. 546, as amended; 49 Stat. 560, as amended, 561, as amended, 563, as amended; sec. 210a, 52 Stat. 1238, as amended; secs. 304, 306, 54 Stat. 933, 935; secs. 403, 405, 413, 56 Stat. 285, 287, 295; 49 U.S.C. 5, 6, 12, 20, 304, 310a, 317, 318, 319, 904, 906, 1003, 1005, 1013)

And it is further ordered, That a copy of this order be served on each party of record, a copy be posted in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and a copy be delivered to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER as notice to all other interested persons.

By the Commission, Division 2, Acting as an Appellate Division.

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

[FR Doc.72-20497 Filed 11-29-72;8:45 am]

Title 50—WILDLIFE AND FISHERIES

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

PART 33—SPORT FISHING

Kirwin National Wildlife Refuge, Kans.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (11–30–72).

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

KANSAS

KIRWIN NATIONAL WILDLIFE REFUGE

Sport fishing on the Kirwin National Wildlife Refuge, Kans., is permitted from January 1 through December 31, 1973, inclusive, on all areas not designated by signs as closed to fishing. These open areas, comprising 5,000 acres, are delineated on maps available at refuge headquarters, 5 miles west of Kirwin, Kans., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103.

Sport fishing shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1973.

KEITH S. HANSEN,
Refuge Manager, Kirwin National Wildlife Refuge, Kirwin, Kans.

NOVEMBER 24, 1972.

[FR Doc.72–20518 Filed 11–29–72;8:46 am]

Proposed Rule Making

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 73]

[Airspace Docket No. 72-RM-27]

RESTRICTED AREA

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 73 of the Federal Aviation Regulations that would expand the annual time of use and change the controlling agency of Restricted Area R-7001, Guernsey, Wyo.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Rocky Mountain Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Park Hill Station, Post Office Box 7213, Denver, CO 80207. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The Department of the Army has requested a change in the time of designation of R-7001 to accommodate additional training activities for Army National Guard units beginning March 1, 1973.

Increased IFR operations in the vicinity of R-7001 also necessitate the designation of Denver ARTCC as the controlling agency to facilitate the handling of these operations.

If these actions are taken, the time of designation and the controlling agency of R-7001 would be revised to show:

WYOMING

R-7001 Guernsey, Wyo.
Time of designation: 0430 to 2400 local time, March 1 through November 30.
Controlling agency: Federal Aviation Administration, Denver ARTC Center.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on November 22, 1972.

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

[FR Doc.72-20549 Filed 11-29-72;8:48 am]

Office of the Secretary

[49 CFR Part 85]

[Docket No. 32; Notice 72-3]

CARGO SECURITY ADVISORY STANDARDS

Notice of Proposed Rule Making

One of the most serious problems confronting the transportation industry today is the increasing incidence of theft and pilferage of cargo. It affects all modes of transportation. It disrupts the orderly and efficient flow of goods in the interstate and foreign commerce of the United States and levies an intolerable financial toll on the Nation. A Department of Transportation study of calendar year 1970 cargo theft and pilferage affecting transportation in the United States shows that, conservatively estimated, theft-related losses (known stolen, plus 80 percent of unaccounted for loss) amounted to more than $1 billion. Although the greatest losses were borne by the carriers themselves, shippers and consignees also experienced significant losses. On the average, carriers in all modes of transportation incurred losses valued at more than 1 percent of their revenues, and shippers and consignees incurred losses valued at approximately one-half of 1 percent of the freight charges that they paid. The following tables depict the supporting statistical data.

CALENDAR YEAR 1970

TOTAL LOSS BY MODE

	CARRIER REVENUE[1]		INDUSTRY LOSS		CARRIER LOSS		SHIPPER/CONSIGNEE LOSS	
					Amt.	Cost Ratio (Loss ÷ Revenue[1])	Amt.	Cost Ratio (Loss ÷ Freight Charges[1])
Air	.7B[2]	1.1%	28.8M[3]	1.1%	15.5M	2.2%	13.2M	1.9%
Truck	43.9B	70.8%	2012.4M	76.0%	1401.2M	3.2%	611.2M	1.39%
Rail	12.3B	19.8%	465.6M	17.6%	381.6M	3.1%	84.0M	0.7%
Maritime	5.1B	8.3%	141.2M	5.3%	101.2M	2.0%	40.0M	0.8%
Total	62.0B	100%	2648.0M	100%	1899.5M	3.06%[4]	748.4M	1.2%[4]

THEFT-RELATED LOSS BY MODE

	CARRIER REVENUE[1]		INDUSTRY LOSS		CARRIER LOSS		SHIPPER/CONSIGNEE LOSS	
					Amt.	Cost Ratio (Loss ÷ Revenue[1])	Amt.	Cost Ratio (Loss ÷ Freight Charges[1])
Air	.7B[2]	1.1%	15.4M[3]	1.5%	8.3M	1.2%	7.1M	1.0%
Truck	43.9B	70.8%	851.3M	84.5%	592.7M	1.4%	258.6M	0.6%
Rail	12.3B	19.8%	54.5M	5.5%	44.6M*	0.4%*	9.9M	0.08%*
Maritime	5.1B	8.3%	85.5M	8.5%	61.3M*	1.2%*	24.2M	0.47%*
Total	62.0B	100%	1006.7M	100%	706.9M	1.1%[4]	299.8M	0.47%[4]

* Based upon incomplete data.
1/ Revenue = freight charges.
2/ B = billions of dollars.
3/ M = millions of dollars.
4/ Industry average.

As might be expected, some losses are attributable to hijacking of trucks, but the value of such losses is surprisingly small in comparison to the total loss. Investigations by the Department of Transportation have shown that the vast majority of the goods lost (approximately 85 percent) were taken by persons having free access to them on docks, in terminals, and in warehouses. Hijacking and larceny of goods in transit and burglary account for approximately 15 percent of total losses. Some carriers, shippers, and consignees have acted to protect the goods in their care; many others, however, are still careless or unconcerned. In many instances, management simply does not know what measures can be taken to safeguard cargo. Some do not know the causes of their losses, while others, knowing the causes, do not know how to combat them.

Ultimately, it is the consumer who pays the price of these losses. He pays more, not because the goods are of higher quality or because they reach him any more quickly (in fact, they often reach him more slowly, as a second shipment is sent to replace the first which has been stolen), but because a charge to compensate for theft has been imposed.

In establishing the Department of Transportation, the Congress asserted that "the general welfare, the economic growth and stability of the Nation and its security require the development of national transportation policies and programs conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith * * * ." In serving these objectives, it is incumbent upon the Department of Transportation "to facilitate the development and improvement of coordinated transportation service, * * * to encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested parties toward the achievement of national transportation objectives, * * * to provide general leadership in the identification and solution of transportation problems * * * ." October 15, 1966, Public Law 89-670, secs. 2, 4, as amended; 80 Stat. 931, 933, as amended; 49 U.S.C. 1651, 1653.)

Cargo theft is a problem affecting "the provision of fast, safe, efficient, and convenient transportation * * *," and clearly warrants the development of nationwide policies and programs designed to promote cooperative solutions among interested parties. In carrying out its responsibilities, the Department of Transportation proposes to establish a program for the issuance of Cargo Security Advisory Standards. The Department would serve as a clearinghouse and coordinator of the knowledge that exists within the public, industry, and Government of the best methods available to combat cargo theft. In specific areas related to the security of cargo from theft, after consultation with the public, industry, and Government, the Department would issue advisory standards. The standards would not be mandatory but would be an authoritative aid to all parts of the transportation system, including shippers and consignees, in the prevention of theft and pilferage of cargo. Nothing in the standards would replace or modify any statutory requirement or any regulatory authority vested in any Federal, State, or local governmental body. Procedures relating to packaging, storage, accountability, communications, and vehicle control are deemed at this time appropriate subjects for the issuance of advisory standards.

The Department cannot require compliance with the advisory standards that would be issued; however, the need to follow them, and the resulting benefits, should be self-evident. Although there has been increasing concern throughout the transportation industry with the problem of theft and pilferage, and some action in reporting and preventing losses, widespread disparities continue to exist. We believe that agreement on such basic matters as the use of seals and locks, and facing up to theft as something more than an insurance problem, can go a long way toward reducing transportation crime.

All interested persons are invited to submit their comments on these proposed procedural regulations. Two written copies of the comments should be sent to the Docket Clerk, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590. All comments received by the close of business on January 3, 1973, will be considered in formulating the final procedural regulations, and will be available for public inspection and copying until that date between 9 a.m. and 5:30 p.m., Monday to Friday, except Federal holidays, in the Office of the Assistant General Counsel for Regulation, Room 10100, Department of Transportation Headquarters (Nassif) Building, 400 Seventh Street SW., Washington, DC.

In consideration of the foregoing, pursuant to section 9(e)(1) of the Department of Transportation Act (Oct. 15, 1966, Public Law 89-670, § 9(e)(1); 80 Stat. 944; 49 U.S.C. 1657(e)(1)), it is proposed to amend Title 49 of the Code of Federal Regulations by adding a Part 85, as appears below. Advisory standards to be developed would be issued as appendices to these procedural regulations.

Issued in Washington, D.C., on November 22, 1972.

JAMES M. BEGGS,
Acting Secretary of Transportation.

PART 85—CARGO SECURITY ADVISORY STANDARDS

Subpart A—General

Sec.
85.1 Applicability.
85.3 Initiation of advisory standard setting.
85.5 Participation by interested persons.
85.7 Docket.

Subpart B—Petitions for Advisory Standard Setting

85.11 Filing of petitions.
85.13 Processing of petitions.

Subpart C—Procedures

85.21 General.
85.23 Contents of notices.
85.25 Petitions for extension of time to comment.
85.27 Consideration of comments received.
85.29 Additional advisory standard-setting proceedings.
85.31 Hearings.
85.33 Adoption of final advisory standards.

AUTHORITY: The provisions of this Part 85 issued under section 9(e)(1), 80 Stat. 944; 49 U.S.C. 1657(e)(1).

Subpart A—General

§ 85.1 Applicability.

(a) This part prescribes the procedures for the development and promulgation of Cargo Security Advisory Standards. These advisory standards are suggested procedures and policies intended to assist all parts of the transportation industry in reducing the incidence of loss and theft of cargo entrusted to their care. The advisory standards are not mandatory, and nothing in the standards replaces or modifies any statutory requirement or any regulatory authority vested in any Federal, State, or local governmental body.

(b) As used herein—

"Advisory standard" means a Cargo Security Advisory Standard issued under this part;

"Director" means the Director of Transportation Security;

"Secretary" means the Secretary of Transportation.

§ 85.3 Initiation of advisory standard setting.

The Director, for the Secretary, initiates advisory standard setting on his own motion. He may also, in his discretion, consider the recommendations of other agencies of the United States, of any part of the transportation industry, and of any other interested person.

§ 85.5 Participation by interested persons.

Any person may participate in advisory standard-setting proceedings by submitting written information or views. The Director may also allow any person to participate in additional advisory standard-setting proceedings, such as informal appearance or hearings, held with respect to any advisory standard.

§ 85.7 Docket.

(a) Records of the Office of the Secretary concerning advisory standard-setting actions, including notices of proposed advisory standard setting, comments received in response to those notices, petitions for advisory standard setting, petitions for rehearing or reconsideration, denials of petitions for advisory standard setting, and final advisory standards are maintained in current docket form in the Office of the General Counsel.

(b) Any person may examine any docketed material at that office and may obtain a copy of any docketed material upon payment of the prescribed fee.

Subpart B—Petitions for Advisory Standard Setting

§ 85.11 Filing of petitions.

(a) Any person may petition the Director to issue, amend, or repeal an advisory standard.

(b) Each petition filed under this section must—

(1) Be submitted in duplicate to the Docket Clerk, Office of the General Counsel, Department of Transportation, Washington, DC 20590;

(2) Set forth the text of substance of the advisory standard or amendment proposed, or specify the advisory standard that the petitioner seeks to have repealed, as the case may be;

(3) Explain the interest of the petitioner in the action requested; and

(4) Contain any information and arguments available to the petitioner to support the action sought.

§ 85.13 Processing of petitions.

(a) *General.* No proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the Director determines that the petition contains adequate justification, he initiates advisory standard-setting action under Subpart C of this part.

(c) *Denials.* If the Director determines that the petition does not justify initiating advisory standard setting, he denies the petition.

(d) *Notification.* Whenever the Director determines that a petition should be granted or denied, he and the Office of the General Counsel prepare a notice of that grant or denial for issuance to the petitioner, and the Director issues it to the petitioner.

Subpart C—Procedures

§ 85.21 General.

(a) A notice of proposed advisory standard setting is issued and interested persons are invited to participate in the advisory standard-setting proceedings with respect to each advisory standard.

(b) In his discretion, the Director may invite interested persons to participate in the advisory standard-setting proceedings described in § 85.29.

§ 85.23 Contents of notices.

(a) Each notice of proposed advisory standard setting is published in the FEDERAL REGISTER.

(b) Each notice includes—

(1) A statement of the time, place, and nature of the proposed advisory standard-setting proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects or issues involved or the substance or terms of the proposed advisory standard;

(4) A statement of the time within which written comments must be submitted and the required number of copies; and

(5) A statement of how and to what extent interested persons may participate in the proceedings.

§ 85.25 Petitions for extension of time to comment.

(a) Any person may petition the Director for an extension of time to submit comments in response to a notice of proposed advisory standard setting. The petition must be submitted in duplicate not later than 10 days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Director grants the petition only if the petitioner shows a substantive interest in the proposed advisory standard and good cause for the extension, and if the extension is in the public interest. If an extension is granted, it is granted as to all persons and is published in the FEDERAL REGISTER.

§ 85.27 Consideration of comments received.

All timely comments are considered before final action is taken on an advisory standard-setting proposal. Late filed comments may be considered so far as possible without incurring additional expense or delay.

§ 85.29 Additional advisory standard-setting proceedings.

The Director may initiate any further advisory standard-setting proceedings that he finds necessary or desirable. The Director may also invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceedings.

§ 85.31 Hearings.

(a) Sections 556 and 557 of title 5, United States Code, do not apply to hearings held under this part. As a fact-finding proceeding, each hearing is nonadversary and there are no formal pleadings or adverse parties. The record in a proceeding may include matters other than those presented at the hearing. An advisory standard issued will be based exclusively on the record in the proceeding.

(b) The Director designates a representative to conduct any hearing held under this part. The General Counsel designates a member of his staff to serve as legal officer at the hearing.

85.33 Adoption of final advisory standards.

Final advisory standards are prepared by the Director and the Office of the General Counsel. If the Director adopts an advisory standard, it is published in the FEDERAL REGISTER.

[FR Doc.72-20702 Filed 11-29-72;8:52 am]

GENERAL SERVICES ADMINISTRATION

[41 CFR Part 101-19]

VENDING STANDS OPERATED BY BLIND PERSONS

Competition with Cafeterias; Withdrawal of Proposal

Proposed rules and regulations concerning vending stands operated by blind persons were published in the FEDERAL REGISTER of October 5, 1972 (37 F.R. 20958), to clarify the practices of General Services Administration with respect to the establishment and operation of vending stands and machines by blind persons under the provisions of the Randolph-Sheppard Act (20 U.S.C. 107), along with the operation of cafeterias in buildings operated by GSA.

The proposed regulations are hereby withdrawn.

Dated: November 28, 1972.

JOHN F. GALUARDI,
Acting Commissioner,
Public Buildings Service.

[FR Doc.72-20704 Filed 11-28-72;4:46 pm]

Notices

CIVIL AERONAUTICS BOARD

[Docket No. 24958; Order 72-11-112]

AIR-LAND FREIGHT CONSOLIDATORS, INC.

Order of Suspension and Investigation Regarding Non-Acceptance of Certain Watches

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of November 1972.

By tariff revision bearing the issue date of October 31 and marked to become effective November 30, 1972, Air-Land Freight Consolidators, Inc. (Air-Land), an air freight forwarder, proposes to modify its tariff to include under shipments not acceptable for carriage shipments of watches when the declared value for carriage exceeds 50 cents per pound.

In support of its filing, the forwarder alleges that its purpose is to provide provisions similar to those currently in effect for other indirect carriers.

Upon consideration of all relevant factors, the Board finds that the proposed rule may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the proposal should be suspended pending investigation.

By proposing to limit the acceptance of watches to shipments with a declared value not exceeding 50 cents per pound, Air-Land would limit its liability accordingly, without offering the shipper a choice of higher liability at additional rates. The Board, in Order 72-8-55, dated August 11, 1972, suspended a virtually identical proposal by CF Air Freight, Inc., another air freight forwarder, stating, inter alia, "This is contrary to the common law concept that the validity of a limitation on liability (or a released rate) is dependent upon the shipper having an option for greater liability at greater rates."

Further, the Board, in Order 71-2-36, in connection with a direct carrier's charter liability, and in Order 70-1-34, covering the suspension of the nonacceptance of parcel post shipments valued in excess of $200 proposed by WTC Air Freight, stated, "A choice of rates and liability is considered essential to the validity of a carrier's limitations on its common carrier responsibilities."

While some forwarders currently have in effect similar provisions to those here proposed by Air-Land, we cannot find such circumstance warrants that the Board permit this proposal to become effective.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

It is ordered, That:

1. An investigation is instituted to determine whether the provisions in Rule No. 25(B)(10) on fifth revised page 7 of Air-Land Freight Consolidators, Inc.'s, CAB No. 12, and rules, regulations, or practices affecting such provisions are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful provisions and rules, regulations, and practices affecting such provisions;

2. Pending hearing and decision by the Board, Rule No. 25(B)(10) on fifth revised page 7 of Air-Land Freight Consolidators, Inc.'s, CAB No. 12 is suspended and its use deferred to and including, February 27, 1973, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein designated Docket 24958 be assigned for hearing before an administrative law judge of the Board at a time and place hereafter to be designated; and

4. Copies of this order shall be filed with the tariff and served upon Air-Land Freight Consolidators, Inc., which is hereby made party to Docket 24958.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-20585 Filed 11-29-72;8:51 am]

[Docket No. 24770]

BEA AIRTOURS, LTD.

Notice of Prehearing Conference and Hearing

Foreign air carrier permit application United Kingdom-United States-all other countries charter fights.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on December 21, 1972, at 10 a.m. (local time) in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Administrative Law Judge James S. Keith.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before December 14, 1972.

Dated at Washington, D.C., November 24, 1972.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.72-20583 Filed 11-29-72;8:51 am]

[Docket No. 20710; Order 72-11-105]

NORTH CENTRAL AIRLINES, INC.

Order to Show Cause Regarding Renewal of Temporary Suspension of Service at Winona, Minn.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 24th day of November 1972.

By Order 69-10-121, dated October 24, 1969, the Board authorized North Central Airlines to suspend its services at Winona, Minn., for a period of 3 years. The Board provided that the suspension authority would terminate if an air taxi operator failed to provide at least two round trips per day between Winona and Chicago, and two round trips per day between Winona and Minneapolis/St. Paul (except that no service was required on Saturday and only one round trip in each market was required on Sunday).

On May 16, 1972, North Central filed for renewal of its suspension authorization at Winona for an additional 3-year period.[1] In support of its application, North Central alleges, inter alia, that an air taxi operator, Mississippi Valley Airways, Inc. (MVA), has been providing Winona with more air service than is required by the Board;[2] that the city of Winona supports this renewal, subject to the same conditions as are presently in effect; and that the financial benefits to North Central which the Board found in Order 69-10-121 continue to exist.

No answers to North Central's application have been filed.

Upon consideration of the pleadings and all the relevant facts, we have tentatively decided to authorize North Central to suspend service at Winona for an additional 3-year period conditioned upon the provision of replacement service by an air taxi operator, subject to the same

[1] Pursuant to § 377.10(a) of the Board's special regulations, the applicant has stated its intention to rely upon 5 U.S.C. 558(c) for a continuation of its present authorization which expired, by its terms, on Oct. 26, 1972.

[2] MVA currently provides two round trips Monday through Friday in the Winona-Chicago market and 2½ nonstop round trips in the Winona-Minneapolis/St. Paul market. On weekends, MVA provides one one-way trip each Saturday and one round trip each Sunday in the Winona-Chicago market and one and one-half round trips each Saturday and Sunday in the Winona-Minneapolis/St. Paul market (OAG, Nov. 15, 1972).

conditions as are presently in effect. We have tentatively concluded that the suspension/substitution arrangement at Winona is in the public interest from an overall transportation standpoint.[3]

We have also examined the facts presented herein in light of findings in a recent court case[4] involving air taxi replacement services where the Court indicated that the Board should consider whether the statutory conditions for exemption from certification continue to exist. As discussed below, we tentatively find that, with respect to MVA, the statutory conditions and guidelines for exemption from certification continue to exist.[5] MVA, which provides the commuter replacement services at Winona, was incorporated on October 1, 1969, and has conducted scheduled air taxi operations since October 28, 1969. As of the quarter ended June 30, 1972, MVA provided short haul commuter air services at six cities in addition to Winona.[6] MVA transported 26,043 passengers and performed 3,048 flights through the fiscal year ending June 30, 1972. All of these flights were with DeHavilland Twin Otters with a seating capacity of 16. The carrier did not transport any cargo. Revenue passenger miles performed by MVA for the calendar year 1971 were 4,394,023 as compared to the local service industry average for the same period of 872,387,888. Thus, MVA's total RPM's for calendar year 1971 are approximately one-half of 1 percent of the average RPM's for each of the certificated local service carriers.[7] For the calendar year 1971, MVA carried 2,969 passengers (8.1 per day) between Chicago and Winona, and 2,912 passengers (8.0 per day) between Minneapolis and Winona.

On the basis of the foregoing, and on the basis of our findings, set forth in Order 72-9-39, September 12, 1972, and our conclusion therein that the certification process is generally inappropriate for replacement commuter carriers, we tentatively conclude that it would not be in the public interest to require MVA to undergo a certification proceeding in order to provide replacement services for North Central at Winona. MVA's replacement services are neither of sufficient magnitude nor do they hold such prospects of economic success as to warrant their separate certification.

We further tentatively find that certification would be an undue burden on MVA by reason of the limited extent of, and unusual circumstances affecting, its operations. As described above, the carrier's operations are of limited extent in terms of both the replacement services involved and the overall scope of its operations. Furthermore, the very nature of the small aircraft to which MVA is restricted makes the operations limited in extent. The accommodations on these aircraft not only limit the competitive capabilities of MVA but also limit the amount of traffic it can carry and the length of the markets it can serve, compared with a certificated carrier operating large aircraft. Thus, the cost of certification procedures would impose a severe financial burden on MVA wholly disproportionate to its existing and proposed operations. Moreover, enforcement of section 401 requirements would be an undue burden not only because of the substantial cost of certification procedures, but also because certification would deprive MVA of the necessary operating flexibility it must have to conduct nonsubsidized services with small aircraft in short-haul, low-density markets.

We are also satisfied that there are no safety considerations which would warrant a determination that the substitution arrangement is contrary to the public interest. Not only must MVA conduct its operations in strict conformity with the Federal Aviation Regulations promulgated by the Secretary of Transportation, who is charged by law with insuring the highest degree of safety in air transportation, but MVA has had a successful operating history.[8]

Consequently, for the reasons set forth above, we tentatively find and conclude that:

1. North Central should be authorized to suspend service temporarily at Winona, subject to the condition that such suspension shall terminate if, at any time, an air taxi operator fails to operate at least:

(a) Two round trips per day between Winona and Chicago;

(b) Two round trips per day between Winona and Minneapolis/St. Paul: *Provided, however,* That no service need be provided in either market on Saturday and only one round trip in each market need be operated on Sunday; and

2. The authority proposed in paragraph 1 should expire on October 26, 1975.

Interested persons will be given 21 days following the service date of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to direct their objections, if any, to the specific facts in issue, and to support such objections with detailed economic or legal analysis.

Accordingly, it is ordered, That:

1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein, and granting the requested suspension;

2. Any interested persons having objection to the issuance of an order making final the proposed findings, conclusions, and suspension authorization set forth herein shall within 21 days after service of a copy of this order, file with the Board and serve upon all persons listed in Appendix A attached hereto, a statement of objections together with such statistical data, and other materials and evidence relied upon to support the stated objections; answers to such objections shall be filed within 14 days, thereafter;

3. Any interested persons requesting an evidentarily hearing shall state in detail why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing. General, vague, or unsupported objections will not be entertained;

4. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised by the objections before further action is taken by the Board;

5. In the event no objections are filed to any part of this order, all further procedural steps relating to such part or parts will be deemed to have been waived, and the case will be submitted to the Board for final action; and

6. A copy of this order shall be served upon all persons listed in Appendix A attached hereto.[9]

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-20584 Filed 11-29-72;8:51 am]

[3] Specifically, we adhere to our prior findings that suspension would reduce North Central's expenses considerably, improve its financial posture, and in light of the air taxi substitution service, not adversely affect the traveling public.

[4] Air Line Pilots Association, International v. C.A.B., 458 F. 2d 846 (C.A.D.C. 1972).

[5] These statutory conditions and guidelines were discussed in Order 72-9-39, dated Sept. 12, 1972. This order was adopted in response to the remand to the Board from the U.S. Court of Appeals of the three applications which were in issue in the ALPA case.

[6] The cities are La Crosse, Prairie du Chien, and Janesville, Wis.; Chicago, Ill.; Minneapolis/St. Paul, Minn.; and Dubuque, Iowa. The total number of markets served by MVA is 21.

[7] The traffic statistics submitted by commuter carriers are confidential for a period of 1 year. However, pursuant to § 298.66 of the Board's economic regulations, the Board, on its own motion, finds that it is in the public interest to disclose this information.

[8] MVA, registered with the Board as a commuter air carrier, presently has insurance in effect and according to the FAA, has excellent operations with good management, maintenance, and training, and has had no safety or maintenance violations of FAA regulations during the last 12 months.

[9] Appendix A filed as part of the original document.

DELAWARE RIVER BASIN COMMISSION

COMPREHENSIVE PLAN

Notice of Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, December 12, 1972, in the South Auditorium of the ASTM Building, 1916 Race Street in Philadelphia, beginning at 2 p.m. The subjects of the hearing will be as follows:

I. Construction of preliminary or preparatory phases of water resources projects prior to or pending Commission approval impairs sound administration of the project review responsibility author-

ized by the Delaware River Basin Compact. Such preparatory work may impose substantial financial risk upon water users and may adversely affect water quality.

II. The conservation of water use is an important part of sound water resources management. Conservation of water use may be encouraged by the use of water meters incident to the distribution and sale of water supplies. The Commission proposes to amend its Comprehensive Plan by the addition thereto of policy relating to water metering. The proposed policy reads as follows:

All new public and private water supply systems using waters of the basin, and designed to serve more than 250 customers (connections), or distribute water supplies in excess of 100,000 gallons per day, shall be required to install water meters incident to the provision of such service at the retail level. Meters shall be installed so as to record water use by each individual household, commercial, industrial, or other user. Apartment houses and other multiple dwelling units shall be required to meter each dwelling unit separately.

III. A proposal to amend the Comprehensive Plan so as to include therein the following water resources projects:

1. *U.S. Soil Conservation Service.* Revision of the Assunpink Watershed work plan in Mercer and Monmouth Counties, N.J. The proposed revisions affect the reservoir pool size at structures numbers 4 and 5 and modifications of the land treatment phases of the project.

2. *Bucks County Commissioners.* A project to treat leachate from a completed landfill in Rockamixon Township, Bucks County, Pa. As a modification of a previously approved project, the treatment facilities will provide 97 percent removal of BOD_5 from an average waste flow of approximately 105,000 gallons per day. Treated effluent will discharge into a tributary of Gallows Run.

3. *Bucks County Department of Parks and Recreation.* A proposed revision to a previously approved boat launching ramp project in Bensalem Township, Bucks County, Pa. The boat launching facilities will be relocated downstream from the existing launching area on the Delaware.

4. *Borough of Deer Lake Municipal Authority.* A sewage treatment project to serve the Borough of Deer Lake, West Brunswick Township, Schuylkill County, Pa. The treatment plant will remove 90 percent of BOD_5 from a projected waste flow of 90,000 gallons per day. Treated effluent will discharge into Pine Creek, a tributary of the Schuylkill River.

5. *City of Wilmington Department of Commerce.* New docking facilities to serve the Port at Wilmington, New Castle County, Del. The project will be designed primarily to handle imports of oil for use by utilities.

6. *City of Philadelphia Water Dept.* Proposed modification to the Southwest sewage treatment plant of the City of Philadelphia, Philadelphia County, Pa. The improved facility is designed to provide 93 percent removal of BOD_5 from a waste flow of 210 million gallons per day. Treated effluent would discharge to the Delaware River.

7. *Camden County Municipal Utilities Authority.* A regional waste collection and treatment plant for that portion of Camden County, N.J., lying within the Delaware River drainage area. A system of collecting and interceptor sewers would serve all or part of the watersheds of Pennsauken, Newton, and Big Timber Creeks, the Cooper River and smaller streams draining directly into the Delaware River. Waste would be conveyed to a new central treatment plant located in the city of Camden.

IV. A proposal to approve the following water pollution abatement schedule as submitted in accordance with section 3–4.2(2) of the Basin Regulations-Water Quality (18 CFR Part 410):

1. *U.S. Pipe and Foundry Co. (A–71–8 revision).* A violation of the effluent requirements of the Commission's Basic Regulations was determined for this facility located in Burlington, N.J., and discharging into Zone 2 of the Delaware Estuary. An abatement schedule for this facility was approved on March 17, 1971. The proposed revision extends the compliance date from September 25, 1972, to October 15, 1974. The proposed revision is necessary to permit the company time to modify its present air pollution control devices which do not presently meet State standards and which are the major contaminated waste water sources.

Documents relating to the items on the hearing notice may be examined at the Commission's offices. All persons wishing to testify are requested to register in advance with the Secretary to the Commission.

W. BRINTON WHITALL,
Secretary.

NOVEMBER 22, 1972.

[FR Doc.72–20554 Filed 11–29–72;8:52 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Notice of Title Change in Noncareer Executive Assignment

By notice of April 20, 1972, F.R. Doc. 72–6033 the Civil Service Commission authorized the Department of Health, Education, and Welfare to make a change in title for the position of Deputy Commissioner for Renewal, Office of Education, authorized to be filled by noncareer executive assignment. This is notice that the title of this position is now being changed to Deputy Commissioner for Development, Office of Education.

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

[FR Doc.72–20574 Filed 11–29–72;8:50 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Title Change in Noncareer Executive Assignment

By notice of November 17, 1967, F.R. Doc. 67–13608, the Civil Service Commission authorized the departments and agencies to fill by noncareer executive assignment, certain positions removed from Schedule C of Civil Service Rule VI by 5 CFR 213.3301a on November 17, 1967. This is notice that the title of one such position so authorized to be filled by noncareer executive assignment has been changed from Executive Assistant Commissioner, Assistant Secretary for Housing Production and Mortgage Credit to Executive Assistant, Office of the Assistant Secretary-Commissioner, Housing Production and Mortgage Credit.

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

[FR Doc.72–20576 Filed 11–29–72;8:50 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Title Change in Noncareer Executive Assignment

By notice of May 1, 1970, F.R. Doc. 70–5343 the Civil Service Commission authorized the Department of Housing and Urban Development to make a change in title for the position of Assistant Commissioner for Technical and Credit Standards, Assistant Secretary for Housing Production and Mortgage Credit-Federal Housing Commissioner, authorized to be filled by noncareer executive assignment. This is notice that the title of this position is now being changed to Director, Office of Technical and Credit Standards, Assistant Secretary for Housing Production and Mortgage Credit.

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

[FR Doc.72–20577 Filed 11–29–72;8:50 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Title Change in Noncareer Executive Assignment

By notice of November 17, 1967, F.R. Doc. 67–13608, the Civil Service Commission authorized the departments and agencies to fill by noncareer executive assignment, certain positions removed from Schedule C of Civil Service Rule VI by 5 CFR 213.3301a on November 17, 1967. This is notice that the title of one such position so authorized to be filled by noncareer executive assignment has been changed from Assistant Commissioner for Field Operations, Federal Housing Administration to Director, Office of Field Support, Housing Production and Mortgage Credit.

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

[FR Doc.72–20578 Filed 11–29–72;8:50 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Title Change in Noncareer Executive Assignment

By notice of November 17, 1967, F.R. Doc. 67-13608, the Civil Service Commission authorized the departments and agencies to fill by noncareer executive assignment, certain positions removed from Schedule C of Civil Service Rule VI by 5 CFR 213.3301a on November 17, 1967. This is notice that the title of one such position so authorized to be filled by noncareer executive assignment has been changed from Assistant Commissioner for Programs, Federal Housing Administration to Director, Policy and Program Analysis and Development, Federal Housing Administration.

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

[FR Doc.72-20579 Filed 11-29-72;8:50 am]

OFFICE OF ECONOMIC OPPORTUNITY

Notice of Title Change in Noncareer Executive Assignment

By notice of July 31, 1971, F.R. Doc. 71-11019 the Civil Service Commission authorized the Office of Economic Opportunity to make a change in title for the position of Director, Evaluation Division, Office of Planning, Research and Evaluation, authorized to be filled by noncareer executive assignment. This is notice that the title of this position is now being changed to Chief, Evaluation Division, Office of Planning, Research and Evaluation.

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

[FR Doc.72-20575 Filed 11-29-72;8:50 am]

U.S. TARIFF COMMISSION

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the U.S. Tariff Commission to fill by noncareer executive assignment in the excepted service the position of Executive Director.

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

[FR Doc.72-20580 Filed 11-29-72;8:50 am]

ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL IMPACT STATEMENTS

Availability of Agency Comments

Appendix I contains a listing of draft environmental impact statements which the Environmental Protection Agency (EPA) has reviewed and commented upon in writing during the period from November 1, 1972, to November 15, 1972, as required by section 102(2)(C) of the National Environmental Policy Act of 1969 and section 309 of the Clean Air Act, as amended. The listing includes the Federal agency responsible for the statement, the number assigned by EPA to the statement, the title of the statement, the classification of the nature of EPA's comments, and the source for copies of the comments.

Appendix II contains definitions of the four classifications of EPA's comments. Copies of EPA's comments on these draft environmental impact statements are available to the public from the EPA offices noted.

Appendix III contains a listing of the addresses of the sources for copies of EPA comments listed in Appendix I.

Copies of the draft environmental impact statements are available from the Federal department or agency which prepared the draft statement or from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

Dated: November 24, 1972.

SHELDON MEYERS,
Director,
Office of Federal Activities.

APPENDIX I

ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN NOVEMBER 1, 1972, AND NOVEMBER 15, 1972

Responsible Federal Agency	Title and identifying number	General nature of comments	Source for copies of comments
Atomic Energy Commission	D-AEC-00069-21: Crystal River Unit 3, Fla.	2	A
Do	F-AEC-06040-00: Indian Point Nuclear Plant, Unit 2, N.Y.	2	C
Corps of Engineers	D-COE-41526-39: Shoal Creek Channel, Shoal Creek, Mo.	1	H
Do	D-COE-32304-46: Lakeport Lake Project Scotts Creek, Calif.	2	J
Do	D-COE-89106-54: Tucannon Port Site, Wash.	1	K
Department of Agriculture	D-DOA-36161-03: Stevens-Rugg Watershed, Franklin County, Vt.	2	B
Do	D-DOA-36033-19: Hollow Creek Watershed, S.C.	1	E
Do	D-DOA-30042-23: Hurricane Creek Watershed, Tenn.	2	E
Do	D-DOA-62025-31: Timber Management Plan for Cocino National Park, Albuquerque, N. Mex.	1	J
Do	D-DOA-36165-54: Newman Lake Watershed, Spokane County, Wash.	1	K
Department of the Interior	D-DOI-84014-00: Five Year Extension, Office of Saline Water.	2	A
Do	D-DOI-61077-01: Acadia National Park, Bar Harbor, Maine.	1	B
Department of Justice	D-DOJ-81103-15: Prisoner Medical Center, Green Springs, Louisa County, Va.	3	D
Department of State	D-DOS-90071-00: Internation Convention on Civil Liability for Oil Pollution Damage.	1	A
Do	D-DOS-03030-00: Permit for Dome Company to Transmit Hydrocarbons Through Pipeline.	1	F
Department of Transportation	D-DOT-41518-02: Route 111, Windham-Atkinson, N.H.	2	B
Do	D-DOT-41495-04: Route 2, Acton, Concord, Lincoln, Lexington, Mass.	3	B
Do	D-DOT-51193-14: Tri-County Airport Improvements, W. Va.	1	D
Do	D-DOT-51192-11: Somerset County Airport Improvements, Pa.	2	D
Do	D-DOT-41511-11: L.R. 1053 and L.R. 313, Centre and Clearfield Counties, Pa.	2	D
Do	D-DOT-41512-11: L.R. 1022, Ebensburg to Hastings, Cambria County, Pa.	2	D
Do	D-DOT-51191-15: Expansion of Patrick Henry Airport, Va.	2	D
Do	D-DOT-41516-17: Lexington-Paris Road, Fayette and Bourbon Counties, Ky.	2	E
Do	D-DOT-51192-21: Destin-Fort Walton Beach Airport, Destin, Fla.	2	E
Do	D-DOT-41523-22: I-65, Morgan, Madison, and Limestone Counties, Ala.	2	E
Do	D-DOT-41521-17: Relocation of KY 237, Boone County, Ky.	2	E
Do	D-DOT-41520-22: Bridge Across Coosa River, Ala. Route 77, Etowah, Ala.	2	E
Do	D-DOT-41511-18: Improvement to US-19, Swain County, N.C.	2	E
Do	D-DOT-41498-21: Lake County, Fla., State Road 50.	1	E
Do	D-DOT-40417-22: S-702(2) Levy County, Fla.	1	E
Do	D-DOT-41474-25: M-66 Relocation Missaukee and Kulkaska Counties, Mich.	1	F
Do	D-DOT-41500-30: CSAH 37, Ramsey County, Minn.	1	F
Do	D-DOT-41510-21: State Road 207, Putnam County, Fla.	1	F

Responsible Federal Agency	Title and Identifying number	General nature of comments	Source for copies of comments
Department of Transportation	D-DOT-41478-30: TH 14 Dodge and Olmsted Counties, Minn.	1	F
Do	D-DOT-41476-27: FAP Route 207, Edwardsville S. Bypass, Madison County, Ill.	2	F
Do	D-DOT-41475-30: TH 60, Jackson, Cottonswood, Watonwan Counties, Minn.	2	F
Do	D-DOT-41512-27: FAP Route 406, Logan and Tazewell Counties, Ill.	1	F
Do	D-DOT-51192-30: Hallock Municipal Airport, Kittson County, Minn.	2	F
Do	D-DOT-41506-48: Draft Supplement to Final EIS to Buckeye-Cemetery Road and Cemetery Perryville Road, I-10, Ariz.	4	J

APPENDIX II

DEFINITION OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

(1) *General agreement/lack of objections.* The Agency generally:

(a) Has no objections to the proposed action as described in the draft impact statement;

(b) Suggests only minor changes in the proposed action or the draft impact statement; or

(c) Has no comments on the draft impact statement or the proposed action.

(2) *Inadequate information.* The Agency feels that the draft impact statement does not contain adequate information to assess fully the environmental impact of the proposed action. The Agency's comments call for more information about the potential environmental hazards addressed in the statement, or ask that a potential environmental hazard be addressed since it was not addressed in the draft statement.

(3) *Major changes necessary.* The Agency believes that the proposed action, as described in the draft impact statement, needs major revisions or major additional safeguards to adequately protect the environment.

(4) *Unsatisfactory.* The Agency believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the safeguards which might be utilized may not adequately protect the environment from the hazards arising from this action. The Agency therefore recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

APPENDIX III

SOURCES FOR COPIES OF EPA COMMENTS

A. Director, Office of Public Affairs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

B. Director of Public Affairs, Region I, Environmental Protection Agency, Room 2303, John F. Kennedy Federal Building, Boston, Mass. 02203.

C. Director of Public Affairs, Region II, Environmental Protection Agency, Room 847, 26 Federal Plaza, New York, N.Y. 10007.

D. Director of Public Affairs, Region III, Environmental Protection Agency, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pa. 19106.

E. Director of Public Affairs, Region IV, Environmental Protection Agency, Suite 300, 1421 Peachtree Street NE., Atlanta, GA 30309.

F. Director of Public Affairs, Region V, Environmental Protection Agency, 1 North Wacker Drive, Chicago, IL 60606.

G. Director of Public Affairs, Region VI, Environmental Protection Agency, 1600 Patterson Street, Dallas, TX 75201.

H. Director of Public Affairs, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, MO 64108.

I. Director of Public Affairs, Region VIII, Environmental Protection Agency, Lincoln Tower, Room 916, 1860 Lincoln Street, Denver, CO 80203.

J. Director of Public Affairs, Region IX, Environmental Protection Agency, 100 California Street, San Francisco, CA 94102.

K. Director of Public Affairs, Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

[FR Doc.72-20509 Filed 11-29-72;8:45 am]

GENERAL SERVICES ADMINISTRATION

FIBERBOARD AND FIBERBOARD BOXES

Industry Specification Development Conference

Notice is hereby given that the Federal Supply Service, General Services Administration, will hold an Industry Specification Development Conference in connection with the use of reclaimed fibers in the manufacture of items conforming to the following Federal specifications: PPP-F-320D, fiberboard, corrugated and solid; PPP-B-636G, boxes, shipping, fiberboard; PPP-B-640D, boxes, fiberboard, corrugated, triple-wall; and PPP-B-1364B, box, corrugated fiberboard, high strength, weather-resistant, double-wall.

The purpose of the conference is to provide a forum for the consideration of suggestions by which (1) the use of reclaimed fibers can be expanded, (2) the quality of the products involved can be maintained, and (3) sufficient industry interest can be generated to insure competition for the supply of items conforming to these specifications. It will be open to all those in the private sector who have an interest or concern for these matters, and all other Government departments or agencies having an interest therein are also being invited to send their representatives.

The conference will be held on December 14, 1972, at 9 a.m., Room 508, Building 3, Crystal Mall, 1931 Jefferson Davis Highway, Arlington, VA. Anyone who wants to attend or desires further information should contact Mr. Thomas M. Bacon, General Services Administration, Federal Supply Service, at telephone number (Area Code 703) 557-7844, or write General Services Administration, Federal Supply Service (FMSX), Washington, D.C. 20406.

Issued in Washington, D.C. on November 16, 1972.

M. S. MEEKER,
Commissioner.

[FR Doc.72-20560 Filed 11-29-72;8:49 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 623]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

NOVEMBER 20, 1972.

Pursuant to §§ 1.227(b)(3) and 21.30(b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

[2] The above alternative cutoff rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio and Local Television Transmission Services (Part 21 of the rules).

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

1257-C2-P-72—Byrnes Message Bureau, Inc. (KEJ884), resubmitted application for an additional channel to operate on 152.03 MHz at a new site described as location No. 2: 15 Virginia Avenue, Poughkeepsie, N.Y.

3469-C2-P-(6)-73—The Mountain States Telephone & Telegraph Co. (New), for a new one-way station to operate on 152.84 MHz at the following locations: Location No. 1: 228 West Adams Street, Phoenix, AZ; location No. 2: 215 East Indian School Road, Phoenix, AZ; location No. 3: 2834 North 44th Street, Phoenix, AZ; location No. 4: 12403 North 15th Avenue, Phoenix, AZ; location No. 5: 25 West First Street, Scottsdale, AZ; and location No. 6: 0.7 mile north of Tempe, Ariz.

3470-C2-P-73—Stockton Mobilphone, Inc. (KMD347), replace transmitter operating on 35.58 MHz, change the antenna system, and relocate facilities to Pock Lane, approximately 1,500 feet north of Carpenter Road, Stockton, Calif.

3471-C2-P-73—Houston Mobilfone, Inc. (New), for a new two-way station to operate on 152.12 MHz at 1⅓ miles east of Huntsville, Tex.

3473-C2-AL-73—MRN Services, Inc., consent to assignment of license from MRN Services, Inc., assignor, to Radio Call Company of Long Island, Inc., assignee station: KED 367 Huntington, N.Y.

3481-C2-AL-73—Electronic Answering Service. Consent to assignment of license from Jack B. McCorcle, doing business as Electronic Answering Service, assignor, to Autophone of Del Rio, Inc., assignee.

3485-C2-P-73—Radio Telephone Company of Gainesville (New), for a new two-way station to operate on 454.200 MHz, 2 miles south of DeLand, Fla.

3486-C2-P-(5)—Same (KIY464), for additional facilities to operate on 454.150, 454.200, 454.300, and 454.350 MHz at 540 Corporation Avenue, Daytona Beach, FL and 454.150 MHz 3.1 miles southwest of New Smyrna, Fla.

3487-C2-P-(4)-73—Chesapeake & Potomac Telephone Co. (KGA586), for additional facilities to operate on 454.550, 454.575, 454.625, and 454.650 MHz at location No. 3: 5217 North 19th Road, Arlington, VA.

3502-C2-P-73—Central Telephone Co. Inc. (KLB325), replace transmitter operating on 152.69 MHz and change the antenna system in the 100 block of State Street, Decatur, Tex.

3503-C2-AL-73—Missouri Central Telephone Co., consent to assignment of license from Missouri Central Telephone Co., assignor, to: Continental Telephone Company of Missouri, assignee. Station: KDT216 Cuba, Mo.

3504-C2-AL-(2)-73—Missouri Telephone Co., consent to assignment of license from Missouri Telephone Co., assignor, to: Continental Telephone Company of Missouri, assignee. Station: KAD514 Branson, and KBM506 Wentzville, Mo.

3507-C2-P-(2)-73—Arrowhead Business Radio, Inc. (KFJ901), change the antenna system and relocate facilities operating on 152.09 MHz base and 459.200 MHz repeater at location No. 1 to: 1306 Windsor Avenue, Duluth, Minn.

3508-C2-P-73—Same (KRH654), change the antenna system and relocate base facilities operating on 152.24 MHz to 1306 Windsor Avenue, Duluth, Minn.

3511-C2-P-73—Contact of Washington, Inc. (KGA806), change the antenna system and relocate facilities operating on 43.58 MHz to the Sheraton Park Hotel, 2260 Connecticut Avenue, Washington, DC.

3512-C2-P-(2)-73—Answerite Professional Telephone Service (New), for a new two-way station to operate on 454.025 and 454.150 MHz on Fourth Street, Apopka, Fla.

3521-C2-P-73—Anserphone of Durham (KIY758), change the antenna system operating on 152.18 MHz at 111 Corcoran Street, Durham, NC.

3522-C2-TC-(2)-73—Tri-Cities Answering Service, Inc., consent to transfer of control from Ray S. Hoyt, Sr., and Evelyn Hoyt, transferors, to: Ray S. Hoyt, Jr., and Roberta Hoyt Haupt, transferees. Stations: KEC930 and KEK296 (one-way), Binghamton, N.Y.

Correction

8256-C2-P-72—The Diamond State Telephone Co. (KGA471), correct frequency 157.73 MHz to read 157.83 MHz. See Reports Nos. 615 and 620, dated September 25 and October 30, 1972, respectively.

POINT-TO-POINT MICROWAVE RADIO SERVICE

3228-C1-ML-73—Pacific Northwest Bell Telephone Co. (KYS69), Sentinel Hill, near southwest Fairmount Boulevard, Portland, Oreg. Latitude 45°29'24" N., longitude 122°41'47" W. Modification of license to change polarization from H to V on frequencies 3730V and 3810V MHz toward Portland, Oreg.

INFORMATIVE: Applicant proposes to provide specialized communications services between Jacksonville and Miami, Fla., with branches to Orlando, Tampa, and West Palm Beach, Fla.

3363-C1-P-73—United Video, Inc. (New), Gulf Lake Drive, Jacksonville, Fla. Latitude 30°19'09" N., longitude 81°39'29" W. C.P. for a new station on frequencies 11,525H and 11,685H MHz toward Orange Park, Fla.

3364-C1-P-73—Same (New), in North Meadowbrook Terrace, 4 miles west-northwest of Orange Park, Fla. Latitude 30°10'52" N., longitude 81°44'51" W. C.P. for a new station on frequency 6063.8V MHz toward Mill Creek, Fla.; frequencies 10,955H and 11,115H MHz toward Jacksonville, Fla.

3365-C1-P-73—Same (New), Florida, Route 16, Mill Creek, Fla. Latitude 29°57'44" N., longitude 81°29'38" W. C.P. for a new station on frequency 6375.2V MHz toward Orange Park, Fla.; frequency 6345.5H MHz toward Hastings, Fla.

3366-C1-P-73—Same (New), 1.7 miles south of Hastings, Fla. Latitude 29°41'31" N., longitude 81°30'17" W. C.P. for a new station on frequency 5945.2V MHz toward Bunnell, Fla.; frequency 5974.8V MHz toward Mill Creek, Fla.

3367-C1-P-73—Same (New), U.S. 1, southeast city limit, Bunnell, Fla. Latitude 29°27'11" N., longitude 81°14'47" W. C.P. for a new station on frequency 3870V MHz toward Barberville, Fla.; frequency 6375.2V MHz toward Hastings, Fla.

3368-C1-P-73—Same (New), 1.2 miles north on Old U.S. 17, Barberville, Fla. Latitude 29°11'41" N., longitude 81°26'17" W. C.P. for a new station on frequency 3910V MHz toward Cassia, Fla.; frequency 4090H MHz toward Bunnell, Fla.

3369-C1-P-73—Same (New), 1 mile north of Cassia on Florida 44, Cassia, Fla. Latitude 28°54'03" N., longitude 81°27'17" W. C.P. for a new station on frequency 3870H MHz toward Ocoee, Fla.; frequency 4050H MHz toward Barberville, Fla.

3370-C1-P-73—Same (New), on west side of Florida 439, 1.4 miles north of Ocoee, Fla. Latitude 28°35'21" N., longitude 81°32'39" W. C.P. for a new station on frequency 3910H MHz toward Davenport Lake, Fla.; frequency 4090V MHz toward Cassia, Fla.; frequencies 10,975V and 11,135V MHz toward Orlando, Fla.

3371-C1-P-73—Same (New), corner of Jackson and Orange Streets, Orlando, Fla. Latitude 28°32'26" N., longitude 81°22'44" W. C.P. for a new station on frequencies 11,505V and 11,665V MHz toward Ocoee, Fla.

3372-C1-P-72—United Video, Inc. (New), 13.5 miles north of Haines City on U.S. 27, Davenport Lake, Fla. Latitude 28°18'30" N., longitude 81°40'54" W. C.P. for a new station on frequency 3870V MHz toward Auburndale, Fla.; frequency 4050H MHz toward Ocoee, Fla.

3373-C1-P-73—Same (New), 0.7 mile west of Florida Route 655 on south side of Old Auburndale Road, Auburndale, Fla. Latitude 28°04'18" N., longitude 81°49'45" W. C.P. for a new station on frequency 3910V MHz toward Keysville, Fla.; frequency 4090H MHz toward Davenport Lake, Fla.

3374-C1-P-73—Same (New), 101 North Tampa Street, Tampa, Fla. Latitude 27°56'42" N., longitude 82°27'29" W. C.P. for a new station on frequency 4070H MHz toward Keysville, Fla.

3375-C1-P-73—Same (New), northeast corner of intersection of State Routes 640 and 676, 3.6 miles east of Lithia and Keysville, Fla. Latitude 27°51'04" N., longitude 82°05'13" W. C.P. for a new station on frequency 3890H MHz toward Fort Green, Fla.; frequency 4030H MHz toward Tampa, Fla.; frequency 4050H MHz toward Auburndale, Fla.

3376-C1-P-73—Same (New), on north side of State Route 664, 1.1 miles east of State Route 663, Fort Green, Fla. Latitude 27°37'01" N., longitude 81°55'33" W. C.P. for a new station on frequency 3910V MHz toward Buchanan, Fla.; frequency 4090H MHz towards Keysville, Fla.

3377-C1-P-73—Same (New), 2.6 miles east of Buchanan, Fla. Latitude 27°25'00" N., longitude 81°45'09" W. C.P. for a new station on frequency 3890V MHz toward Arcadia, Fla.; frequency 4050H MHz toward Fort Green, Fla.

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

3378–C1–P–73—Same (New), 3.6 miles southeast of Arcadia off Florida Route 31, Arcadia, Fla. Latitude 27°09'27" N., longitude 81°50'22" W. C.P. for a new station on frequency 3910V MHz toward Bermont, Fla.; frequency 4090V MHz toward Buchanan, Fla.

3379–C1–P–73—Same (New), 5.1 miles east of Bermont, Fla. Latitude 26°56'40" N., longitude 81°40'45" W. C.P. for a new station on frequency 3890H MHz toward Fort Denaud, Fla.; frequency 4050H MHz toward Arcadia, Fla.

3380–C1–P–73—Same (New), 0.8 mile north of Fort Denaud, Fla. Latitude 26°45'17" N., longitude 81°30'25" W. C.P. for a new station on frequency 3930H MHz toward Keri Station, Fla.; frequency 4090V MHz toward Bermont, Fla.

3381–C1–P–73—Same (New), 7.7 miles east of Keri on Florida Route 832, Keri Station, Fla. Latitude 26°36'19" N., longitude 81°15'27" W. C.P. for a new station on frequency 3890V MHz toward Seminole, Fla.; frequency 4050H MHz toward Fort Denaud, Fla.

3382–C1–P–72—United Video, Inc. (New), 24.7 miles east of Immokalee, Seminole (Hendry), Fla. Latitude 26°27'45" N., longitude 81°01'55" W. C.P. for a new station on frequency 3910H MHz toward Big Cypress, Fla.; frequency 4090H MHz toward Keri Station, Fla.; frequency 3930V MHz toward Lake Harbor, Fla.

3383–C1–P–73—Same (New), intersection of State Road 80 and Miama Canal, southwest corner, Lake Harbor, Fla. Latitude 26°41'25" N., longitude 80°48'30" W. C.P. for a new station on frequency 4130V MHz toward Seminole, Fla.; frequency 3790H MHz toward Belle Glade, Fla.

3384–C1–P–73—Same (New), north side of Florida Route 441 midway between 6 miles Bend, 20 miles Bend, Belle Glade, Fla. Latitude 26°40'47" N., longitude 80°30'04" W. C.P. for a new station on frequency 4150V MHz toward West Palm Beach, Fla.; frequency 4150H MHz toward Lake Harbor, Fla.

3385–C1–P–73—Same (New), 500 feet north from end of Belvedere Extension Road, West Palm Beach, Fla. Latitude 26°41'34" N., longitude 80°10'48" W. C.P. for a new station on frequency 3730H MHz toward Belle Glade, Fla.; frequencies 10,815H and 10,975H MHz toward West Palm Beach Terminal, Fla.

3386–C1–P–73—Same (New), corner of Datura Street and Olive Avenue, West Palm Beach Terminal, Fla. Latitude 26°42'42" N., longitude 80°03'07" W. C.P. for a new station on frequencies 11,345H and 11,505H MHz toward West Palm Beach, Fla.

3387–C1–P–73—Same (New), 27.0 miles east-southeast of Sunniland, Big Cypress, Fla. Latitude 26°13'15" N., longitude 80°55'37" W. C.P. for a new station on feequency 3890H MHz toward Alligator Alley, Fla.; frequency 4030V MHz toward Seminole, Fla.

3388–C1–P–73—Same (New), 10.5 miles east of Andytown, Alligator Alley, Fla. Latitude 26°08'30" N., longitude 80°37'20" W. C.P. for a new station on frequency 3910H MHz toward Perry, Fla.; frequency 4090H MHz toward Big Cypress, Fla.

3389–C1–P–73—Same (New), 1 mile south of Florida Route 820, 3.5 miles east of U.S. 27, Perry, Fla. Latitude 25°59'34" N., longitude 80°22'33" W. C.P. for a new station on frequency 4050H MHz toward Alligator Alley, Fla.; frequency 6301V MHz toward Miami, Fla.

3390–C1–P–73—Same (New), Freedom Towers, Biscayne Boulevard, Miami, Fla. Latitude 25°46'46" N., longitude 80°11'22" W. C.P. for a new station on frequency 6049H MHz toward Perry, Fla.

3394–C1–P–73—Microwave Transmission Corp. (WBO58), Squak Mountain, 1.8 miles southwest of Issaquah, Wash. (latitude 47°30'17" N., longitude 122°02'43" W.): Modification of C.P. (1884–C1–P–71) to add frequency 11,385.0V MHz toward Ravens Roost (KPR32), Wash., on azimuth 134°00'. (INFORMATIVE: MTC proposes to change the pickup point for the signal of station KTNT–TV, Seattle-Tacoma, to Squak Mountain. This proposal does not involve new service.).

3395–C1–P–73—Eastern Microwave, Inc. (KPP81), 0.2 mile northwest of Gouverneur, N.Y. (latitude 44°20'38" N., longitude 75°29'19" W.): C.P. to replace existing transmitter on frequency 6108.3V MHz and increase output power to 1.5 watts on azimuth 47°41' toward Potsdam (KPP82), N.Y.

3396–C1–P–73—Same (KPP82), 0.2 mile southwest of Potsdam, N.Y. (latitude 44°38'54" N., longitude 75°01'07" W.): C.P. to replace existing transmitter on frequency 6390.0H MHz and increase output power to 1.5 watts on azimuth 15°01'.

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

3397–C1–P–73—American Television Relay, Inc. (KPV76), White Tank Mountain, 10.5 miles north-northwest of Perryville, Ariz. (latitude 33°34'10" N., longitude 112°33'33" W.): C.P. to add frequencies 11,605H MHz, 11,365H MHz, 11,525H MHz, and 11,285H MHz toward new point of communication at Pete Smith Peak, Ariz. (latitude 34°03'53" N., longitude 113°21'18" W.), on azimuth 306°56'. (INFORMATIVE: ATR proposes to provide the television signals of KTLA, KHJ, KTTV, and KCOP of Los Angeles, Calif., to American Cable Television, Inc., at Pete Smith Peak, Ariz.).

3398–C1–P–73—Mountain Microwave Corp. (WDE42), 3.0 miles northwest of Toronto, S. Dak. (latitude 44°36'22" N., longitude 96°40'52" W.): C.P. to add frequency 11,625V MHz toward Watertown, S. Dak., on azimuth 310°41'. (INFORMATIVE: Mountain proposes to provide the signal of WTCN–TV, Minneapolis, Minn., to Midland Cable TV Co. in Watertown, S. Dak.).

3399–C1–P–73—American Television Relay, Inc. (KPV76), White Tank Mountain, 10.5 miles north-northwest of Perryville, Ariz. (latitude 33°34'10" N., longitude 112°33'33" W.): C.P. to add frequencies 6330.7H MHz and 6390.0H MHz toward new point of communication at Sun City, Ariz. (latitude 33°35'59" N., longitude 112°16'32" W.), on azimuth 82°39'. (INFORMATIVE: ATR proposes to provide the television signals of KTLA and KTTV of Los Angeles, Calif., to Sun Valley Cable Communications, Inc., at Sun City, Ariz.).

3400–C1–P–73—American Television and Communications Corp. (New), 2.70 miles east of Mankato, Minn. (latitude 44°10'40" N., longitude 93°56'20" W.): C.P. for a new station—frequency 5945.2H MHz toward Wells, Minn., on azimuth 158°38'.

3401–C1–P–73—Same (New), 1.0 mile east of Wells, Minn. (latitude 43°44'42" N., longitude 93°42'20" W.): C.P. for a new station—frequency 6330.7H MHz toward Albert Lea, Minn., on azimuth 115°57'.

3402–C1–P–73—Same (New), 1.0 mile south of Albert Lea, Minn. (latitude 42°37'26" N., longitude 93°21'52" W.): C.P. for a new station—frequency 5945.2V MHz toward Mason City, Iowa, on azimuth 166°49'.

3403–C1–P–73—Same (New), 1.0 mile northwest of Mason City, Iowa (latitude 43°09'56" N., longitude 93°13'04" W.): C.P. for a new station—frequency 6226.9V MHz toward Allison, Iowa, on azimuth 139°10'.

3404–C1–P–73—Same (New), 3.7 miles north of Allison, Iowa (latitude 42°48'22" N., longitude 92°47'48" W.): C.P. for a new station—frequency 5945.2V MHz toward Waterloo, Iowa, on azimuth 127°35'.

3405–C1–P–73—Same (New), 2.20 miles northeast of Waterloo, Iowa (latitude 42°31'28" N., longitude 92°18'14" W.): C.P. for a new station—frequency 6286.2H MHz toward Reinbeck, Iowa, on azimuth 230°37'.

3406–C1–P–73—Same (New), 5.80 miles west-southwest of Reinbeck, Iowa (latitude 42°16'53" N., longitude 92°42'05" W.): C.P. for a new station—frequency 6123.1V MHz toward Marshalltown, Iowa, on azimuth 220°03'.

3407–C1–P–73—Same (New), 2.20 miles west of Marshalltown, Iowa (latitude 42°01'26" N., longitude 92°59'13" W.): C.P. for a new station—frequency 6375.2V MHz toward Ames, Iowa, on azimuth 272°25'.

3408–C1–P–73—Same (New), 1.3 miles east of Ames, Iowa (latitude 42°02'12" N., longitude 93°34'52" W.): C.P. for a new station—frequency 6063.8H MHz toward Des Moines, Iowa (latitude 41°39'58" N., longitude 93°35'27" W.), on azimuth 181°08'. (INFORMATIVE: ATC proposes to provide the signal of WTCN–TV, Minneapolis, Minn., to Hawkeye Cablevision, Inc., at Des Moines for service to Urbandale, Iowa. A waiver of Section 21.701(i) of the FCC Rules is requested by ATC.)

3409–C1–P–73—Microwave Transmission Corp. (WAN96), 8.6 miles south of Pomeroy, Wash. (latitude 46°20'52" N., longitude 117°36'06" W.): C.P. (a) to relocate receiver station at Clarkston, Wash., to latitude 46°27'24" N., longitude 117°02'45" W. and (b) to change azimuth toward new site at Clarkston to 74°11'.

3410–C1–P–73—American Television Relay, Inc. (KKT81), Mount Powell, 4.5 miles north of Thoreau, N. Mex. (latitude 35°27'59" N., longitude 108°14'25" W.): C.P. to add frequencies 6212.0H MHz, 6271.4H MHz, 6330.7H MHz, and 6301.0V MHz toward Grants, N. Mex. (latitude 35°09'47" N., longitude 107°52'47" W.), on azimuth 135°38'. (INFORMATIVE: ATR proposes to provide the television signals of KTLA, KCOP, KHJ, and KTTV of Los Angeles, Calif., to Tele Vu, Inc., in Grants, N. Mex.)

3411–C1–ML–73—Western Tele-Communications, Inc. (KPT21), Nelson Peak, 18.0 miles southwest of Salt Lake City, Utah (latitude 40°36'30.5" N., longitude 112°09'34" W.): Modification of license (7695–C1–ML–72) to change azimuth toward Ogden (KOC40), Utah, to 15°46'.

3412–C1–MP–73—Same (KOC40), Ogden (Weber State College Science Building), Utah (latitude 41°11'40" N., longitude 111°56'25" W.): Modification of C.P. (7696–C1–P–72) to relocate station to foregoing coordinates—existing frequency 6137.9H MHz toward Nelson Peak (KPT21), Utah, on new azimuth 195°55' and existing frequency 6108.3V MHz toward New Promontory (KOC42), Utah, on azimuth 320°48'.

3413–C1–ML–73—Same (KOC42), New Promontory, 20.0 miles west of Tremonton, Utah (latitude 41°45'10" N., longitude 112°33'00" W.): Modification of C.P. (7697–C1–P–72), to change azimuth toward Ogden (KOC40), Utah, to 140°24'. (INFORMATIVE: Western requests Special Temporary Authority to effect these technical modifications.)

3414–C1–P–73—American Television Relay, Inc. (KOS63), Hellograph Peak, 13.9 miles southwest of Stafford, Ariz. (latitude 32°38'59" N., longitude 109°50'53" W.): C.P. to add frequencies 6219.5H MHz, 6338.1H MHz, 6249.1V MHz, and 6189.8V MHz toward Mule Mountain, Ariz. (latitude 31°28'20" N., longitude 109°57'18" W.), on azimuth 184°27'. (INFORMATIVE: ATR proposes to provide the television signals of KTLA, KTTV, KCOP, and KHJ of Los Angeles, Calif., to Bisbee CATV, Inc., at Mule Mountain, Ariz. A waiver of Section 21.701(1) of the FCC Rules is requested by ATR.)

3415–C1–P–73—Frank K. Spain, doing business as Microwave Service Co. (KSN80), 4.3 miles northeast of Harvard, Ill. (latitude 42°28'10" N., longitude 88°33'37" W.): C.P. to add frequency 6315.9H MHz toward Rockford (KSN81), Ill., on azimuth 256°22'.

3416–C1–P–73—Same (KSN81), 7 miles north of Rockford, Ill. (latitude 42°21'51" N., longitude 89°08'15" W.): C.P. to add frequencies 6034.2H MHz, 6152.8H MHz, and 6412.2H MHz toward Freeport, Ill., on azimuth 262°20'. (INFORMATIVE: MSC proposes to provide the television signals of WGN–TV, WFLD, and WTTW and the radio signal of WFMT(FM), all of Chicago, Ill., to Freeport Cablevision in Freeport, Ill. A waiver of Section 21.701(1) of the FCC Rules is requested by MSC.)

3417–C1–P–73—The Mountain States Telephone & Telegraph Co. (KVU54), 800 Main Street, Grand Junction, CO. Latitude 39°04'03" N., longitude 108°33'30" W. C.P. to replace frequencies 5937.8V and 10,755V MHz with frequencies 10,815V, 10,895V, and 11,135V MHz; to change point of communication from Palisade, Colo., to Land's End, Colo.

3418–C1–P–73—Same (New), 7 miles east of Palisade, Colo. Latitude 39°05'27" N., longitude 108°13'20" W. C.P. for a new station on frequencies 11,305H, 11,385H, and 11,625H MHz toward Grand Junction, Colo.; frequencies 11,265V, 11,345V, and 11,665V MHz toward Grand Valley, Colo.

3419–C1–P–73—Same (KBC29), 3 miles southwest of Grand Valley (Garfield), Colo. Latitude 39°25'37" N., longitude 108°06'09" W. C.P. to add frequencies 10,775H, 10,855H, and 11,175H MHz toward Land's End, Colo.; to replace frequencies 5937.8V and 10,755H MHz with frequencies 10,815V, 10,895V, and 11,135V MHz toward Rifle Junction, Colo.

3420–C1–P–73—Same (KBC41), 1 mile northeast of Rifle, Colo. Latitude 39°32'28" N., longitude 107°45'49" W. C.P. to add frequences 11,305H, 11,385H, and 11,625H MHz in place of frequencies 6189.8V and 11,685H MHz toward Grand Valley, Colo.; correct frequency to read 10,995H MHz toward Rio Blanco, Colo.

3421–C1–P–73—American Telephone & Telegraph Co. (KVU39), 110 North Hall Street, Allentown, PA. Latitude 40°36'13" N., longitude 75°28'26" W. C.P. to add frequency 3930V MHz toward Lanark, Pa.

3422–C1–P–73—Same (KGN36), 3 miles southeast of Allentown, Pa. Latitude 40°33'59" N., longitude 75°26'11" W. C.P. to add frequency 3890V MHz toward Allentown, Pa.; frequencies 3710H and 3790H MHz toward Cherryville, N.J.

3423–C1–P–73—Same (KEA77), 0.8 mile north of Cherryville, N.J. Latitude 40°34'18" N., longitude 74°54'22" W. C.P. to add frequencies 3750H and 3830H MHz toward Lanark, Pa.

3426–C1–P–73—The Mountain States Telephone & Telegraph Co. (KPX29), 14 miles southeast of Cedar City, Utah. Latitude 37°35'20" N., longitude 112°52'01" W. C.P. to add frequencies 11,325H and 11,565V MHz toward Mount Wilson, Utah via passive reflector.

3427–C1–P–73—Same (New), 11.6 miles southeast of Panguitch, Utah. Latitude 37°41'28" N., longitude 112°18'16" W. C.P. for a new station on frequencies 10,875H and 11,115V MHz toward Blowhard Mountain, Utah via passive reflector; frequencies 10,915H and 11,155V MHz toward Panguitch, Utah via passive reflector.

3428–C1–P–73—Same (New), 50 South Main Street, Panguitch, UT. Latitude 37°49'20" N., longitude 112°26'13" W. C.P. to add frequencies 11,365H and 11,605V MHz toward Mount Wilson, Utah.

3429–C1–P–73—Southwestern Bell Telephone Co. (New), 623 Eldorado Street, near League City, Tex. Latitude 29°33'46" N., longitude 95°08'20" W. C.P. for a new station on frequency 3770V MHz toward Liverpool, Tex.; frequency 4090V MHz toward Houston, Tex.

3430–C1–P–73—Same (New), 1021 West Broad Street, Freeport, TX. Latitude 28°57'09" N., longitude 95°21'34" W. C.P. for a new station on frequency 4090V MHz toward Liverpool, Tex.

3431–C1–P–73—Same (KYJ66), 1407 Jefferson Street, Houston, TX. Latitude 29°44'55" N., longitude 95°21'56" W. C.P. to add frequency 3730V MHz toward Apollo RS, Tex.

3432–C1–MP–73—Same (WCZ52), 6.2 miles east-southeast of Liverpool, Tex. Latitude 29°15'36" N., longitude 95°11'02" W. Modification. C.P. to add frequency 4050V MHz toward Apollo RS, Tex.; frequency 3730V MHz toward Freeport RS, Tex.; to change polarization from H to V on frequency 3730V and 3810V MHz toward Galveston, Tex.; to change polarization from V to H on frequencies 4050H and 4130H MHz toward Texas City, Tex.

3433–C1–P–73—United Telephone Company of Florida (KIQ75), 113 East Ventura Avenue, Clewiston, FL. Latitude 26°45'00" N., longitude 80°56'03" W. C.P. to change frequency 2178.4H MHz to 2164.6H MHz toward Sipreston, Fla.

3434–C1–P–73—Same (KIB95), 13 miles south-southeast of Devils Garden, Fla. Latitude 26°26'22" N., longitude 81°01'35" W. C.P. to change frequency from 2128.4H MHz to 2114.6H MHz toward Clewiston, Fla.

3436–C1–P–73—RCA Alaska Communications, Inc. (WBP70), Lena Point Loop Road, 1.2 miles from the Glacier Highway, Lena Point, Alaska. Latitude 58°23'32" N., longitude 134°46'02" W. C.P. to change frequencies from 4050V and 4130V MHz to frequencies 6585V and 6685V MHz toward Hoonah, Alaska.

3437–C1–MP–73—The Chesapeake & Potomac Telephone Co. of West Virginia (KXR63), 200 Woodlawn Avenue, Beckley, WV. Latitude 37°46'33" N., longitude 81°11'25" W. Modification. C.P. to change antenna system and add passive site on frequency 6123.1H MHz toward Beckley Passive toward Barker's Ridge Passive via Barker's Ridge Passive toward Barker's Ridge.

3438–C1–MP–73—Same (WHT69), Barker's Ridge, junction of Mercer, Wyoming, and Raleigh Counties, W. Va. Latitude 37°30'39" N., longitude 81°13'19" W. Modification. C.P. to change antenna system and add passive site on frequency 6375.2V MHz toward Barker's Ridge Passive toward Beckley Passive via Beckley Passive toward Beckley.

3439–C1–P–73—Southern Bell Telephone & Telegraph Co. (KJA97), 213 South Coit Street, Florence, SC. Latitude 34°11'39" N., longitude 79°46'17" W. C.P. to add frequencies 6152.8V, 5974.8V, and 6093.5V MHz toward Elliott, S.C.

3440–C1–P–73—Southern Bell Telephone & Telegraph Co. (KVH63), 1.4 miles northeast of Elliott, S.C. Latitude 34°07'11" N., longitude 80°08'48" W. C.P. to add frequency 6404.8H MHz toward Sumter, S.C.

3441–C1–P–73—Same (KJB49), 15 South Harvin Street, Sumter, SC. Latitude 33°55'08" N., longitude 80°20'24" W. C.P. to change frequencies from 6011.9H and 6130.5H MHz to 6004.5H and 6123.8H MHz toward Elliott, S.C.

3442–C1–P–73—American Telephone & Telegraph Co. (KKH66), 3.5 miles northeast of Frisco, Tex. Latitude 33°10'31" N., longitude 96°46'18" W. C.P. to add frequency 3730V MHz toward Roanoke, Tex.

3443–C1–P–73—Same (KYZ91), 4.9 miles northwest of Roanoke, Tex. Latitude 33°10'41" N., longitude 97°18'05" W. C.P. to add frequency 3770V MHz toward Adams, Tex.; frequency 4150V MHz toward Fort Worth, Tex.

3444–C1–P–73—United Inter-Mountain Telephone Co. (KJX31), 179 East Main Street, Abingdon, VA. Latitude 36°42'44" N., longitude 81°58'15" W. C.P. to add frequency 2128.0H MHz toward White Top Mountain, Va.

3445–C1–P–73—Same (New), White Top, Va. Latitude 36°38'19" N., longitude 81°36'19" W. C.P. for a new station on frequency 2178.0H MHz toward Abingdon, Va.

3446–C1–P–73—American Telephone & Telegraph Co. (KEA77), 0.8 mile north of Cherryville, N.J. Latitude 40°34'18" N., longitude 74°54'22" W. C.P. to add frequency 4010H MHz toward Iselin, N.J.

3447–C1–P–73—Same (KEA76), 0.85 mile west of Iselin, N.J. Latitude 40°34'16" N., longitude 74°20'49" W. C.P. to add frequency 3970H MHz toward Cherryville, N.J.; frequency 3970H MHz toward New York 7, N.Y.

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

3448–C1–P–73—Same (KEL79), 811 10th Avenue, New York, NY. Latitude 40°45'59" N., longitude 73°59'27" W. C.P. to add frequency 4010H MHz toward Iselin, N.J.

3449–C1–P/ML–73—General Telephone Company of Florida (KVI27), temporary fixed location. C.P. modification of license to add transmitters 5925–6425 MHz toward temporary fixed locations.

3450–C1–P–73—American Telephone & Telegraph Co. (KIK64), 521 West Chestnut Street, Louisville, KY. Latitude 38°14'58" N., longitude 85°45'39" W. C.P. to add frequency 4198H MHz toward Lanesville, Ind.

3451–C1–P–73—Same (KSJ47), 3.8 miles southeast of Lanesville, Ind. Latitude 38°12'01" N., longitude 85°56'01" W. C.P. to add frequency 4190H MHz toward Louisville, Ky.

3452–C1–P–73—American Telephone & Telegraph Co. (KIM60), 0.7 mile northwest of Payneville, Ky. Latitude 38°00'06" N., longitude 86°19'19" W. C.P. to add frequency 4198H MHz toward Lanesville, Ind.

3453–C1–P–73—New England Telephone & Telegraph Co. (KCO97), on Telco Hill, 3 miles northeast of the village of East Vassalboro, Maine. Latitude 44°28'52" N., longitude 69°34'07" W. C.P. to add frequencies 10,975H and 11,175.0V MHz toward Waterville, Maine.

3454–C1–P–73—Same (New), 10 Appleton Street, Waterville, Maine. Latitude 44°33'04" N., longitude 69°37'49" W. C.P. for a new station on frequencies 11,385.0H and 11,585.0V MHz toward Vassalboro, Maine.

3455–C1–P–73—Southern Bell Telephone & Telegraph Co. (KIY63), 218 College Street, Greenville, S.C. Latitude 34°51'19" N., longitude 82°24'00" W. C.P. to change frequencies from 5967.4H and 6026.8H MHz to frequencies 6004.5V and 6123.1V MHz toward Glassy Mountain, S.C.

3456–C1–P–73—Same (KJG26), Glassy Mountain, approximately 3 miles east-northeast of Pickens, S.C. Latitude 34°54'00" N., longitude 82°39'36" W. C.P. to add frequency 6375.2H MHz toward Anderson, S.C.; frequencies 6375.2V and 6256.5V MHz toward Clemson, S.C.; correct azimuth and path length to Clemson.

3457–C1–P–73—Same (KJH51), 461 East Main Street, Spartanburg, S.C. Latitude 34°57'07" N., longitude 81°55'12" W. C.P. to add frequencies 6034.2H and 6152.8H MHz toward West Springs, S.C.

3458–C1–P–73—Same (KJH52), 0.7 mile southeast of West Springs, S.C. Latitude 34°45'40" N., longitude 81°46'35" W. C.P. to add frequencies 10,795H and 11,035H MHz toward Union, S.C.

3466–C1–P–73—Bell Telephone Company of Nevada (KPF81), 195 East First Street, Reno, NV. Latitude 39°31'35" N., longitude 119°48'38" W. C.P. to modify transmitters on frequencies 10,755V and 10,995H MHz toward McClellan, Nev.

3467–C1–P–73—Same (KPR96), McClellan Peak, 3 miles west of Silver City, Nev. Latitude 39°15'35" N., longitude 119°41'53" W. C.P. to replace antenna and modify transmitter on frequencies 11,685V and 11,445H MHz toward Reno, Nev.; frequencies 11,405V and 11,645H MHz toward Carson City, Nev.

3468–C1–P–73—Same (KPX50), 709 North Stewart Street, Carson City, NV. Latitude 39°10'06" N., longitude 119°45'47" W. C.P. to replace antenna and modify transmitter on frequencies 10,715H and 10,955V MHz toward McClellan, Nev.

3472–C1–P/ML–73—Indiana Bell Telephone Co. (KYS50), temporary fixed location. C.P. modification of license to authorize the proposed use of a Western Electric ITE 5349 Waveguide TDR Test Set to be utilized for waveguide, antenna testing, and antenna orientation.

3523–C1–P–73—Eastern Microwave, Inc. (KEM35), Ingraham Hill, N.Y. (latitude 42°03'43" N., longitude 75°57'03" W.): C.P. to change polarity from (H) to (V) on frequency 6049.0 MHz, and to change frequency from 6138.0H to 6137.9H MHz on the paths to Rogers Knob (KEL89), on azimuth 54°23'; Endicott, N.Y., on azimuth 320°38'; Vestal, N.Y., on azimuth 259°28'; and Binghamton, N.Y., on azimuth 36°00'.

3524–C1–P–73—Same (KEL89), Rogers Knob, 8 miles northeast of Sidney, N.Y. (latitude 42°23'27" N., longitude 75°19'42" W.): C.P. (a) to change frequency 6181.5H MHz to 6182.4H MHz and (b) to delete frequency 6092.5H MHz and add 6301.0H MHz toward Cherry Valley (KEA64), on azimuth 50°57'; Hatch Hill (KEM36), on azimuth 323°00'; Oneonta, N.Y., on azimuth 72°13'; Sidney, N.Y., on azimuth 200°50'; Walton, N.Y. (KOA73/drop), on azimuth 145°51'; and Norwich, N.Y., on azimuth 313°38'.

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

3525–C1–P–73—Same (KEA64), Cherry Valley, 4 miles southeast of Cherry Valley, N.Y. (latitude 42'46'31" N., longitude 74°40'56" W.): C.P. (a) to delete frequencies 6212.1V MHz, 6271.4V MHz, and 6330.7V MHz and add 5989.7V MHz, 6049.0V MHz, and 6108.3V MHz toward Helderberg Mountain (KEM58), N.Y., on azimuth 105°05'; (b) to delete frequencies 6212.1H MHz and 6271.4H MHz, and to add 5989.7H MHz and 6049.0H MHz toward Canajoharie, N.Y., on azimuth 27°45'; (c) to delete frequencies 6212.1H MHz and 6271.4H MHz and to add 5989.7H MHz and 6049.0H MHz toward Amsterdam, N.Y., on azimuth 62°39'; (d) to delete frequencies 6212.1H MHz, 6271.4H MHz, and 6330.7H MHz and to add 5989.7H MHz and 6049.0H MHz toward Gloversville, N.Y., on azimuth 46°53'.

3526–C1–P–73—Same (KEM58), Helderberg Mountain, 1.75 miles northwest of Salem, N.Y. (latitude 42°38'12" N., longitude 73°59'45" W.): C.P. (a) to delete frequencies 5960.0V MHz, 6019.3V MHz, and 6078.6V MHz and to add 6182.4H MHz, 6241.7H MHz, and 6301.0H MHz toward Black Spruce Mountain, N.Y., on azimuth 12°08'; (b) to delete frequencies 5960.0V MHz, 6019.3V MHz, and 6078.6V MHz, and to add 6182.4V MHz, 6241.7V MHz, and 6301.0V MHz toward Queensbury, N.Y., on azimuth 21°53'; (c) to delete frequency 5960.0H MHz and to add 6182.4V MHz toward Mount Greylock (KCL72), Mass., on azimuth 89°45'; (d) to delete frequencies 5960.0V MHz, 6019.3V MHz, and 6078.6V MHz and to add 6182.4H MHz, 6241.7H MHz, and 6301.0H MHz toward Troy, N.Y., on azimuth 67°26', and toward Saratoga Springs, N.Y., on azimuth 18°23', and frequencies 6182.4V MHz, 6241.7V MHz, and 6301.0V MHz toward Latham, N.Y., on azimuth 58°00'; (e) to delete frequencies 5960.0V MHz, 6019.3V MHz, and 6078.6V MHz, and to add 6182.4H MHz, 6241.7H MHz, and 6301.0H MHz toward Colonie, N.Y., on azimuth 23°24'; and (f) to delete frequencies 5960.0V MHz, 6019.3V MHz, and 6078.6V MHz, and to add 6182.4H MHz, 6241.7V MHz, and 6301.0H MHz toward Albany, N.Y., on azimuth 75°55'.

3527–C1–P–73—Same (KEM36), Hatch Hill, 2 miles southeast of Georgetown, N.Y. (latitude 42°45'10" N., longitude 75°41'56" W.): C.P. (a) to delete paths to Sentinel Heights (KEM59), Turin Mountain (KEA29), and Smith Hill (KEM49), N.Y.; (b) to delete frequencies 6212.1H MHz, 6271.4H MHz, 6330.7H MHz, and 6301.0V MHz and add 5960.0H MHz, 5989.7V MHz, 6019.3H MHz, and 6049.0V MHz toward Cortland, N.Y., on azimuth 238°50'; and (c) to add frequencies 5960.0H MHz, 5989.7V MHz, and 6019.3H MHz toward new point of communication at Quaker Hill (Stokes), N.Y., on azimuth 18°31'.

3528–C1–P–73—Same (New), Quaker Hill (Stokes), 3 miles northeast of Stokes, N.Y. (latitude 43°20'36" N., longitude 75°25'36" W.): C.P. for a new station at foregoing coordinates—frequencies 6182.4H, 6212.0V, and 6301.0H MHz toward Turin Mountain (KEA29), on azimuth 352°17'; frequencies 6271.4H and 6390.0H MHz toward Hatch Hill (KEM36), on azimuth 198°42'; frequencies 6182.4H, 6212.0V, 6301.0H, and 6390.0V MHz toward Sentinel Heights (KEM59), on azimuth 231°52' and toward Smith Hill (KEM49), on azimuth 137°51'.

3529–C1–P–73—Same (KEA29), Turin Mountain, 4 miles northwest of Turin, N.Y. (latitude 43°38'58" N., longitude 75°29'00" W.): C.P. (a) to delete path to Hatch Hill (KEM36); (b) to add frequency 5960.0V MHz toward Quaker Hill (Stokes), on azimuth 172°15'; (c) to delete frequency 6092.5H MHz and to add frequency 6108.3H MHz toward Boonville, N.Y., on azimuth 156°09'; (d) to delete frequencies 6092.5H MHz, 6241.7H, and 6360.0H MHz, and to add 5989.7V MHz, 6108.3V MHz, and 6167.6V MHz toward Carthage, N.Y., on azimuth 347°19'; and (e) to delete frequencies 6092.5H MHz, 6181.5H MHz, 6241.7H MHz, 6301.0H MHz, and 6360.0H MHz, and to add 5989.7V MHz, 6019.3H MHz, 6049.0V MHz, 6108.3V MHz, and 6167.6V MHz toward Blue Hill (KEA66), N.Y., on aimuth 24°07'.

3530–C1–P–73—Same (KEA66), Blue Hill, 2 miles southeast of Fine, N.Y. (latitude 44°13'20" N., longitude 75°07'35" W.): C.P. (a) to delete frequencies 5960.0H MHz and 5989.7V MHz and to add 6241.7 MHz and 6301.0V MHz toward Watertown, N.Y., on azimuth 242°46'; (b) to delete frequency 5960.0H MHz and to add 6241.7V MHz toward Gouverneur (KPP81/drop), N.Y., on azimuth 295°11'; (c) to delete frequency 5960.0H MHz and to add 6241.7V MHz toward Ogdensburg, N.Y., on azimuth 331°11'; and (d) to delete frequency 6049.0V MHz and to add 6360.0V MHz toward Turin Mountain, KEA29), on azimuth 204°23'. (INFORMATIVE: Eastern proposes to revise its system frequency plan to use TH-frequencies and the alternate "high-low" pattern of transmitter sites. These applications do not involve new service.)

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

3480–C1–P–73—Racom, Inc. (KYZ85), Summit of Mount Washington, Sargent's Purchase, N.H. Latitude 44°16'13" N., longitude 71°18'13" W. C.P. to add frequency 6360.3 MHz toward Lewiston, Maine. (INFORMATIVE: Racom, Inc., proposes to provide the signals of WSMW–TV, Worcester, Mass., to CATV system serving Lewiston, Maine. A waiver of section 21.701(i) FCC rules by Racom, Inc.)

3504–C1/C2–AL–73—Missouri Telephone Co. Consent to assignment of control from stockholders of Missouri Telephone Co., assignors to Continental Telephone Co. of Missouri, assignees. Stations: KAD514, Branson, Mo.; KEM506, Wentzville, Mo.; KPP76, Forsyth, Mo.; KPP77, Blue Eye, Mo.; KPP78, Ozark, Mo.; KPP79, Rockaway Beach, Mo.; KPP80, Branson, Mo.; WAY56, Branson, Mo.

3509–C1–P–73—Southwestern Bell Telephone Co. (New), South Washington and East 30th Street, Bryan, Tex. Latitude 30°40'10" N., longitude 96°22'18" W. C.P. for a new station on frequency 4150H MHz toward Independence, Tex.

3510–C1–P–73—Same (WJL29), 1.9 miles east of Independence, Tex. Latitude 30°19'05" N., longitude 96°18'55" W. C.P. to add frequency 4050V MHz toward Bryan, Tex.

3533–C1–P–73—Data Transmission Co. (New), 0.4 mile south of New Rochester, Ohio. Latitude 41°21'28" N., longitude 83°30'27" W. C.P. for a new station on frequency 6123.1H MHz toward McComb, Ohio, azimuth 222°36' and toward Williston, Ohio, azimuth 25°30'.

3534–C1–P–73—Same as above (New), 1 mile northwest of McComb, Ohio. Latitude 41°07'14" N., longitude 83°47'44" W. C.P. for a new station. Frequency 6404.8H MHz toward Dola, Ohio, on azimuth 169°36' and frequency 6375.2H MHz toward New Rochester, Ohio, on azimuth 42°25'.

3535–C1–P–73—Same (New), 2.5 miles northwest of Dola, Ohio. Latitude 40°48'45" N., longitude 83°43'16" W. C.P. for a new station. Frequency 6152.8H MHz toward Mount Victory, Ohio, on azimuth 154°37' and toward McComb, Ohio, on azimuth 349°39'.

3536–C1–P–73—Same (New), 2 miles northwest of Mount Victory, Ohio. Latitude 40°32'38" N., longitude 83°33'15" W. C.P. for a new station. Frequency 6375.2V MHz toward Pottersburg on azimuth 174°07' and frequency 6404.8H MHz toward Dola, Ohio, on azimuth 334°44'.

3537–C1–P–73—Same (New), 1 mile northwest of Pottersburg, Ohio. Latitude 40°16'18" N., longitude 83°31'03" W. C.P. for a new station. Frequency 6152.8V MHz toward Brighton on azimuth 187°33' and frequency 6123.1V MHz toward Mount Victory, Ohio, on azimuth 354°08'.

3538–C1–P–73—Same (New), 2.4 miles north of Brighton, Ohio. Latitude 39°57'49" N., longitude 83°34'14" W. C.P. for a new station. Frequency 6404.8V MHz toward Pottersburg on azimuth 7°31' and frequency 6375.2H MHz toward Hilliard, Ohio, on azimuth 77°36'.

3539–C1–P–73—Data Transmission Co. (New), Johnstown, 2 miles southeast of Rachelwood, Pa. Latitude 40°15'59" N., longitude 79°04'56" W. C.P. for a new station. Frequency 6152.8H MHz toward Downey on azimuth 151°46' and frequency 11,055V MHz toward Youngstown, Pa., on azimuth 271°15'.

3540–C1–P–73—Same as above (New), McMurray, 2 miles south of Bethel, Pa. Latitude 40°17'33" N., longitude 80°02'57" W. C.P. for a new station. Frequency 6152.8H MHz toward Arona on azimuth 93°51'; frequency 6152.8V MHz toward Georgetown on azimuth 317°07' and frequency 11,135V MHz toward Pittsburgh, Pa., on azimuth 14°50'.

3541–C1–P–73—Same (New), 3.7 miles east of Hamburg, Pa. Latitude 40°38'49" N., longitude 75°54'43" W. C.P. for a new station. Frequency 11,465H MHz toward Eagle Peak on azimuth 222°58' and frequency 11,365V MHz toward Palmerton, Pa., on azimuth 42°12'.

3542–C1–P–73—Same (New), 1 mile northwest of Woodstock, N.J. Latitude 41°00'30" N., longitude 74°32'27" W. C.P. for a new station. Frequency 6345.5H MHz toward New York on azimuth 126°43' and frequency 10,975V MHz toward Hope, N.J., on azimuth 244°10'.

3543–C1–P–73—Same (New), 1 World Trade Center, New York, N.Y. Latitude 40°42'31" N., longitude 74°00'54" W. C.P. for a new station. Frequency 6093.5V MHz toward Woodstock, N.J., on azimuth 307°04'.

3544–C1–P–73—Same (New), 2.5 miles west of Hilliard, Ohio. Latitude 40°01'27" N., longitude 83°12'33" W. C.P. for a new station. Frequency 6123.1H MHz toward Brighton on azimuth 257°50' and frequency 11,225V MHz toward Columbus, Ohio, on azimuth 110°45'.

Correction

3066–C1–P–70—Data Transmission Co. (New), correct station location to read: 875 North Michigan Boulevard, Chicago, IL. Latitude 41°53'55" N., longitude 87°37'26" W. All other particulars same as reported on Public Notices 12–15–69; 8–3–70; 10–10–72.

Major Amendment

3084–C1–P–70—Data Transmission Co. (New), 88 East Broad Street, Columbus, OH. Delete point of communication at Yatesville and add frequency 11,095.0V MHz on azimuth 290°53' toward new point of communication at Hilliard, Ohio.

3148–C1–P–70—Same (New), 1.3 miles southwest of Williston, Ohio. Add frequency 6375.2H MHz on azimuth 205°36' toward new point of communication at New Rochester, Ohio.

3152–C1–P–70—Same (New), Eagle Peak, 1 mile south of Womelsdorf, Pa. Add frequency 10,855.0H MHz on azimuth 42°48' to new point of communication at Hamburg, Pa.

3136–C1–P–70—Same (New), Front Mountain, 2.5 miles northwest of Edenville, Pa. Add frequency 10,995.0V MHz on azimuth 273°42' to new point of communication at Crystal Spring, Pa.

3137–C1–P–70—Same (New), change station location to 5.5 miles northeast of Crystal Spring, Pa. Latitude 40°00'38" N., longitude 78°08'45" W. Change frequency toward Front Mountain to 11,645.0V MHz on azimuth 93°29'. Change frequency toward Downey to 6063.8H MHz on azimuth 262°22'.

3138–C1–P–70—Same (New), change station location to 2.7 miles southeast of Downey, Pa. Latitude 39°56'08" N., longitude 78°51'06" W. Change frequency toward Crystal Spring to 6315.9V MHz on azimuth 81°55'. Delete point of communication at Jones Mill and add frequency 6404.8V MHz on azimuth 331°55' toward new point of communication at Johnstown.

3139–C1–P–70—Same (New), change station name and location to Youngstown, 1.7 miles southeast of Youngstown, Pa. Latitude 40°16'13" N., longitude 79°19'46" W. Delete point of communication at Downey and add frequency 11,265.0V MHz on azimuth 91°06' toward new point of communication at Johnstown, Pa. Change frequency toward Arona to 11,265.0H MHz on azimuth 270°10'.

3140–C1–P–70—Same (New), change station location to 1.3 miles east of Arona, Pa. Latitude 40°16'14" N., longitude 79°38'17" W. Delete point of communication at Jones Mill and add frequency 11,055.0H MHz on azimuth 89°58' toward new point of communication at Youngstown, Pa. Delete point of communication at Pittsburgh, Pa., and add frequency 6404.8H MHz on azimuth 274°07' toward new point of communication at McMurray, Pa.

3141–C1–P–70—Same (New), 525 William Penn Place, Pittsburgh, PA. Delete point of communication at Arona, Pa., and add frequency 11,345.0V MHz on azimuth 194°52' toward new point of communication at McMurray, Pa. Delete point of communication at Georgetown, Pa.

3142–C1–P–70—Same (New), change station location to 1.3 miles southwest of McLeary, Pa. Latitude 40°35'36" N., longitude 80°24'59" W. Delete point of communication at Pittsburgh and add frequency 6404.8V MHz on azimuth 136°52' toward new point of communication at McMurray, Pa. Change frequency toward Salem to 6404.8V MHz on azimuth 308°55'.

3143–C1–P–70—Data Transmission Co. (New), 1.5 miles southwest of Salem, Ohio. Change frequency towards McLeary to 6152.8V MHz on azimuth 128°37'. Delete point of communication at Shalersville and add frequency 6152.8H MHz on azimuth 308°29' towards new point of communication at Rootstown, Ohio.

3144–C1–P–70—Same (New), change station name and location to Rootstown, 3 miles southeast of Rootstown, Ohio, latitude 41°03'49" N., longitude 81°11'29" W. Change frequency towards Salem, to 6404.8H MHz. Delete point of communication at Cleveland and add frequency 6404.8V MHz on azimuth 297°23' towards new point of communication at Broadview Heights, Ohio.

2271–C1–P–73—Same (New), 3.4 miles southwest of Broadview Heights, Ohio. Add frequency 6152.8H MHz on azimuth 117°02' towards new point of communication at Rootstown, Ohio.

3164–C1–P–70—Same (New), station location: 1 mile northwest of West Farms, Mass. Delete point of communication at Noyes Hill, Mass., and change frequency to 10,775.0V MHz on azimuth 196°12' toward new point of communication at Granby, Conn. Change azimuth toward East Hill to 64°54'. Delete point of communication at Talcott Mountain, Conn.

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

3166–C1–P–70—Data Transmission Co. (New), delete point of communication at Talcott Mountain, Conn., and change frequency to 10,775.0V MHz on azimuth 326°51′ toward new point of communication at Granby, Conn.

494–C1–P–71—Data Transmission Co. (New), change location to 3.7 miles north-northeast of Belchertown, Mass., latitude 42°19′42″ N., longitude 72°23′29″ W. Change azimuth toward West Farms to 245°10′. Delete point of communication at Worcester, Mass., and change frequency to 6375.2H MHz on azimuth 76°37′ toward new point of communication at Princeton, Mass.

3167–C1–P–70—Data Transmission Co. (New), change station name and location to Princeton, 2 miles north of Rutland, Mass., latitude 42°24′13″ N., longitude 71°57′36″ W. Change frequency toward East Hill to 6123.1H MHz on azimuth 256°54′. Delete point of communication at Nobscot Hill, Mass., and change azimuth to 101°34′ toward new point of communication at Marlboro, Mass.

3168–C1–P–70—Data Transmission Co. (New), change station name and location to Marlboro, Onamog Street and American Way, Marlboro, Mass., latitude 42°20′27″ N., longitude 71°33′04″ W. Delete point of communication at Worcester, Mass., and change frequency to 11,665.0V MHz on azimuth 281°50′ toward new point of communication at Princeton, Mass. Change frequency toward Boston to 11,645.0H MHz on azimuth 87°05′.

3169–C1–P–70—Data Transmission Co. (New), station location: 1 Beacon Street, Boston, Mass. Delete point of communication at Nobscot Hill, Mass., and change frequency to 10,995.0H MHz on azimuth 267°24′ toward new point of communication at Marlboro, Mass.

3157–C1–P–70—Data Transmission Co. (New), change location to 1 mile southwest of Palmerton, latitude 40°46′50″ N., longitude 75°39′10″ W. Change frequency to 11,115.0H MHz on azimuth 222°22′ toward new point of communication at Hamburg, Pa. Delete point of communication at Eagle Peak, Pa. Change frequency to 6404.8V on azimuth 78°57′ toward Hope, N.J.

3158–C1–P–70—Data Transmission Co. (New), station location: 7 miles east of Hope, N.J. Correct coordinates to latitude 40°53′54″ N., longitude 74°50′21″ W. Change azimuth toward Palmerton to 259°28′. Change frequency toward Beemerville to 6093.5H MHz on azimuth 22°37′. Add frequency 11,665.0V MHz on azimuth 63°58′ toward new point of communication at Woodstock, N.J.

490–C1–P–71—Data Transmission Co. (New), change location to 3.5 miles northwest of Beemerville, N.J., latitude 41°14′49″ N., longitude 74°38′48″ W. Change frequency toward Hope to 6345.5H MHz on azimuth 202°45′. Change frequency toward Middletown to 10,715.0H MHz on azimuth 36°27′.

491–C1–P–71—Data Transmission Co. (New), change location to 3 miles southwest of Middletown, N.Y., latitude 41°25′03″ N., longitude 74°28′45″ W. Change frequency toward Beemerville to 11,445.0H MHz on azimuth 216°34′. Change frequency toward Cragsmoor to 11,465.0H MHz on azimuth 19°09′.

3159–C1–P–70—Data Transmission Co. (New), correct coordinates to latitude 41°41′21″ N., longitude 74°21′12″ W. Change frequency toward Middletown to 10,855.0H MHz on azimuth 199°14′. Delete point of communication at Clove Mountain, N.Y., and change azimuth to 73°09′ toward new point of communication at Amenia, N.Y. Delete point of communication at Cold Spring, N.Y.

3163–C1–P–70—Data Transmission Co. (New), change station name and location to Amenia, 1.5 miles northwest of Amenia, N.Y., latitude 41°51′42″ N., longitude 73°34′48″ W. Change azimuth toward Canaan to 59°51′. Change azimuth toward Cragsmoor to 253°40′.

492–C1–P–71—Data Transmission Co. (New), station location: 3.5 miles southeast of Canaan, Conn. Delete point of communication at Noyes Hill, Mass., and change azimuth to 89°05′ toward new point of communication at Granby, Conn. Delete point of communication at Clove Mountain, N.Y., and change azimuth to 240°03′ toward new point of communication at Amenia, N.Y.

493–C1–P–71—Data Transmission Co. (New), change station name and location to Granby, 2 miles east of Granby, Conn., latitude 41°59′32″ N., longitude 72°52′21″ W. Change frequency toward West Farms to 11,385.0V MHz on azimuth 16°09′. Change azimuth toward Canaan to 269°22′. Add new frequency 11,385.0V MHz on azimuth 146°43′ toward new point of communication at Hartford, Conn.

[FR Doc.72–20379 Filed 11–29–72;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP73–135]

DISTRIGAS CORP.

Notice of Application

NOVEMBER 27, 1972.

Take notice that on November 20, 1972, Distrigas Corp. (Applicant), 25 High Street, Boston, MA 02110, filed in Docket No. CP73–135 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of imported liquefied natural gas (LNG) to certain distribution customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

By Commission Opinion No. 613, Distrigas Corp., Dockets Nos. CP70–196, et al., issued on March 9, 1972 (47 FPC ____)[1] Applicant was authorized, inter alia, to import into the United States at its Everett, Mass. terminal LNG from Algeria.

Applicant proposes to sell the LNG imported at its Everett terminal to the following customers in the following volumes:

[1] Rehearing denied in Commission Opinion No. 613–A, Distrigas Corp., Dockets Nos CP70–196, et al., issued June 7, 1972 (47 FPC ____).

Customer	1972–73 (million B.t.u.)	1973–74 (million B.t.u.)	1974–75 and following (million B.t.u.)
The Brooklyn Union Gas Co	2,500,000	2,500,000	2,500,000
The Connecticut Gas Co	500,000	500,000	500,000
Providence Gas Co	800,000	900,000	900,000
New Jersey Natural Gas Co		400,000	[1] 500,000
South Jersey Gas Co	200,000	400,000	600,000
Valley Gas Co	120,000	120,000	120,000
Total	4,120,000	4,820,000	[1] 5,120,000

[1] 400,000 million B.t.u. of this quantity will be sold under agreement with New Jersey Natural Gas Co. which will be effective between Apr. 1, 1973, and Mar. 31, 1975.

Applicant proposes to charge its customers a demand charge of 70.6 cents per million B.t.u. for the contract year ending March 31, 1973, and increasing by 0.6 cent per million B.t.u. in each year thereafter, and a commodity charge of 34 cents per million B.t.u. for the LNG sold, f.o.b. the Everett terminal. Applicant proposes to charge the Brooklyn Union Gas Co. for deliveries in December through March a demand charge of $1.046 per million B.t.u. and a commodity charge of 34 cents per million B.t.u. Applicant indicates that an additional charge will be made for storage service in its tanks if a customer elects to use that service.

Applicant alleges that its existing facilities at the Everett terminal are adequate to render the proposed service and that no additional facilities are required. Applicant states that all deliveries of LNG to the aforementioned customers will be made in liquid form. Applicant further states that delivery to the Brooklyn Union Gas Co. will be made by cryogenic barge at Brooklyn, N.Y., and that deliveries to the other customers will be made at Everett. The latter customers will utilize truck transportation to deliver the LNG to their own facilities. Applicant desires to commence the sale of LNG to its interstate customers as soon as possible in order to meet the immediate needs of its customers for supplemental peak shaving supplies during the current heating season.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 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.

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.72-20581 Filed 11-29-72;8:49 am]

[Docket No. G-3079, et al.]

EXXON CORP.

Notice of Petition To Amend

NOVEMBER 27, 1972.

Take notice that on November 14, 1972, Exxon Corp. (Petitioner) (successor to Humble Oil & Refining Co.), Post Office Box 2180, Houston, TX 77001, filed in Docket No. G-3079, et al., a petition to amend the orders issuing certificates of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act to Humble Oil & Refining Co. (Humble) by substituting Petitioner as certificate holder, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that effective January 1, 1973, it will merge Humble and that it proposes to continue all sales of natural gas in interstate commerce theretofore authorized to be made by Humble.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 11, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). 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.72-20582 Filed 11-29-72;8:49 am]

[Dockets Nos. RP66-4, RP68-1]

FLORIDA GAS TRANSMISSION CO.

Extension of Time

NOVEMBER 22, 1972.

On November 17, 1972, Florida Gas Transmission Co. requested a 1 week extension of time to comply with the requirements of paragraph (B) of the Commission's order issued November 14, 1972, accepting filing as compliance filing but rejecting proposed tariff sheets.

Upon consideration, notice is hereby given that the time is extended to and including December 1, 1972, within which to file new tariff sheets. The time is also extended to and including December 21, 1972, for all customers to file protests or comments to the compliance filing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20542 Filed 11-29-72;8:48 am]

[Docket No. E-7805]

GULF STATES UTILITIES CO.

Notice of Application

NOVEMBER 22, 1972.

Take notice that on October 25, 1972, Gulf States Utilities Co. (Applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of $125 million principal amount of unsecured short-term promissory notes.

Applicant is incorporated under the laws of Texas with its principal business office at Beaumont, Tex., and is engaged in the electric utility business in portions of Louisiana and Texas. Natural gas is purchased at wholesale and distributed at retail in the city of Baton Rouge, La., and vicinity.

Applicant proposes to issue the notes to commercial banks and to commercial paper dealers. Notes issued to commercial banks and to commercial paper dealers will be issued on various dates beginning December 31, 1972, for varying periods of time, but no note issued to a commercial bank will have a maturity of more than 1 year from the date of its issuance and no note issued to commercial paper dealers will have a maturity of more than 9 months from the date of its issuance. In no event shall any such notes have a maturity after December 31, 1974.

The proceeds from the notes will be added to the general funds of the Applicant and will be used, among other things, to provide part of the funds for construction expenditures made and to be made. The preliminary estimated total for 1972-3 construction is $219 million.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 11, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 and 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 available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20543 Filed 11-29-72;8:48 am]

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEES

Order Designating Additional Members

NOVEMBER 22, 1972.

The Federal Power Commission, by order issued September 28, 1972, established the National Power Survey Technical Advisory Committees.

2. *Membership.* Additional members to the Technical Advisory Committees, as selected by the Chairman of the Commission, with the approval of the Commission, are as follows:

TECHNICAL ADVISORY COMMITTEE ON FINANCE

Paul Fox, member; finance officer; National Rural Utilities Cooperative Finance Corp.

TECHNICAL ADVISORY COMMITTEE ON POWER SUPPLY

Ross A. Segrest, member; manager; Brazos Electric Power Cooperative.

TECHNICAL ADVISORY COMMITTEE ON RESEARCH AND DEVELOPMENT

Roy G. Zook, member; general manager; Cooperative Power Association.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20541 Filed 11-29-72;8:48 am]

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON CONSERVATION OF ENERGY

Order Rescinding Order

NOVEMBER 22, 1972.

The Federal Power Commission, by order issued September 28, 1972, established the National Power Survey Technical Advisory Committee on Conservation of Energy.

Our November 2, 1972, order, insofar as it appointed Dr. Charles A. Berg as a member to the Technical Advisory Committee on Conservation of Energy, is hereby rescinded.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20540 Filed 11-29-72;8:47 am]

[Docket No. RI73-93]

MARATHON OIL CO.

Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

NOVEMBER 21, 1972.

Respondent has filed a proposed change in rate and charge for the jurisdictional sale of natural gas, as set forth in Appendix A hereof.

The proposed changed rate and charge 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 a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its 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 Ch. I), and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date suspended until" column. This supplement 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. 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 supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period, whichever is earlier.

By the Commission.

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

APPENDIX A

Docket No.	Respondent	Rate sched. No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI73-93	Marathon Oil Co.	65	[2] 15	Tennessee Gas Pipeline Co. (Heyser Field, Victoria and Calhoun Counties, Tex., RR. District No. 2).	$161,625	10-24-72		11-25-72	18.34876	[1] 24.0	RI69-300.

*The pressure base is 14.65 p.s.i.a.
[1] Unilateral increase to new gas ceiling established in Opinion No. 595.
[2] Basic contract (Aug. 1, 1952) expired Aug. 1, 1972.

The question presented here with respect to Marathon's unilateral increase filed after the expiration of it's contract is whether the subject gas is entitled to the flowing gas rate of 19 cents or the new gas rate of 24 cents established in Opinion No. 595, Dockets Nos. AR64-2 et al., issued May 6, 1971. The proposed increase should be suspended for 1 day from the expiration of the statutory notice period, pending determination as to whether the gas involved herein is entitled to the new or old gas price.

Marathon's proposed increased rate may 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.72-20401 Filed 11-29-72;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST FLORIDA BANCORPORATION

Acquisition of Bank

First Florida Bancorporation, Tampa, Fla., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent or more of the voting shares of the State Bank of South Jacksonville, Jacksonville, Fla., a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than December 15, 1972.

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

[SEAL] MICHAEL A. GREENSPAN, *Assistant Secretary of the Board.*

[FR Doc.72-20537 Filed 11-29-72;8:47 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR PLANNING AND INSTITUTIONAL AFFAIRS

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given that a meeting of the Advisory Committee for Planning and Institutional Affairs will be held at 9:30 a.m. on December 7 and 9 a.m. on December 8, 1972, in Room 540, 1800 G Street NW., Washington, DC 20550. The purpose of the committee is to provide advice and recommendations concerning planning activities within NSF and the impact of Foundation programs, actual and proposed, on the integrity and effectiveness of the academic institution as a whole.

The Director of the National Science Foundation has, pursuant to section 13(d) of Executive Order 11671 (dated June 5, 1972), determined that this meeting of the committee shall be exempt from the provisions of sections 13(a), (b), and (c) of the order, relating to public participation and recordkeeping, inasmuch as the activities of the committee for the December 7 and 8, 1972, meeting are matters which fall within policies analogous to those rec-

ognized in section 552(b) of title 5 of the United States Code, an the public interest requires such activities to be withheld from disclosure. At this meeting, the committee will discuss matters related to the fiscal year 1974 budget plans in relationship to specific problem areas to be considered by the committee in furnishing advice and recommendations. The matters embodied in the discussion relate to the budget formulation process and are regarded privileged in nature.

In accordance with the determination by the Director of the National Science Foundation, dated November 24, 1972, this meeting will not be open to the public. Further information relative to this committee may be obtained from Mrs. Mary L. Parramore, Executive Assistant, Office of Budget, Programing, and Planning Analysis, Room 426, 1800 G Street NW., Washington, DC 20550.

T. E. JENKINS,
Assistant Director for Administration.

NOVEMBER 27, 1972.

[FR Doc.72-20678 Filed 11-29-72;8:52 am]

SECURITIES AND EXCHANGE COMMISSION

[File 500-1]

ACCURATE CALCULATOR CORP.

Order Suspending Trading

NOVEMBER 24, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, and all other securities of Accurate Calculator Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 26, 1972, through December 5, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-20525 Filed 11-29-72;8:46 am]

[File 500-1]

CLINTON OIL CO.

Order Suspending Trading

NOVEMBER 24, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.03⅓ par value, and all other securities of Clinton Oil Co., being traded otherwise than on a national securities exchange is required in the public interest and for the protecton of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period November 28, 1972 through December 7, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-20529 Filed 11-29-72;8:46 am]

[File 500-1]

FIRST LEISURE CORP.

Order Suspending Trading

NOVEMBER 24, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value and all other securities of First Leisure Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 27, 1972 through December 6, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-20526 Filed 11-29-72;8:46 am]

[File 500-1]

FIRST WORLD CORP.

Order Suspending Trading

NOVEMBER 24, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the Class A and Class B common stocks, $0.15 par value, and all other securities of First World Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 26, 1972, through December 5, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-20527 Filed 11-29-72;8:46 am]

[70-5274]

SYSTEM FUELS, INC., ET AL.

Notice of Proposed Issue and Sale of Promissory Note to Bank by Nonutility Subsidiary Company

NOVEMBER 24, 1972.

Notice is hereby given that Arkansas Power & Light Co., Ninth and Louisiana Streets, Little Rock, Ark. 72203 (AP&L), Louisiana Power & Light Co., 142 Delaronde Street, New Orleans, LA 70174 (LP&L), Mississippi Power & Light Co., Post Office Box 1640, Jackson, MS 39205 (MP&L), and New Orleans Public Service Inc., Post Office Box 60340, New Orleans, LA 70160 (NOPSI) (collectively referred to as "Operating Companies"), all public utility subsidiary companies of Middle South Utilities, Inc. (MSU), a registered holding company, and System Fuels, Inc., 225 Baronne Street, New Orleans, LA 70112 (SFI), a joint nonutility subsidiary company of Operating Companies, have filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), (7), 12(b), and 12(f) and Rules 43, 45, and 50(a)(2) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Historically, the major steam electric generating stations of Operating Companies have used natural gas as their principal fuel, with oil as emergency standby fuel. Now, due to the decreasing supply of natural gas because of curtailments, expiration of gas supply contracts, unavailability of substitute supplies and other factors, it will be necessary for Operating Companies to burn increasing amounts of oil on a continuous basis in order to meet the demands of their electric customers. By order dated December 17, 1971 (Holding Company Act Release No. 17400), the Commission authorized Operating Companies to organize a new jointly owned subsidiary company, SFI, to plan and implement programs for the procurement of fuel oil supplies for the generating units of Operating Companies; and SFI in a separate proceeding (File No. 70-5259) has applied to the Commission for authority to issue and sell unsecured promissory notes in order to acquire, and maintain for use by Operating Companies, an adequate inventory of fuel oil (See Holding Company Act Release No. 17758).

In the present filing, declarants state that it is advisable to maintain adequate bulk storage facilities at locations central to points of anticipated usage, to maintain bulk storage facilities at point of origin locations where oil is to be delivered under long-term oil purchase contracts, and to have available facilities for transferring oil from bulk storage facilities to points of usage as and when required. It is estimated that under present conditions, the total amount of stor-

age capacity required to assure reliable availability of oil to Operating Companies is approximately 35 percent of annual requirements; that Operating Companies will be burning about 43 million barrels of oil in 1975 and about 66 million barrels in 1980, which would require storage capacity of about 15 million barrels and 23 million barrels in those years, respectively. As a first step, SFI now proposes to acquire bulk storage facilities with a capacity of 725,000 barrels.

In anticipation of SFI eventually becoming the medium for conducting Operating Companies' oil procurement and storage program, Arkansas and NOPSI undertook the construction of certain bulk storage and handling facilities. SFI proposes to acquire and complete the construction of these bulk storage and handling facilities (Fuel Storage Facilities) and to operate the same in conjunction with such additional bulk storage and handling facilities as SFI may need to acquire in order to conduct properly Operating Companies' oil procurement and storage program.

The purchase price to be paid by SFI to Arkansas and NOPSI will be equal to the latters' respective book costs (also original costs) of the Fuel Storage Facilities as of the closing date. It is contemplated that the closing date will be on or about December 22, 1972, and that the aggregate purchase price of the Fuel Storage Facilities as constructed to the closing date will be approximately $3,600,000. It is estimated that the additional cost after the closing date to be incurred by SFI for completion of the construction and installation of the Fuel Storage Facilities will be approximately $205,000. Arkansas and NOPSI will covenant that the property to be transferred to SFI will be rendered free and clear of all liens and encumbrances no later than March 31, 1973.

To finance the cost of the Fuel Storage Facilities, SFI proposes to issue and sell a promissory note (Note) in the principal amount of $3,600,000 to The First National Bank of Chicago, Chicago, Ill. (Bank). The Note will be issued pursuant to a loan agreement (Loan Agreement) among SFI, Bank, and the Operating Companies; will mature on July 1, 1982; and will bear interest at a rate per annum of one-half of 1 percent in excess of the prime commercial rate charged by Bank for short-term commercial loans of 90-day maturities, with adjustments to be made effective on the first day of the month following the month in which any such change occurs. There is no requirement that SFI maintain compensatory balances. SFI will pay a commitment fee at the rate of one-half of 1 percent per annum from the date of the signing of the Loan Agreement pursuant to the order of the Commission herein, to the earlier of the date of borrowing or January 1, 1973.

The Note may be prepaid by SFI in any amount at any time without penalty; *Provided, however,* That commencing July 1, 1973, SFI will be required to make quarterly prepayments in amounts calculated to equal depreciation on the Fuel Storage Facilities. Declarants state that based upon the presently estimated program for the acquisition and the completion of construction of the Fuel Storage Facilities, depreciation accruals will begin on January 1, 1973, at a rate which will permit the prepayment of 75 percent of the principal amount of the Note by maturity. The remaining 25 percent will be repaid at maturity on July 1, 1982, from funds then on hand or from the issuance and sale by SFI of such other securities as may be authorized by the Commission.

The Operating Companies will covenant (a) to take all action necessary from time to time to enable SFI to discharge its obligations under the Loan Agreement, and (b) so long as any principal amount of the Note remains unpaid, to maintain their respective shares of ownership of the Common Stock of SFI in approximately the same proportions as currently held by them, unless otherwise consented to by Bank.

SFI has represented it will at all times, unless the Commission shall otherwise expressly authorize, maintain the aggregate of its capital stock, surplus, and principal amount of its indebtedness to Operating Companies, at an amount equal to at least 35 percent of its total capitalization.

Fees and expenses to be paid in connection with the proposed transactions are estimated at $8,500, including counsel fees of $5,000 and $500 for administrative services, at cost, performed by the system service company, Middle South Services, Inc. It is stated that no State Commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 18, 1972, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarants at the above-stated addresses, and proof of service (by affidavit or in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective in the manner provided by Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof, or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

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

[FR Doc.72-20524 Filed 11-29-72;8:46 am]

[File 500-1]

TRANS-EAST AIR, INC.

Order Suspending Trading

NOVEMBER 24, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.50 par value, and all other securities of Trans-East Air, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 26, 1972, through December 5, 1972.

By the Commission.

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

[FR Doc.72-20528 Filed 11-29-72;8:46 am]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 72-326]

FOREIGN CURRENCIES

Rates of Exchange for the Ceylon Rupee

NOVEMBER 14, 1972.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Ceylon rupee.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which vary by 5 percent or more from the quarterly rate published in Treasury Decision 72-285 for the Ceylon rupee. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Ceylon rupee:	
November 8, 1972	$0.1480
November 9, 1972 [1]	.1560
November 10, 1972 [1]	.1560

[1] Rate did not vary 5 percent or more from the rate of exchange published in T.D. 72-285 for use during calendar quarter beginning October 1 through December 31, 1972.

Rates of exchange certified for the Ceylon rupee which vary by 5 percent

or more from the rate $0.1560 during the balance of the calendar quarter ending December 31, 1972, will be published in a Treasury Decision for dates subsequent to November 10, 1972, and before January 1, 1973.

[SEAL] R. N. MARRA,
Acting Assistant Commissioner, Office of Operations.

[FR Doc.72-20557 Filed 11-29-72;8:45 am]

[T.D. 72-327]

LIGHTWEIGHT LUGGAGE

Exclusion From Entry

Treasury Decision 72-5, published on December 28, 1971 (36 F.R. 25053), gave notice of a restriction under section 337(f), Tariff Act of 1930 (19 U.S.C. 1337(f)), on the importation of certain lightweight luggage described fully therein, imposed pursuant to the temporary exclusion order of the President dated December 13, 1971, due to the existence of unfair methods of competition and unfair acts in the importation and sale of such luggage.

There is hereby published for direction and guidance of Customs officers and others concerned the following superseding order of the President, issued to the Secretary of the Treasury on October 31, 1972, directing that the Secretary forbid the unlicensed entry into the United States of lightweight luggage made in accordance with registered patent claims:

Atlantic Products Corp., Trenton, N.J., made a complaint requesting relief under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), from alleged unfair methods of competition and unfair acts in the importation and domestic sale of lightweight luggage which is made in accordance with the claims of U.S. Patent Nos. 3,298,480 and Re. 26,443 (Tariff Commission Investigation No. 337-28).

Upon the facts submitted to me by the U.S. Tariff Commission (T.C. Publication 463), I have found that the said articles are offered or sought to be offered for entry into the United States in violation of said section 337.

Therefore, I request that, except where the importation is made under license of the registered owner of said patent, you forbid the entry into the United States of lightweight luggage which is made in accordance with the claims of U.S. Patent Nos. 3,298,480 and Re. 26,443, until such time as I may find that the conditions which led to such refusal of entry no longer exist or until the date of expiration of said patents, whichever occurs first.

U.S. Patent No. 3,298,480 expires on January 16, 1984. U.S. Patent No. Re. 26,443 expires on August 15, 1983. Articles of lightweight luggage of the kind protected by the patents are generally classified under item 706.60, Tariff Schedules of the United States. Other background information is provided in U.S. Tariff Commission Publication 463, February 1972.

Entry into the United States of lightweight luggage prohibited importation by the President's order of October 31, 1972, shall be refused pursuant to section 337(e), Tariff Act of 1930, and § 12.39(c), Customs Regulations (19 CFR 12.39(c)). Importations refused entry may be permitted to be exported in accordance with provisions of § 8.49, 18.25, and 18.26 of the Customs Regulations (19 CFR 8.49, 18.25, 18.26). Excepted importations entitled to entry into the United States under license of the registered patent owner shall require the presentation with Customs entry of appropriate evidence thereof.

Articles of lightweight luggage prohibited importation by the President's order of October 31, 1972, which have been released under special bond pursuant to section 337(f), supra, and T.D. 72-5 are to be exported or destroyed under Customs supervision, upon Customs notification to each importer concerned in accordance with § 12.39(c) of the Customs Regulations (19 CFR 12.39(c)). However, entry of the merchandise is permitted if the import transaction is licensed by the registered patent owner and evidence of such license is presented to the principal Customs officer at the port of release under special bond. Special bonds taken shall be canceled and, in cases of verified exportation or destruction of the lightweight luggage, any duties that have been paid under a consumption entry that is not finally liquidated may be refunded, in accordance with § 8.49(b) of the Customs Regulations (19 CFR 8.49(b)).

Unless prohibited lightweight luggage entered and released under special bond is exported or destroyed under Customs supervision, or its entry duly licensed, within 30 days after notice is given the importer concerned, demand shall be made upon the principal and surety for payment of the amount of the penalty specified in the special bond.

Effective date. This notice shall be effective upon publication in the FEDERAL REGISTER (11-30-72).

[SEAL] VERNON D. ACREE,
Commissioner of Customs.

Approved: November 17, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72-20555 Filed 11-29-72;8:49 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[S 5302]

CALIFORNIA

Notice of Proposed Withdrawal and Reservation of Lands

NOVEMBER 21, 1972.

The Bureau of Reclamation, U.S. Department of the Interior, has filed an application, Serial No. S 5302, for the withdrawal of public lands described below, from appropriation under the public land laws, including the mining laws but not from leasing under the mineral leasing laws. The lands will be used for the construction, operation, and maintenance of the Auburn Dam and Reservoir, Auburn-Folsom South Unit, American River Division and Central Valley project.

On or before December 31, 1972, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, U.S. Department of Interior, Room E 2841, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

The Department's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are in the Tahoe National Forest and are described below:

MOUNT DIABLO MERIDIAN

T. 14 N., R. 11 E.,
Sec. 31, SW¼SE¼SW¼ (includes mineral lot 74 and portions of mineral lots 72 and 73).

The area aggregates 10 acres.

WALTER F. HOLMES,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.72-20530 Filed 11-29-72;8:47 am]

[Colorado 17190]

COLORADO

Notice of Proposed Withdrawal and Reservation of Lands

NOVEMBER 14, 1972.

The Forest Service, U.S. Department of Agriculture, has filed an application, Serial No. C-17190, for the withdrawal of the public domain lands described below, from all forms of appropriation under the public land laws, including the mining laws, 30 U.S.C., Chapter 2, but not from leasing under the mineral leasing laws, subject to valid existing rights.

The applicant desires the lands for a National Forest administrative site.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Colorado State Office, 700 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202.

The Department's regulations (43 CFR 2351.4(c)) provide that the authorized officer of the Bureau of Land Management will undertake such investigations

as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced:

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN

MEEKER ADMINISTRATIVE SITE

T. 1 S., R. 94 W.,
Sec. 14, N½NW¼NW¼;
Sec. 15, N½NE¼NE¼.

The area described aggregates 40 acres.

CHARLES W. LUSCHER,
Acting State Director.

[FR Doc.72-20531 Filed 11-29-72;8:47 am]

Geological Survey

[Power Site Classification 413]

ALSEA RIVER, OREG.

Power Site Classification; Correction

In F.R. Doc. 50-10461, filed November 20, 1950, appearing on pages 7955 and 7956 in the issue of Tuesday, November 21, 1950, the following described lands in T. 13 S., R. 9 W., are deleted: sec. 31, lots 9, 10, 11, 12, 13, 14, and 15, those parts outside national forest. The last sentence is changed to read: The area described aggregates 670.25 acres.

Dated: November 21, 1972.

W. A. RADLINSKI,
Acting Director.

[FR Doc.72-20532 Filed 11-29-72;8:47 am]

[Power Site Classification 463]

TAZIMINA RIVER AND LAKES, ALA.

Power Site Classification; Correction

In F.R. Doc. 71-15915, filed November 1, 1971, appearing on page 20994 in the issue of Tuesday, November 2, 1971, the last sentence in the second paragraph is changed to read: "Geological Survey topographic quadrangle maps, Lake Clark, Alaska (A-3), (A-4), (A-5); Iliamna, Alaska (D-4), (D-5); and Geological Survey special map, Tazimina Lakes, Alaska, indicate that the classification will affect the following subdivisions of the protracted public land survey referenced to the Seward Base and Meridian:"

Dated: November 21, 1972.

W. A. RADLINSKI,
Acting Director.

[FR Doc.72-20533 Filed 11-29-72;8:47 am]

Office of Hearings and Appeals

[Docket No. M 73-4]

CHRISTOPHER COAL CO.

Petition Regarding Modification of Mandatory Safety Standard

In regard, petition of Christopher Coal Co. for modification of application of Mandatory Safety Standard (Sec. 311(c) of Act; and 30 CFR 75.1105).

In accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), notice is given that the Christopher Coal Co., Post Office Box 100, Osage, WV 26543, has filed a petition to modify the application of section 311(c) of the Act and section 75.1105 of the Secretary's implementing regulations (30 CFR § 75.1105) to its Arkwright No. 1 Mine in Monongalia, W. Va.

Section 311(c) of the Act and § 75.1105 of the regulations provide in identical language:

(c) Underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps shall be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly into the return. Other underground structures installed in a coal mine as the Secretary may prescribe shall be of fireproof construction.

Petitioner requests the Secretary to modify the application of the above-quoted standard so as to permit it to avoid having to course the air used to ventilate its Loar and Hess Pumping Stations directly to the return. Petitioner avers that it cannot comply with the applicable standard because: (1) The pumps are located on old haulages from the pit mouth to the Lynch Shaft which were mined 20 to 50 years ago (2) the haulages are ventilated with intake air and the nearest return to the Hess Station is over 2 miles and the nearest return to the Loar Station is 3,000 feet, (3) the intake air that passes the pump stations is not used to ventilate an active working section, (4) the Swickley Seam located 80 feet above the pumps has been mined, thereby eliminating the practicability of drilling additional holes for venting air to the surface, and (5) the location of the pumps in natural swags requires continuous operation to prevent flooding of the haulages.

Petitioner states that it will provide no less than the same measure of protection required by section 301(c) of the Act by: (1) Housing the pumps in a fireproof building, (2) installing in each pump station an automatic fire suppression device that will be activated by heat sensors over the pumps, (3) using automatic steel doors which will be activated by heat sensory devices. (4) prohibiting storage of oil or combustible materials in the pump stations, (5) employing electrical circuits in compliance with the Mandatory Safety Standards, and (6) making inspections of the stations in compliance with the Federal Coal Mine Health and Safety Act of 1969.

Parties interested in this petition should, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, file their answers or comments with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Copies of the petition are available for inspection at that address.

JAMES M. DAY,
Director, Office of Hearings and Appeals.

NOVEMBER 21, 1972.

[FR Doc.72-20547 Filed 11-29-72;8:48 am]

[Docket No. M 73-10]

LADY JANE COLLIERIES, INC.

Petition Regarding Modification of Mandatory Safety Standard

In regard, petition of Lady Jane Collieries, Inc. for modification of application of Mandatory Safety Standard (Sec. 303(r) of Act; and 30 CFR 75.319 and 75.319-1).

In accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), notice is given that Lady Jane Collieries, Inc., 402 Indiana Theatre Building, Indiana, Pa. 15701, filed on October 4, 1972, a petition to modify the application of section 303(r) of the Act and §§ 75.319 and 75.319-1 of the Secretary's implementing regulations (30 CFR 75.319 and 75.319-1) to its Stott No. 1 Mine in Huston Township, Clearfield County, Pa.

Section 303(r) of the Act and § 75.319 of the regulations provide in identical language:

(r) Each mechanized section shall be ventilated with a separate split of intake air directed by overcasts, undercasts, or the equivalent, except an extension of time, not in excess of 9 months, may be permitted by the Secretary, under such conditions as he may prescribe, whenever he determines that this subsection cannot be complied with on the operative date of this title.

Section 75.319-1 defines a "mechanized mining section" as follows:

The term "mechanized mining section" means an area of a mine in which coal is mined with one set of production equipment, characterized in a conventional mining section by a single loading machine, or in a continuous mining section by a continuous mining machine, and which is comprised of a number of contiguous working places. Specialized mining sections, such as longwall mining sections, which utilize equipment other than specified in this section, may, if approved by the Coal Mine Safety District Manager, be ventilated by a single split of air.

Petitioner requests the Secretary to modify the application of the above-quoted standard so as to permit it to use two loading machines and three shuttle cars in conjunction with one cutting machine instead of utilizing only one loading machine and two shuttle cars with each cutting machine. Petitioner avers that the modification it seeks will provide no less than the same measure of protection required by section 301(c) of the Act because, inter alia, the number of trailing cable crossings will be reduced in that the operating area of each loading machine will be restricted to three or four working places instead of seven. Each shuttle car will have a completely separate travelway. Petitioner's proposed method of operation would, it is said, reduce damage to cables, failure of cables, and the potentiality of fires.

Petitioner also claims that its proposed method of operating would increase ventilation efficiency by decreasing disturbance of the number of checks and line brattices from those involving seven entries to disturbance of only the three or four associated with each loading machine. Utilization of two loading machines is also said to reduce the number of split checks through which each shuttle car must pass during trips from the loader to the belt feeder. Reduction of passages through split checks is claimed to be helpful in that air control is enhanced and the likelihood of injuries to shuttle car operators is reduced.

Petitioner alleges that it had operated its mine in the specialized manner described above prior to the passage of the Federal Coal Mine Health and Safety Act of 1969 and believes that its proposed method has been proven to be safe for use in the low coal (down to 30 inches) encountered in several areas of the mine and it believes that if application of the standard to its Stott No. 1 Mine is modified as requested in its petition that the safety of its overall operations will be improved.

Parties interested in this petition should, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, file their answers or comments with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Copies of the petition are available for inspection at that address.

JAMES M. DAY,
Director,
Office of Hearings and Appeals.

NOVEMBER 21, 1972.

[FR Doc.72-20546 Filed 11-29-72;8:48 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. C-376]

MICHAEL DAN ZUCKER

Notice of Loan Application

NOVEMBER 24, 1972.

Michael Dan Zucker, 601 Ocean Avenue, Seal Beach, CA 90740, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new wood vessel, about 28-foot in length, to engage in the fishery for salmon, albacore, bonito, and rockfishes.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above-entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

PHILIP M. ROEDEL,
Director.

[FR Doc.72-20519 Filed 11-29-72;8:46 am]

Office of Import Programs

VETERANS ADMINISTRATION REGIONAL OFFICE, ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the FEDERAL REGISTER.

Amended regulations issued under cited Act, as published in the February 24, 1972 issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C.

Docket No. 73-00165-33-43780. Applicant: Veterans' Administration Regional Office, Supply Officer (4814-R), 252 Seventh Avenue, New York, NY 10001. Article: Myoelectric Hand. Manufacturer: Viennatone Co., Austria. Intended use of article: The article is a prosthetic device developed by the Veterans' Administration to be used in research and educational programs conducted by the Veterans' Administration to enrich the professional and technical people in this field as well as provide the amputee population with better prosthetic devices. Application received by Commissioner of Customs: September 26, 1972.

Docket No. 73-00175-33-43780. Applicant: Miami Valley Hospital, Radiation Therapy Department, One Wyoming Street, Dayton, OH 45409. Article: 45 MeV Medical-type Betatron with accompanying Magnetic Lens. Manufacturer: Brown-Boveri, Switzerland. Intended use of article: The article is intended to be used in the following research projects:

(1) Determination of the physical characteristics of the electron beam;

(2) Investigation of the effects of inhomogeneities in the body such as, bone and air cavities, on the beam, and

(3) Development of computer programs for use in radiation dosimetry of the electron beam.

The article will also be used for teaching the principles and clinical applications of high energy electron and X-ray beam therapy to radiology residents. In addition the article will be used for both high energy X-ray and electron beam therapy in the treatment of certain cancers. Application received by Commissioner of Customs: October 2, 1972.

Docket No. 73-00209-33-46040. Applicant: Chico State College, Department of Biological Sciences, Chico, Calif. 95926. Article: Electron Microscope, Model HS-8F-2. Manufacturer: Hitachi-Perkin Elmer, Japan. Intended use of article: The article is intended to be used for electron microscopy studies which will include the following investigations:

(1) The role that microtubules play in the morphogenesis of parasitic protozoa, particularly trypanosomes,

(2) The ultrastructure and development of generative organelles (amyloplasts and mitochondria) in male transmission of cytoplasmic inherited characters in several plants and

(3) The ultrastructure of the walls of pollen grains.

The article will also be used for instruction and research of graduate students and faculty in the following courses:

Bio Sci 202, Cytology.
Biological Preparations for Electron Microscopy.
Electron Microscope Theory and Operations.
Bio Sci 398, Independent Study.
Bio Sci 399, Master's Study.

Application received by Commissioner of Customs: October 24, 1972.

Docket No. 73-00210-33-46500. Applicant: Chico State College, Department of Biological Sciences, Chico, Calif. 95926. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in the following studies:

(1) The role that microtubules play in the morphogenesis of parasitic protozoa, particularly flagellates;

(2) The ultrastructure and development of generative cells in geranium pollen grain and pollen tube; and

(3) The role of generative organelles (amyloplasts and mitochondria) in male transmission of cytoplasmic inherited characters in several plants, and ultrastructure of the walls of pollen grains.

The article will also be used in the course, Biology Science 202, Cytology, to present an introduction to the structure and related functions of plant and animal cells and protoplasmic systems. In addition the article will be used in the course Biological Preparations for Electron Microscopy to present theory and provide actual experience in preparing biological specimens for electron microscopy. Application received by Commissioner of Customs: October 24, 1972.

Docket No.: 73-00212-33-19000. Applicant: Boston University School of Medicine, 80 East Concord Street, Boston, MA 02118. Article: Precision Density Meter for Liquids and Gases, Model No. DMA 02C-DMA 190. Manufacturer: Anton Paar, KG, Austria. Intended use of article: The article is intended to be used for rapid and accurate determination of liquids and gases. The materials to be investigated are biological lipids to be studied individually and in various combinations as suspensions or true solutions in water and in aqueous buffers.

They comprise the phospholipids; phosphatidyl choline, phosphatidyl ethanolamine, phosphatidyl serine, phosphatidyl inositol, sphingomyelin and cardiolipin, etc., cholesterol, other sterols and cholesterol esters and waxes, bile salts, lysophosphatides and certain gangliosides. Application received by Commissioner of Customs: October 19, 1972.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.72-20558 Filed 11-29-72;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEES

Notice of Meetings

Pursuant to Executive Order 11671, the Food and Drug Administration announces the following public advisory committee meetings 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
1. Panel on Review of Antacids.	Dec. 8 and 9, 9 a.m., Conference Room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open Dec. 8, 9 a.m. to 10 a.m. Closed Dec. 8 after 10 a.m. Closed Dec. 9. Armond Welch, Room 10B-06, 5600 Fishers Lane, Rockville, Md. 20852. 301—443-3504.

Purpose. Reviews and evaluates available information concerning safety and effectiveness of active ingredients in currently marketed nonprescription antacid products.

Agenda. Continuing review of over-the-counter antacid products under investigation. Meeting will include discussion of confidential information and formulation of recommendations.

Committee name	Date, time, place	Type of meeting and contact person
2. Radioactive Pharmaceuticals Advisory Committee.	Dec. 11 and 12, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open Dec. 11, 9 a.m. to 10 a.m. Closed Dec. 11 after 10 a.m. Closed Dec. 12. Earl Meyers, Ph.D. Room 11B-20, 5600 Fishers Lane, Rockville, Md. 20852. 301—443-4250.

Purpose. Advises the Commissioner of Food and Drugs regarding safety and efficacy of drugs employed in nuclear medicine.

Agenda. Orientation of new members and discussion of package inserts for radiopharmaceuticals with respect to evaluation of safety problems and adequacy of effectiveness data. Closed portion of meeting will include discussion of confidential information and formulation of recommendations.

Committee name	Date, time, place	Type of meeting and contact person
3. Panel on Review of Cough, Cold, Allergy, Bronchodilator, and Antiasthmatic Agents.	Dec. 11 and 12, 9 a.m., Conference Room 13B-45, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open Dec. 11, 9 a.m. to 10 a.m. Closed Dec. 11 after 10 a.m. Closed Dec. 12. Thomas DeCillis, Room 10B-06, 5600 Fishers Lane, Rockville, Md. 20852. 301—443-3504.

Purpose. Reviews and evaluates available information concerning safety and effectiveness of active ingredients in currently marketed nonprescription drugs containing cough, cold, allergy, bronchodilator, and antiasthmatic agents.

Agenda. Continuing review of over-the-counter drug products under investigation. Meeting will include discussion of confidential information and formulation of recommendations.

Committee name	Date, time, place	Type of meeting and contact person
4. Anti-infective Agents Advisory Committee.	Dec. 14 and 15, 9 a.m., Conference Room F, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open Dec. 14, 9 a.m. to 10 a.m. Closed Dec. 14 after 10 a.m. Closed Dec. 15. Jean D. Lockhart, M.D., Room 12B-45, 5600 Fishers Lane, Rockville, Md. 20852. 301—443-4310.

Purpose. Advises the Commissioner of Food and Drugs regarding safety and effectiveness of drugs employed in the treatment of infectious diseases.

Agenda. Topical gentamicin, safety, and efficacy of trimethoprimsulfamethoxazole, comments on new antibiotic disc regulations, penicillin G combinations, and long-acting sulfas. Meeting will include discussion of confidential information and formulation of recommendations.

Committee name	Date, time, place	Type of meeting and contact person
5. Panel on Review of Cardiovascular Devices.	Dec. 15, 9:30 a.m., Room 6821, 200 C Street SW., Washington, DC.	Open 9:30 a.m. to 10:30 a.m. Closed after 10:30 a.m. David M. Link, Room 212B, 1901 Chapman Ave., Rockville, Md. 20852. 301—443-1743.

Purpose. Reviews and evaluates available information concerning safety, effectiveness, and reliability of cardiovascular medical devices currently in use.

Agenda. Continuing review of cardiovascular medical devices under investigation. Meeting will include discussion of confidential information and formulation of recommendations.

Committee name	Date, time, place	Type of meeting and contact person
6. Panel on Review of Antimicrobial Agents.	Dec. 14 to 16, 9 a.m., Conference Room B, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open Dec. 14, 9 a.m. to 10 a.m. Closed Dec. 14 after 10 a.m. Closed Dec. 15 and 16. Michael Kennedy, Room 10B-06, 5600 Fishers Lane, Rockville, Md. 20852. 301—433-3504.

Purpose. Reviews and evaluates available information concerning safety and effectiveness of active ingredients in currently marketed nonprescription antimicrobial drug products.

Agenda. Continuing review of over-the-counter antimicrobial agents under investigation. Meeting will include discussion of confidential information and formulation of recommendations.

Committee name	Date, time, place	Type of meeting and contact person
7. Panel on Review of Anesthesiology Devices.	Dec. 19, 9:30 a.m., Room 6821, 200 C Street SW., Washington, DC.	Open 9:30 a.m. to 10:30 a.m. Closed after 10:30 a.m. David M. Link, Room 212B, 1901 Chapman Ave., Rockville, MD. 20852. 301—443-1743.

Purpose. Reviews and evaluates available information concerning safety, effectiveness, and reliability of anesthesiology devices currently in use.

Agenda. Continuing review of anesthesiology devices under investigation. Meeting will include discussion of confidential information and formulation of recommendations.

Agenda items are subject to change as priorities dictate.

During the open sessions shown above, interested persons may present relevant information or views orally to any committee for its consideration. Information or views submitted to any committee in writing before or during a meeting shall also be considered by the committee.

A list of committee members and summary minutes of meetings may be obtained from the contact person for the

committee both for meetings open to the public and those meetings 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).

Dated: November 27, 1972.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.72-20642 Filed 11-29-72;8:52 am]

[Docket No. FDC-D-484; NADA No. 6-737V and NADA No. 7-495V]

HILLTOP LABORATORIES, INC., AND BEEBE LABORATORIES, INC.

Certain Drug Products Containing Sulfaquinoxaline; Notice of Opportunity for a Hearing

In an announcement in the FEDERAL REGISTER of July 9, 1970 (35 F.R. 11069, DESI 6391V), 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 Sulfaquin-O-Mor, NADA (new animal drug application) No. 6-737V; marketed by Hilltop Laboratories, Inc., 2035 East Larpenteur Avenue, St. Paul, Minn. 55109 and B-B-Q Liquid, NADA No. 7-495V; marketed by Beebe Laboratories, Inc., 2035 East Larpenteur Avenue, St. Paul, Minn. 55109. The announcement invited the holder of said NADA's and any other interested persons to submit pertinent data on the drugs' effectiveness.

No data were received in response to the announcement and available information fails to provide substantial evidence that these drugs will have the effect they purport to have when administered in accordance with the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, notice is given to Hilltop Laboratories, Inc., Beebe Laboratories, Inc., and to any other interested person 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. 6-737V and NADA No. 7-495V including all amendments and supplements thereto. This action is proposed on the grounds that there is a lack of substantial evidence that the drugs have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In accordance with the provisions of section 512 of the Act (21 U.S.C. 360b), the Commissioner will give the applicants and any other interested person who would be adversely affected by an order withdrawing such approvals an opportunity for a hearing at which time such persons may produce evidence and arguments to show why approval of NADA No. 6-737V and NADA No. 7-495V 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 of use to be a new animal drug for which an approved new animal drug application is not in effect. Any such drug 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, Food and Drug Administration, 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 applications 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 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 there is no genuine and substantial issue of fact which 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 the response to this notice, the issues will be defined, an administrative law judge 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: November 20, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-20544 Filed 11-29-72;8:48 am]

INTERSTATE COMMERCE COMMISSION

[Notice 126]

ASSIGNMENT OF HEARINGS

NOVEMBER 27, 1972.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

RRA MC 1251, Passenger Automobiles and Trucks Auto Driveaway Co., now assigned November 28, 1972, at Washington, D.C., is canceled and application dismissed.

MC-C-7776, Cooper Transfer Co., Inc.—Investigation and Revocation of Certificates, now assigned November 28, 1972, at Birmingham, Ala., is canceled.

MC 123407 Sub 101, Sawyer Transport, Inc., now assigned February 7, 1973, at Chicago, Ill., is postponed indefinitely.

MC-F-11593, Gordons Transports, Inc.—Purchase—J. B. Reed Motor Express, Inc., and MC 11220 Sub 126, Gordons Transport, Inc., now being assigned hearing February 7, 1973 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC 668 Sub 95, Inter City Transportation Co., Inc., Donald A. Robinson, trustee, now being assigned hearing January 15, 1973 (1 week), at Newark, N.J., in a hearing room to be later designated.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.72-20565 Filed 11-29-72;8:49 am]

[Notice 158]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 22, 1972.

The following are notices of filing of applications[1] for temporary authority

[1] Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67 (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 200 (Sub-No. 257 TA), filed November 8, 1972. Applicant: RISS INTERNATIONAL CORP., 903 Grand Avenue, Post Office Box 2809—ZIP 64142, Kansas City, MO 64106. Applicant's representative: Ivan E. Noody (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the distribution terminal of Spiegel, Inc., at Monocacy, Union Township, Berks County, Pa., as an off-route point in connnection with applicant's regular route authority, for 150 days. NOTE: Riss has regular route authority on U.S. Highways 22 and 30 and the Pennsylvania Turnpike and all of applicant's present routes will be utilized. Supporting shipper: Spiegel, Inc., 2511 West 23d Street, Chicago, IL 60608. Send protests to: Vernon V. Coble, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1100, Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 2202 (Sub-No. 424 TA), filed November 2, 1972. Applicant: ROADWAY EXPRESS, INC., Post Office Box 471, 1077 Gorge Boulevard, Akron, OH 44309. Applicant's representative: James W. Conner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between Meridian, Miss., and Florence, Ala., serving the facilities of Mueller Brass at or near Fulton, Miss., as an off-route point, and serving Meridian, Miss., and Florence, Ala., for purpose of joinder only, from Meridian over U.S. Highway 45 to the junction of U.S. Highway 45 and Mississippi Highway 25, thence over Mississippi Highway 25 to the junction of Mississippi Highway 25 and U.S. Highway 78, thence over U.S. Highway 78 to the junction of U.S. Highways 28 and 43, thence over U.S. Highway 43 to Florence, Ala., and return over the same route; and (2) between Memphis, Tenn., and the junction of U.S. Highways 278 and 431, serving the facilities of Mueller Brass at or near Fulton, Miss., as an off-route point, and serving Memphis, Tenn., and the junction of U.S. Highways 278 and 431 for purpose of joinder only, from Memphis, over U.S. Highway 78 to the junction of U.S. Highway 78 to the junction of U.S. Highways 78 and 278, thence over U.S. Highway 278 to the junction of U.S. Highways 278 and 431, and return over the same route. Restriction: Restricted against the transportation of traffic originating at or destined to Memphis, Tenn., or points in its commercial zone, for 180 days. NOTE: Applicant states that it will tack with authority in MC–2202 and Subs thereto, and will affect interchange at all points served. Supporting shipper: Federal Pacific Electric Co., 1820 Statesville Avenue, Charlotte, NC 28206. Send protests to: Franklin D. Bail, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 3252 (Sub-No. 83 TA), filed November 6, 1972. Applicant: MERRILL TRANSPORT CO., 1037 Forest Avenue, Portland, ME 04103. Applicant's representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from Ticonderoga, N.Y., to Montpelier, Barre, Boltonville, Northfield, Plainfield, Waitsfield, Waterbury, Wells River, Randolph, and Royalton, Vt., for 180 days. Supporting shipper: Amerada Hess Corp., 1 Hess Plaza, Woodbridge, NJ 07095. Send protests to: Donald G. Weiler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 307, 76 Pearl Street, Portland, ME 04112.

No. MC 9251 (Sub-No. 2 TA), filed November 10, 1972. Applicant: S & M TRUCK LINE, INC., 510 North Water Street, Silverton, OR 97381. Applicant's representative: Raymond Zollner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wallboard, plywood, mouldings, and building materials*, from Vancouver, Wash., to Silverton, Oreg., for 180 days. Supporting shippers: Redman Mobile Homes, Inc., 1204 Mill Street, Silverton, OR 97381; Vanply, Inc., Post Office Box 720, Vancouver, WA 98660. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, 319 Southwest Pine Street, Portland, OR 97204.

No. MC 16872 (Sub-No. 14 TA), filed November 8, 1972. Applicant: WILLIAM MIRRER, doing business as MIRRER's TRUCKING CO., 54 East 11th Street, Paterson, NJ 07524. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Washing, cleaning and scouring compounds*, except commodities in bulk, from Paterson, N.J., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas (except New York, N.Y., and points in the New York, N.Y., commercial zone as defined by the Commission, Nassau, Rockland, and Westchester Counties, N.Y.), under contract with Witco Chemical Co., Ultra Division, Paterson, N.J., for 180 days. Supporting shipper: Witco Chemical Co., Ultra-Division, 2 Wood, Paterson, NJ 07524. Send protests to: District Supervisor Robert E. Johnston, Interstate Commerce Commission, Bureau of Operations, 970 Broad Street, Newark, NJ 07102.

No. MC 29120 (Sub-No. 146 TA), filed November 9, 1972. Applicant: ALL-AMERICAN TRANSPORT, INC., 1500 Industrial Avenue, Post Office Box 769, 57101, Sioux Falls, SD 57104. Applicant's representative: Allan C. Zuckerman, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Refrigerators, refrigeration, and electrical equipment, appliances, and parts, materials and supplies* used in the manufacture, repair and distribution of such commodities, from Amana, Iowa, to Kansas City, Kans., Pittsburgh, Pa., and points in Indiana, Kentucky, Michigan, Missouri, North Dakota, Ohio, South Dakota, and Wisconsin, and (2) *cleaning solvents*, in containers, from Cleveland, Ohio, to Amana, Iowa, for 180 days. Supporting shipper: Amana Refrigeration, Inc., Amana, Iowa 52203, Edward A. Morris, Jr., Traffic Manager. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, SD 57501.

No. MC 36629 (Sub-No. 2 TA), filed November 1, 1972. Applicant: STEINWAY TRUCKING, INC., 41–06 19th Avenue, Astoria, NY 11102. Applicant's representative: Arthur J. Piken, Suite 1515, One Lefrak City Plaza, Flushing, NY 11368. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Building glass*, from the piers and wharves in the New York, N.Y., commercial zone, as defined by the Commission in Fifth Supplemental Report in commercial zones and terminal areas, 53–MCC–451, within which local operations may be conducted under the exempt provisions provided by section 203 (Sub-B (8) of the Act, exempt zone), to points in Connecticut, New Jersey, Massachusetts, Rhode Island, and that part of Pennsylvania on and east of U.S. Highway 15, and that part of New

York within 100 miles of New York, N.Y., for 180 days. NOTE: Applicant presently holds authority for the same transportation from New York, N.Y., as origin, to the same destination territory, and does not seek duplicating authority by this application. Supporting shippers: Merchants Glass Distributors, Inc., Henderickson Avenue, Lynbrook, Long Island, NY 11563; Bienenfeld Industries, Inc., 1539 Covert Street, Brooklyn, NY 11227; Sentinel Enterprises, Inc., 2138 Biscayne Boulevard, Miami, FL 33137; Amworth Industries Corp., 42 Chasner Street, Hempstead, NY 11550; Daniel De Gorter, Inc., 1044 Northern Boulevard, Roslyn, NY 11576; Remington Aluminum, Window Corp., 999 Stewart Avenue, Garden City, NY 11530; John De Gorter, Inc., 1044 Northern Boulevard, Roslyn, NY 11576; Seaply Glass Corp., 271 North Avenue, New Rochelle, NY 10802. Send protests to: Thomas W. Hopp, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

No. MC 42828 (Sub-No. 4 TA), filed November 3, 1972. Applicant: THEODORE ROSSI TRUCKING CO., INC., 9 South Vine Street, Barre, VT 05641. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Granite*, from the piers in New York, N.Y., and Port Newark, N.J., to Barre and Montpelier, Vt., for 90 days. Supporting shipper: Granite Importers, Inc., Barre, Vt. Send protests to: District Supervisor Martin P. Monaghan, Jr., Interstate Commerce Commission, Bureau of Operations, 52 State Street, Room 5, Montpelier, VT 05602.

No. MC 71459 (Sub-No. 32 TA), filed October 26, 1972. Applicant: O. N. C. FREIGHT SYSTEMS, 2800 West Bayshore Road, Palo Alto, CA 94303. Applicant's representative: C. J. Boddington (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over 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 commodities requiring special equipment and those injurious or contaminating to other lading, in interstate or foreign commerce, from junction U.S. Highway 89 and U.S. Highway 160 near Tuba City, Ariz., to Alamosa, Colo., over regular routes as follows: from junction U.S. Highway 89 and U.S. Highway 160 (near Tuba City, Ariz.), over U.S. Highway 160 to Alamosa, Colo., and return over the same route, serving all intermediate points, for 180 days. NOTE: Applicant does intend to tack authority here applied for to other authority held by it with MC 71459 and Subs and to interline with carriers at Alamosa, Colo. Supported by: There are approximately 39 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor Claud W. Reeves, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, CA 94102.

No. MC 74321 (Sub-No. 62 TA), filed November 6, 1972. Applicant: B. F. WALKER, INC., 650—17th Street, Denver, CO 80202. Applicant's representative: J. Marshall Forsyth (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel beams*, from the Port of Catoosa, Okla., to points in Arkansas, Colorado, Kansas, Missouri, Nebraska, Oklahoma, and Texas, for 180 days. Supporting shipper: Jones and Laughlin Steel Corp., Three Gateway Center, Pittsburgh, PA. Send protests to: District Supervisor Roger L. Buchanan, Bureau of Operations, Interstate Commerce Commission, 2022 Federal Building, 1961 Stout Street, Denver, CO 80202.

No. MC 77340 (Sub-No. 6 TA), filed November 3, 1972. Applicant: E. J. DICKIE TRUCKING CO. (Arizona Corporation), 521 Bogart Street, Post Office Box 265, Bagdad, AZ 86321. Applicant's representative: Richard Minne, 609 Luhrs Building, Phoenix, AZ 85003. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lime*, in bulk, from the plant of Flintkote Co., U.S. Lime Division at Arrolime, Nev., to Bagdad, Ariz., for 180 days. Supporting shipper: Bagdad Copper Corp., Bagdad, Ariz. 86321. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 3427, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 102982 (Sub-No. 29 TA), filed November 8, 1972. Applicant: GEORGE W. KUGLER, INC., 2800 East Waterloo Road, Post Office Box 6064, Ellet Station, Akron, OH 44312. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Propane gas*, in bulk, from Marcus Hook, Pa., to the plantsite and storage facilities of Griffin Pipe Products Co., at Florence, Burlington County, N.J., restricted to service performed under continuing contract with Griffin Pipe Products Co., Oak Brook, Ill., for 180 days. Supporting shipper: Griffin Pipe Products Co., 2000 Spring Road, Oak Brook, IL 60521. Send protests to: Franklin D. Bail, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 103051 (Sub-No. 260 TA), filed November 8, 1972. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Avenue, North, Post Office Box 90408, Nashville, TN 37209. Applicant's representative: W. G. North (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oils and/or animal fats*, in bulk, in tank vehicles, moving on commercial bills of lading, from Chattanooga, Tenn., to Milwaukee, Wis., for 180 days. Supporting shipper: Swift Edible Oil Co., Chicago, Ill. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite 803, 1808 West End Building, Nashville, TN 37203.

No. MC 103191 (Sub-No. 36 TA), filed November 7, 1972. Applicant: THE GEO. A. RHEMAN CO., INC., Post Office Box 2095, Station A, Charleston, SC 29403. Applicant's representative: Harris G. Andrews, Post Office Box 4255, Greenville, SC 29608. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid animal feed*, in bulk, from Fountain Inn, S.C., to points in Georgia and North Carolina, for 180 days. Supporting shipper: Allied Chemical Corp., Post Office Box 2120, Houston, TX 77001. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 300 Columbia Building, 1200 Main Street, Columbia, SC 29201

No. MC 107515 (Sub-No. 814 TA), filed November 2, 1972. Applicant: REFRIGERATED TRANSPORT CO., INC., Post Office Box 308, 3901 Jonesboro Road, Forest Park, GA 30050. Applicant's representative: Alan E. Serby, Suite 1600, First Federal Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Crozet, Va., to points in Illinois, Indiana, Ohio, Michigan, Pennsylvania, Kentucky, West Virginia, and New York, for 150 days. Supporting shipper: ITT Continental Baking Co., Inc., Morton Frozen Foods Division, Post Office Box 731, Rye, NY 10580. Send protests to: William L. Scroggs, Interstate Commerce Commission, Bureau of Operations, Room 309, 1252 West Peachtree Street NW., Atlanta, GA 30309.

No. MC 107515 (Sub-No. 815 TA), filed November 2, 1972. Applicant: REFRIGERATED TRANSPORT CO., INC., Post Office Box 308, 3900 Jonesboro Road SE., Forest Park, GA 30050. Applicant's representative: Alan E. Serby, Suite 1600, First Federal Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products, yogurt, and dessert preparations*, in vehicles equipped with mechanical refrigeration, from the plantsite and storage facilities of Breakstone Sugar Creek Foods, a division of Kraftco Corp. at Walton, N.Y., to points in North Carolina, South Carolina, Georgia, and Florida, for 150 days. Supporting shipper: Breakstone Sugar Creek Foods, Division of Kraftco Corp., 450 East Illinois Street, Chicago, IL 60611. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1252 West Peachtree Street NW., Room 309, Atlanta, GA 30309.

No. MC 109689 (Sub-No. 240 TA), filed November 10, 1972. Applicant: W. S. HATCH CO., Office: 643 South 800 West Street, Wood Cross, UT 84087, Mail: Post

Office Box 1825, Woods Cross, UT 84110. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulfuric acid*, in bulk, from Nichols, Calif., to White City, Oreg., for 180 days. Supporting shipper: Industrial Chemical Division, Allied Chemical Corp., Post Office Box 1139R, Morristown, NJ 07960 (R. G. Thorn, Manager, Distribution, Planning and Analysis). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, 125 South State Street, Salt Lake City, UT 84111.

No. MC 110988 (Sub-No. 289 TA), filed November 6, 1972. Applicant: SCHNEIDER TANK LINES, INC., 200 West Cecil Street, Neenah, WI 54956. Applicant's representative: David A. Petersen (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid feed, liquid feed supplements*, in bulk, in tank vehicles, from plantsite of Cargill, Inc., located in Scott County, Iowa, to points in Missouri on and north of Interstate Highway 44; and points in Illinois on and north of Interstate Highway 70; and points in Wisconsin on and south of Highway 8; and points in Minnesota on and south of Highway 12; and (2) *molasses*, in bulk, in tank vehicles, from plantsite of Cargill, Inc., located in Scott County, Iowa, to points in Illinois on and north of Interstate Highway 70; and points in Wisconsin on and south of Highway 8, for 150 days. Supporting shipper: Cargill, Inc., Cargill Building, Minneapolis, Minn. 55402 (David J. Hurlbur, Manager of Rail/Truck Distribution). Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 114897 (Sub-No. 100 TA), filed November 7, 1972. Applicant: WHITFIELD TANK LINES, INC., 300–316 North Clark Road (Post Office Drawer 9897), El Paso, TX 79989. Applicant's representative: J. P. Rose (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Titanium tetrachloride*, in bulk, in tank vehicles, from Henderson, Nev., to Orange, Tex., for 150 days. Supporting shipper: P. H. Norton, Purchasing Agent, Titanium Metals Corporation of America, Post Office Box 2128, Henderson, NV 89015. Send protests to: Haskell E. Ballard, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box H–4395, Herring Plaza, Amarillo, Tex. 79101.

No. MC 135535 (Sub-No. 3 TA), filed November 8, 1972. Applicant: EL DORADO TRANSPORTATION, INC., 206 North Corcord, Minneapolis, KS 67467. Applicant's representative: Clyde N. Christey, 641 Harrison Street, Topeka, KS 66603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fifth wheel travel trailers* (in towaway service), also *pickup trucks*, when moving in combination with fifth wheel travel trailers, between the plantsite and/or storage facilities of El Dorado Industries, Inc., at or near Minneapolis, Kans., on the one hand, and, on the other, points in Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, Wyoming, and the District of Columbia, under continuing contract with El Dorado Industries, Inc., of Minneapolis, Kans.; and (2) *self-propelled motor homes* (in driveaway service), between the plantsite and/or storage facilities of El Dorado Industries, Inc., at or near Salina, Kans., on the one hand, and, on the other, points in the 48 contiguous States, under continuing contract with El Dorado Industries, Inc., of Minneapolis, Kans., for 150 days. NOTE: Applicant does not intend to tack the authority here applied for to other authority held by it, or to interline with other carriers. Supporting shipper: El Dorado Industries, Inc., Route 2, Post Office Box 266, Minneapolis, KS 67467. Send protests to: Thomas P. O'Hara, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 234 Federal Building, Topeka, Kans. 66603.

MOTOR CARRIERS OF PASSENGERS

No. MC 95466 (Sub-No. 3 TA), filed November 6, 1972. Applicant: DATTCO, INC., 99 Newington Avenue, New Britain, CT 06051. Applicant's representative: Samuel B. Zinder, 98 Cutter Mill Road, Great Neck, NY 11021. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle as passengers, in charter operations, beginning and ending at Meriden, New Haven, Middletown, Bridgeport, and Stamford, Conn., and New Rochelle, N.Y., and extending to points in the United States, restricted to charter operations originating at Springfield, Mass., Hartford, Conn., and/or New York, N.Y., for the account of Parker Tours, Inc., New York, N.Y., for 150 days. NOTE: Applicant will interline at New York, N.Y., with such carriers as Hudson Bus Transportation Co., Inc. Supporting shipper: Parker Tours, Inc., 125 West 43d Street, New York, NY 10036. Send protests to: District Supervisor David J. Kiernan, Bureau of Operations, Interstate Commerce Commission, 324 U.S. Post Office Building, 135 High Street, Hartford, CT 06101.

By the Commission.

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

[FR Doc.72-20566 Filed 11-29-72;8:49 am]

[Order 35539]

LOUISIANA INTRASTATE FREIGHT RATES AND CHARGES, 1972

Assignment for Hearing and Directing Special Procedure

It appearing, that by order dated March 13, 1972, the Commission, Division 2, instituted an investigation under section 13 of the Interstate Commerce Act to determine whether the intrastate rates and charges of the petitioning carriers by railroads, or any of them, operating in the State of Louisiana, for the intrastate transportation of property, made or imposed by the State of Louisiana, as previously indicated, cause or will cause, by reason of the failure of such rates and charges to include increases corresponding to those authorized on interstate traffic by this Commission in Ex Parte Nos. 265 and 267, Increased Freight Rates, 1970 and 1971, 339 I.C.C. 125, Ex Parte No. 262, Increased Freight Rates, 1969, 337 I.C.C. 436, Ex Parte No. 259, Increased Freight Rates, 1968, 322 I.C.C. 590 and 332 I.C.C. 714, Ex Parte No. 256, Increased Freight Rates, 1967, 329 I.C.C. 854 and 332 I.C.C. 280, Ex Parte No. 223, Increased Freight Rates, 1960, 311 I.C.C. 373, Ex Parte No. 223 (Sub-No. 1) Minimum Charges Per Car, 313 I.C.C. 563, Ex Parte No. 223 (Sub-No. 2), Increased Switching Charges, 315 I.C.C. 199, 318 I.C.C. 485, and 322 I.C.C. 560, Ex Parte No. 223 (Sub-No. 3), Increased Rates on Iron Ore, 313 I.C.C. 549, Ex Parte No. 223 (Sub-No. 5), Increased Rates on Coal and Petroleum Coke, 316 I.C.C. 159, Ex Parte No. 223 (Sub-No. 9), Increased Rates on Fresh Fruits and Vegetables, 313 I.C.C. 519, and Ex Parte No. 223 (Sub-No. 10), Increased Freight Rates, 1960 (Rule 7), 313 I.C.C. 471, and Ex Parte No. 212, Increased Freight Rates, 1958, 302 I.C.C. 665 and 304 I.C.C. 289, any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce on the one hand, and those in interstate or foreign commerce, on the other, or any undue unreasonable, our unjust discrimination against, or undue burden on, interstate or foreign commerce, and to determine what rates and charges, if any, or what maximum, or minimum or maximum and minimum, rates and charges should be prescribed to remove the unlawful advantage, preference, discrimination or undue burden, if any, that may be found to exist.

And it further appearing, that upon consideration of the record in the above-entitled proceeding, this matter is one which should be referred to an administrative law judge for hearing and requires the adoption of special procedure for the purpose of expediting the hearing; and for good cause shown:

It is ordered, That the above-entitled proceeding be, and it is hereby, referred to an administrative law judge for hearing and for recommendation of an appropriate order thereon, accompanied by the reasons therefor.

It is further ordered, That on or before December 28, 1972, the respondents and

any persons in support thereof shall file with the Commission three copies of the verified statements of their witnesses, in writing, together with any studies to be offered at the hearing, with a statement where the underlying workpapers to such studies will be available for inspection by parties to the proceeding and at the same time, serve a copy of such prepared material upon all parties listed in Appendix A attached hereto and any additional persons who make known their desire to actively participate in the proceeding on or before December 21, 1972.

It is further ordered, That on or before January 29, 1973, protestants shall file with the Commission, three copies of reply verified statements of their witnesses, in writing, and at the same time, serve a copy of such prepared material upon all persons listed in Appendix A hereto and any additional persons who make known their desire to actively participate on or before December 21, 1972. Attached hereto as Appendix A is a list of all known persons who have indicated their desire to actively participate in the proceeding. Any additional persons who desire to actively participate and receive copies of the prepared material to be served shall notify the Commission, in writing, on or before December 21, 1972, as well as all persons listed in Appendix A attached hereto. Otherwise, any interested person desiring to participate in this proceeding may make his appearance at the hearing.

It is further ordered, That parties desiring to cross-examine witnesses who have submitted verified statements shall give notice to that effect, in writing, to the affiant and his counsel, if any, on or before February 12, 1973, a copy of such notice to be filed simultaneously with the Commission, together with a request for any underlying data that the witnesses will be expected to have available for immediate reference at the hearing. All verified statements and attachments as to which no cross-examination is requested will be considered as part of the record. Any witness who has been requested to appear for cross-examination but fails to do so, subjects his verified statement to a motion to strike.

It is further ordered, That a hearing will be held commencing on February 26, 1973, at 9:30 a.m. U.S. standard time in New Orleans, La., at a hearing room to be later designated, for the purpose of hearing cross-examination of witnesses so requested; to afford opportunity to present evidence in opposition to the cross-examination; and such other pertinent evidence which the judge deems necessary to complete the record.

And it is further ordered, That a copy of this order be served upon the respondents and protestants; that the State of Louisiana be notified of the proceeding by sending a copy of this order by certified mail to the Governor of Louisiana, Baton Rouge, La., and a copy to the Louisiana Public Service Commission, Baton Rouge, La.; and that further notice of this proceeding be given to the public by depositing a copy of this order in the Office of the Secretary of this Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, Washington, D.C., for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 20th day of November 1972.

By the Commission, Commissioner Brown.

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

APPENDIX A

Mr. John W. Adams, Gulf, Mobile & Ohio Railroad Co., 104 St. Francis Street, Mobile, AL 36602.

Mr. Marshall B. Brinkley, Secretary, Louisiana Public Service Commission, State Capitol, Post Office Box 44035, Baton Rouge, LA 70804.

Mr. Phillip S. Brown, Kansas City Southern Lines, 114 West Eleventh Street, Kansas City, MO 64105.

Mr. L. F. Daspit, Assistant General Manager, New Orleans Traffic and, Transportation Bureau, International Trade Mart, No. 2 Canal Street, New Orleans, LA 70130.

Mr. John H. Doeringer, Illinois Central Railroad Co., 135 East Eleventh Place, Chicago, IL 60605.

Mr. B. C. Fuller, General Traffic Manager, Industrial Molasses Corp., 321 Fort Lee Road, Leonia, NJ 07605.

Mr. C. R. Gaudry, The Celotex Corp., Tampa, Fla.

Mr. Jarrell E. Godrey, Jr., Chaffe, McCall, Phillips, Toler & Sarpy, 1500 National Bank of Commerce Building, New Orleans, La. 70112.

Mr. W. F. Krause, Manager, Transportation Pricing, Crown Zellerbach, 1 Bush Street, San Francisco, CA 94119.

Mr. Harry McCall, Jr., Chaffee, McCall, Phillips, Toler & Sarpy, 1500 National Bank of Commerce Building, New Orleans, La. 70112.

Mr. William R. McDowell, The Texas & Pacific Railway Co., 900 Fidelity Union Tower, 1507 Pacific Avenue, Dallas, TX 75201.

Mr. E. B. McKinney, Assistant General Manager, New Orleans Traffic and Transportation Bureau, International Trade Mart, No. 2 Cancal Street, New Orleans, LA 70130.

Mr. L. A. Parish, Traffic Manager, Radcliff Materials, Inc., McDuffie Island, Mobile, Ala. 36601. Representing: Radcliffe Materials, Inc., Pelican State Lime Co., Oyster Shell Products Co.

Mr. Harold J. Reitz, Manager, Regulatory Services, International Paper Co., New York, N.Y.

Mr. R. W. Skirvin, Crown Zellerbach Corp., 1 Bush Street, Room 1515, San Francisco, CA 94119.

Mr. Robert H. Stahlheber, Missouri Pacific Railroad Co., 210 North 13th Street, St. Louis, MO 63103.

Mr. J. W. Stanard, Post Office Box 66377, Baton Rouge, LA 70806. Representing: Big River Industries, Inc., Feliciana Eastern Railroad Co., St. Tammany & Eastern Railroad, Louisiana Eastern Railroad, South Central Railroad, Aggregates Railway Corp., A. A. Railroad, Inc.

Mr. James L. Tapley, Southern Railway System, Post Office Box 1808, Washington, DC 20013.

Mr. Wm. B. Thomas, Jr., Post Office Box 47127, Dallas, TX 75247. Representing: Gifford-Hill & Co., Inc.

Mr. D. L. Williams, Traffic Manager, Louisiana Cement, 14900 Intercoastal Drive, New Orleans, LA 70129.

C. G. Wise, Post Office Box 200, Boise, ID 83701.

[FR Doc.72-20567 Filed 11-29-72;8:49 am]

[Notice 97]

MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER APPLICATIONS

NOVEMBER 24, 1972.

The following applications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by Special Rule 1100.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure reasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

No. MC 2860 (Sub-No. 118), filed October 27, 1972. Applicant: NATIONAL FREIGHT, INC., 57 West Park Avenue, Vineland, NJ 08360. Applicant's representative: Jacob P. Billig, 1108 16th Street NW., Suite 400, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric and gas appliances and parts thereof*, from Appliance Park/East, Columbia, Md., to points in Maine, New Hampshire, and Vermont. NOTE: Common control may be involved. Applicant states that the requested authority could be tacked with its existing authority at Columbia, Md., to serve points in the Middle Atlantic Territory. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 3854 (Sub-No. 19), filed October 30, 1972. Applicant: BURTON LINES, INC., East Durham Station, Post Office Box 11306, Durham NC 27703. Applicant's representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Reconstituted, reconstructed, or homogenized tobacco*, from Danville, Va., and Spotswood, N.J., to Louisville, Ky. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 19227 (Sub-No. 173), filed October 24, 1972. Applicant: LEONARD BROS. TRUCKING CO., INC., 2595 Northwest 20th Street, Miami, FL 33152. Applicant's representative: J. F. Dewhurst (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Signs, sign parts, attachments; accessories, and equipment* used in connection with or installation thereof, between the plantsites of Federal Sign and Signal Corp. at Los Angeles and Oakland, Calif.; Knoxville, Tenn.; Portland, Oreg.; Louisville, Ky.; Burr Ridge, Ill.; and Arlington, Tex., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority, cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif., or Miami, Fla.

No. MC 19227 (Sub-No. 174), filed October 25, 1972. Applicant: LEONARD BROS. TRUCKING CO., INC., 2595 Northwest 20th Street, Miami, FL 33152. Applicant's representative: J. Fred Dewhurst (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Equipment shelters* from Port Jervis, N.Y., to Austin, Tex. NOTE: Common control may be involved. Applicant states it holds authority under MC 19227 to transport commodities, the transportation of which because of size or weight requires the use of special equipment, between points in New York and points in Florida, which can be tacked with its authority under Sub-No. 43 which authorizes transportation of the same commodities between points in Florida and points in Texas, and that the purpose of this application is to eliminate the Florida Gateway. Applicant further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 26396 (Sub-No. 63), filed October 27, 1972. Applicant: POPELKA TRUCKING CO., a corporation doing business as: THE WAGGONERS, Post Office Box 990, Livingston, MT 59047. Applicant's representative: Jacob P. Billig, 1108 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber products and articles of particle board*, from points in Montana to points in Arizona, Arkansas, Louisiana, Kentucky, Tennessee, Mississippi, Pennsylvania, Alabama, Georgia, Iowa, Minnesota, Nebraska, Nevada, North Dakota, South Dakota, Illinois, Wisconsin, California, Oregon, Washington, Wyoming, Utah, Idaho, and Colorado. NOTE: Applicant states that the requested authority can be tacked with its existing authority under MC 26396 and Subs thereunder. However, applicant does not specify where such physical operation would connect and the territory that would be served through such tacking. Applicant further states that its Sub 50 also duplicates in part the authority sought herein. Applicant holds contract carrier authority under MC 136777, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Billings, Mont.

No. MC 29120 (Sub-No. 147), filed November 6, 1972. Applicant: ALL-AMERICAN TRANSPORT, INC., Post Office Box 769, Sioux Falls, SD 57101. Applicant's representative: Axelrod, Goodman, Steiner & Bazelon, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Refrigerators, refrigeration and electrical equipment, appliances, and parts, materials, and supplies* used in the manufacture, repair and distribution of such commodities, from Amana, Iowa to Kansas City, Kans., Pittsburgh, Pa., and points in Indiana, Kentucky, Michigan, Missouri, North Dakota, Ohio, South Dakota, and Wisconsin; and (2) *cleaning solvents*, in containers from Cleveland, Ohio, to Amana, Iowa. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority but does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 32505 (Sub-No. 9), filed October 24, 1972. Applicant: VINCI's EXPRESS, INC., 404 Madison Avenue, Woodbine, NJ 08270. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), between points in Cape May County, N.J., on the one hand, and, on the other, points in the New York, N.Y. commercial zone. NOTE: Applicant is presently authorized to transport clothing from Woodbine, N.J. to New York, N.Y., cloth from New York, N.Y., and fish from Sea Isle City, N.J. to New York, N.Y., therefore duplicating authority may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Cape May, N.J.

No. MC 35628 (Sub-No. 340), filed October 20, 1972. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, a corporation, 134 Grandville, SW., Grand Rapids, MI 49502. Applicant's representative: Leonard D. Verdier, Jr., 900 Old Kent Building, Grand Rapids, Mich. 49502. Authority sought to operate as a *common carrier*, by motor vehicle, over 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), serving the plantsite of Northern Indiana Public Service Co., near Wheatfield, Ind., as an off-route point in connection with applicant's presently authorized operations between Michigan City and Lafayette, Ind., and between Evansville, Ind., and Chicago, Ill. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Lansing, Mich.

No. MC 44447 (Sub-No. 29), filed October 23, 1972. Applicant: SUBURBAN MOTOR FREIGHT, INC., 1100 King Avenue, Columbus, OH 43212. Applicant's representative: Taylor C. Burneson, 88 East Broad Street, Suite 1680, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular 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 commodities requiring special equipment), (a) between Bellaire, Ohio, on the one hand, and, on the other, points in Washington County, Pa., and points in West Virginia on and north of U.S. Highway 50 and west of the West Virginia-Maryland State line near Brookside, W. Va., and (b) between Belpre, Ohio, on the one hand, and, on the other, points in Washington County, Pa., and points in West Virginia on and north of U.S. Highway 50 and west of the West Virginia-Maryland State line near Brookside, W. Va. NOTE: Applicant states it is authorized to transport the above described commodities under MC 44447 (Sub-No. 27) between Powhatan Point, Ohio, and points in Ohio, within 8 miles of Powhatan Point, on the one hand, and, on the other, points in Washington County, Pa., and those in that part of West Virginia on and north of U.S. Highway 50 and west of the West Virginia-Maryland State line near Brookside, W. Va. The Sub 27 authority is tacked with applicant's regular-route authority which is contained in MC 44447 to MC 44447, Sub 26, inclusive. The tacking takes place at Shadyside, Ohio (a point within 8 miles of Powhatan Point). Through the Shadyside gateway, service is rendered by applicant between the points in Ohio, Michigan, Indiana, Illinois, and Kentucky which are specified in MC 44447 to MC 44447, Sub 26, inclusive, on the one hand, and, on the other, the points in Pennsylvania and West Virginia which are specified in MC 44447, Sub 27, that its proposal is to use Bellaire and Belpre, Ohio (in lieu of Shadyside, Ohio, as gateways in connection with its operations, as aforesaid, between points in Ohio, Michigan, Indiana, Illinois, and Kentucky on the one hand, and, on the other, points in Pennsylvania and West Virginia, and at the same time, applicant would continue rendering local and joint-line service between Powhatan Point, Ohio, and points in Ohio within 8 miles of Powhatan Point, on the one hand, and, on the other, points in Washington County, Pa., and points in West Virginia on and north of U.S. Highway 50 and west of the West Virginia-Maryland State line near Brookside, W. Va. Applicant further states it is not applying for duplicative authority, and such conditions may be attached to the applied-for "gateway" authority, if granted, as may be deemed by the Commission to be necessary to prevent such authority from being separated from the existing Sub 27 authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio or Washington, D.C.

No. MC 48213 (Sub-No. 34), filed October 30, 1972. Applicant: C. E. LIZZA, INC., Post Office Box 447, Latrobe, PA 15601. Applicant's representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, Pa. 15601. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Water treatment chemicals and compounds, cleaning compounds, drugs, medicines and toilet preparations, textile softeners, activated carbon and water softener equipment; materials, equipment and supplies*, used or useful in the production, use, distribution or sale of the foregoing commodities, between points in Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin, under continuing contracts with Calgon Corp. and Calgon Consumer Products Co., Inc. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington or Pittsburgh, Pa.

No. MC 50069 (Sub-No. 456), filed October 23, 1972. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlywood Avenue, Oregon (Toledo), OH 43616. Applicant's representative: J. A. Kundtz, 1100 National City Bank Building, Cleveland, Ohio 44114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Spent hydrochloric acid* from Toledo, Ohio to Detroit, Mich.; and (2) *virgin hydrochloric acid* from Detroit, Mich., to Toledo, Ohio. NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 50069 (Sub-No. 457), filed October 23, 1972. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Avenue, Oregon (Toledo), OH 43516. Applicant's representative: J. A. Kundtz, 1100 National City Bank Building, Cleveland, Ohio 44114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Kentucky, Illinois, Indiana, Ohio, Pennsylvania, and Missouri to Bay City and Midland, Mich. NOTE: Common control and dual operations may be involved. No duplicating authority sought. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 51146 (Sub-No. 296), filed August 25, 1972. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, WI 54304. Applicant's representative: Charles Singer, Suite 1000, 327 South La Salle, Chicago, IL 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers*, from Watertown, Mass., to points in Maine, Vermont, Connecticut, New Hampshire, Rhode Island, New York, New Jersey, Illinois, Pennsylvania, Ohio, West Virginia, Maryland, Delaware, and Virginia. NOTE: Common control may be involved. Applicant states that the requested authority will be tacked with its existing authority where feasible but does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 51146 (Sub-No. 297), filed August 31, 1972. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, WI 54304. Applicant's representative: Neil DuJardin, Post Office Box 2298, Green Bay, WI 54306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers*, from Forest Park, Ga., to points in Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Missouri, Kentucky, Oklahoma, Arkansas, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas. NOTE: Common control may be involved. Applicant states that the requested authority could possibly be tacked with various subs of MC 51146 and applicant will tack with its MC 51146 where feasible. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant further states that it has various duplicative items under various subs but does not seek duplicative authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 52709 (Sub-No. 318), filed October 20, 1972. Applicant: RINGSBY TRUCK LINE, INC., 5773 So. Prince Street, Littleton, CO 80120. Applicant's representative: Robert P. Tyler (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over 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), serving the warehouse site of Western Electric located at or near Underwood, Iowa as an off-route point in connection with applicant's operations via Omaha, Nebr. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 57315 (Sub-No. 22), filed October 24, 1972. Applicant: TRI-STATE TRANSPORT, INC., 91 Heard Street, Chelsea, MA 02150. Applicant's representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen meats*, from Portsmouth, N.H. and New Bedford, Mass. to points in Connecticut, Massachusetts, and Rhode Island. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority.

If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No. MC 59150 (Sub-No. 74), filed October 27, 1972. Applicant: PLOOF TRANSFER COMPANY, INC., 1901 Hill Street, Jacksonville, FL 32202. Applicant's representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal buildings*, knocked down and *parts thereof*, from Cedartown, Ga., to points in Alabama, Louisiana, Mississippi, South Carolina, North Carolina, Virginia, Florida, and Georgia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Jacksonville, Fla., or Atlanta, Ga.

No. MC 61592 (Sub-No. 287), filed October 27, 1972. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Donald W. Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flat glass and glass glazing units*, from Clinton and Laurinburg, N.C., to points in the United States in and east of Montana, Wyoming, Colorado, and New Mexico. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 61592 (Sub-No. 288), filed October 27, 1972. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Donald Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, in containers, from Golden, Colo., and the plantsite of Jos. Schlitz Brewing Co., Memphis, Tenn., to points in Oklahoma; and (2) *pallets and/or empty containers*, from points in Oklahoma to the plantsite of Jos. Schlitz Brewing Co., Memphis, Tenn., and Golden, Colo. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla.

No. MC 61592 (Sub-No. 289), filed October 27, 1972. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Donald Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, including particle board, (1) from points in Arizona, Colorado, and New Mexico to points in Arkansas, Illinois, Indiana, Kansas, Kentucky, Michigan, Mississippi, Missouri, Ohio, Tennessee, Texas, and Wisconsin and (2) from points in Arizona and Colorado to points in Oklahoma and New Mexico. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Santa Fe, N. Mex.

No. MC 61592 (Sub-No. 290), filed October 27, 1972. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Donald Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Snowmobiles, materials, equipment, and supplies* used in the manufacture, distribution, operation and transportation of snowmobiles, between points in the United States (including Alaska but excluding Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 69833 (Sub-No. 104), filed October 18, 1972. Applicant: ASSOCIATED TRUCK LINES, INC., Vandenberg Center, Grand Rapids, Mich. 49502. Applicant's representative: Harry Pohlad and Earl Meisenbach (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), serving Midland, Mich. as an off-route point in connection with its presently authorized regular route operations, between Bay City and Saginaw, Mich., over U.S. Highway 23. NOTE: Applicant has pending in No. MC 69833 (Sub-No. 102) a motor common carrier application to transport calcium chloride from Dow Chemical USA, at Midland, Mich. to irregular route territory including the regular route area herein, therefore duplicating authority may be involved. If a hearing is deemed necessary, applicant requests it be held at Saginaw, Lansing, or Detroit, Mich.

No. MC 72140 (Sub-No. 60), filed October 16, 1972. Applicant: SHIPPERS DISPATCH, INC., 1216 West Sample Street, South Bend, IN 46624. Applicant's representative: Richard L. Andrysiak (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods, as defined by the Commission, Classes A and B explosives, commodities in bulk, and those requiring special equipment), serving the plantsite and warehouse facilities of the Dana Corp. at Edgerton, Wis., as an off-route point in connection with applicant's existing regular-route authority. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 76661 (Sub-No. 2), filed October 30, 1972. Applicant: SMITH TRUCK SERVICE, INC., Southeast of City, Post Office Box 373, Perry, OK 73077. Applicant's representative: Rufus H. Lawson, 106 Bixler Building, Post Office Box 75124, Oklahoma City, OK 73107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precast or prestress concrete articles and accessories* used in the installation of the above-named commodities, from Tulsa, Okla., to points in Kansas, Missouri, Arkansas, and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tulsa or Oklahoma City, Okla.

No. MC 85850 (Sub-No. 8), filed October 22, 1972. Applicant: NEYLON FREIGHT LINES, INC., c/o JONES TRUCK LINES, INC., Springdale, Ark. 72764. Applicant's representative: James B. Blair, 111 Holcomb Street, Springdale, AR 72764. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, packinghouse products, and commodities used by packinghouses*, between Sioux City, Iowa and Omaha, Nebr. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority so that its service would connect with Jones Truck Lines, Inc. to points in Missouri, Oklahoma, Arkansas, Texas, Kansas, and Tennessee. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City or St. Louis, Mo.

No. MC 94350 (Sub-No. 321), filed October 19, 1972. Applicant: TRANSIT HOMES, INC., Post Office Box 1628, Haywood Road, Greenville, SC 29602. Applicant's representative: Mitchell King, Jr. (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers* designed to be drawn by passenger automobiles in initial shipments, from points in Marshall County, Tenn., to points in the United States (excluding Alaska and Hawaii); and (2) *commodities named in (1) above* and *buildings*, or *sections of buildings* mounted on wheeled undercarriages, from points of manufacture in Monroe County, Ark., to points in the United States (excluding Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn.

No. MC 100623 (Sub-No. 37), filed October 10, 1972. Applicant: HOURLY MESSENGERS, INC., a corporation, H. M. PACKAGE DELIVERY SERVICE, 20th and Indiana Avenue, Philadelphia, PA 19132. Applicant's representative: Harold G. Hernly, Jr., 2030 North Adams Street, Suite 510, Arlington, VA 22201.

Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities*, as are sold and dealt in by department stores, specialty shops and retail stores, between Philadelphia, Pa., and its commercial zone, on the one hand, and, on the other, points in Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Salem, Warren, Atlantic, Ocean, and Cape May Counties, N.J.; Berks, Bucks, Carbon, Chester, Dauphin, Delaware, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Schuykill, and York Counties, Pa.; New Castle County, Del., points in Virginia, Maryland, and the District of Columbia. RESTRICTION: The service authorized herein is subject to the following conditions: (1) No service shall be rendered in the transportation of any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined, and each package or article shall be considered as a separate and distinct shipment; and (2) no service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location on any one day. NOTE: Applicant states that the requested authority can be tacked with its existing authority but has no present intentions to tack. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa.

No. MC 103993 (Sub-No. 739), filed October 24, 1972. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Paul D. Borghesani (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from Crawford County, Ark., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.

No. MC 106497 (Sub-No. 73), filed October 30, 1972. Applicant: PARKHILL TRUCK COMPANY, a corporation, Business Route I–44 East, Joplin, Mo. 64801. Applicant's representative: A. N. Jacobs, Post Office Box 113, Joplin, MO 64801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roadbuilding, earthmoving, construction, mining, and contractors' machinery and equipment, and parts thereof*, when moving at the same time or separately, from Chattanooga, Tenn., to points in the United States including Alaska (but excluding Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New Orleans, La.

No. MC 107002 (Sub-No. 426), filed October 5, 1972. Applicant: MILLER TRANSPORTERS, INC., Post Office Box 1123 (U.S. Highway 80 West), Jackson, MS 39205. Applicant's representative: John J. Borth, Post Office Box 1123, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, from Arlington, Tenn., to points in Illinois, Indiana, Iowa, and Texas. NOTE: Applicant states that although the authority sought could be combined with other authorities to perform through service from points, tacking is not contemplated at this time. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn.

No. MC 107460 (Sub-No. 39), filed October 27, 1972. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Road, Lancaster, PA 17601. Applicant's representative: Donald D. Shipley (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (I) (A) (1) *Tractors* (except those with vehicle beds, bed frames and fifth wheels); (2) *equipment* designed for use in conjunction with tractors; (3) *agricultural, industrial, and construction machinery and equipment;* (4) *such merchandise* as dealt in by lawn and garden dealers (except chemicals and commodities in bulk); (5) *trailers* designed for the transportation of the above-described commodities (except those trailers designed to be drawn by passenger automobiles); (6) *attachments* for the above-described commodities; (7) *internal combustion engines;* (8) *accessories, parts, and supplies* used in the manufacture, repair, and assembly of (1) through (7) above: (a) from the plantsites of the Sperry Rand Corp., New Holland Division located at Mountville and New Holland, Pa., to points in Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania (except Belleville and Lewistown, Pa.), Rhode Island, South Carolina, Tennessee, Virginia, Vermont, West Virginia, Wisconsin, and the plantsite of the Sperry Rand Corp., New Holland Division located at Grand Island, Nebr.; (b) from the plantsite of the Sperry Rand Corp., New Holland Division at Belleville, Pa., to points in Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania (restricted to export traffic or traffic having immediately prior or subsequent movement in rail service), Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the plantsite of the Sperry Rand Corp., New Holland Division located at Grant Island, Nebr.; and (c) from the plantsite of the Sperry Rand Corp., New Holland Division at Grand Island, Nebr., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Vermont, Virginia, and West Virginia;

(II) (B) *Materials, equipment and supplies* (except commodities in bulk) used in the manufacture, repair, assembly, and distribution of the commodities described in (1) through (7) above: (a) From points in Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland (except Baltimore and points in that part of Maryland, east of the Chesapeake Bay and the Susquehanna River), Massachusetts, Michigan, New Hampshire, New York (except Buffalo, Rochester and Syracuse), North Carolina, Ohio, Pennsylvania (except Belleville and Lewistown, Pa.), Rhode Island, South Carolina, Tennessee, Virginia (except iron and steel casting and agricultural implements parts from Lynchburg, Va.), West Virginia, Wisconsin, and the plantsite of the Sperry Rand Corp., New Holland Division at Grand Island, Nebr., to the plantsites of the Sperry Rand Corp., New Holland Division at Mountville and New Holland, Pa.; (b) from points in Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania (restricted to export traffic or traffic having immediately prior or subsequent movement in rail service), Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin and the plantsite of the Sperry Rand Corp., New Holland Division at Grand Island, Nebr., to the plantsite of the Sperry Rand Corp., New Holland Division at Belleville, Pa.; and (c) from points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Vermont, Virginia, and West Virginia to the plantsite of Sperry Rand Corp., New Holland Division at Grand Island, Nebr., under contract with Sperry Rand Corp., New Holland Division at Grand Island, Nebr. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Harrisonburg, Va.

No. MC 108676 (Sub-No. 51), filed October 20, 1972. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue, NE., Knoxville, TN 37917. Applicant's representative: Carl U. Hurst, Post Office Box E, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flat glass and glass glazing units*, from Clinton and Laurinburg, N.C. to points in the United States in and east of Montana, Wyoming, Colorado, and New Mexico. NOTE: Ap-

plicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 109397 (Sub-No. 282), filed October 23, 1972. Applicant: TRI-STATE MOTOR TRANSIT CO., a Corporation, Post Office Box 113 (Business Loop I–44 East), Joplin, MO 64801. Applicant's representative: A. N. Jacobs (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Industrial and construction machinery and equipment*, from the plantsite of Mastercraft Engineering, Inc., Belleville, Mich., to points in the United States (including Alaska, but excluding Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 109538 (Sub-No. 20), filed October 16, 1972. Applicant: CHIPPEWA MOTOR FREIGHT, INC., Post Office Box 269, Eau Claire, WI 54701. Applicant's representative: Nancy J. Johnson, 4506 Regent, Suite 100, Madison, WI 53705. Authority sought to operate as a *common carrier*, by motor vehicle, over 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 commodities requiring special equipment), between Eau Claire, Wis., and Moline and Mendota, Ill., serving all intermediate points, (1) from Eau Claire, Wis., over U.S. Highway 53 to junction of U.S. Highway 61 at La Crosse, Wis., thence over U.S. Highway 61 to Davenport, Iowa, thence over city routes to Moline, Ill., and return over the same routes, serving the off-route point of Hager City, Wis., in connection with presently authorized operations and proposed route, and (2) from Eau Claire, Wis. over U.S. Highway 53 to junction Interstate Highway 94, thence over Interstate Highway 94 and 90 to junction Wisconsin Highway 15 near Beloit, Wis., thence over Wisconsin Highway 15 to junction U.S. Highway 51 at Beloit, Wis., and thence over U.S. Highway 51 to Mendota, Ill., and return over the same routes, and (3) from Eau Claire, Wis. over U.S. Highway 53 to junction Interstate Highway 94, thence over Interstate Highway 94 and 90 to junction U.S. Highway 20 by-pass near Rockford, Ill., thence over U.S. Highway 20 by-pass to junction Illinois Highway 2, thence over Illinois Highway 2 to Moline, Ill., and return over the same routes. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Madison, Wis., or St. Paul or Minneapolis, Minn.

No. MC 111375 (Sub-No. 65), filed October 27, 1972. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., Post Office Box 3358, Madison, WI 53704. Applicant's representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery* from Robinson, Ill., to points in Arizona, California, Colorado (except Denver), Idaho, Montana, Nevada (except Reno), New Mexico, Oregon (except Portland), Utah, Washington, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 111401 (Sub-No. 375), filed October 13, 1972. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, Post Office Box 632, Enid, OK 73701. Applicant's representative: Alvin J. Meiklejohn, Jr., 420 Denver Club Building, Denver, Colo. 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products* (except liquefied petroleum gases), in bulk, in tank vehicles, (1) from points in East Baton Rouge, Iberville, Jefferson, Orleans, Plaquemines, Saint Bernard, Saint Charles, and West Baton Rouge Parishes, La., to points in Alabama, Louisiana, and Mississippi, and (2) from Meridian and Pascagoula, Miss., to points in East Baton Rouge, Iberville, Jefferson, Orleans, Plaquemines, Saint Bernard, Saint Charles, and West Baton Rouge Parishes, La. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Boyle or Hattiesburg, Miss.

No. MC 111812 (Sub-No. 481), filed October 25, 1972. Applicant: MIDWEST COAST TRANSPORT, INC., 900 West Delaware, Post Office Box 1233, Sioux Falls, SD 57101. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Hallwood, Va., to points in California, Montana, Oregon, Washington, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 112184 (Sub-No. 38), filed October 9, 1972. Applicant: THE MANFREDI MOTOR TRANSIT COMPANY, a Corporation, Route 87, Newbury, Ohio 44065. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Alkyd resins, paint oils, and vegetable oils*, in bulk, in tank vehicles, from Philadelphia, Pa., to points in Ohio north of U.S. Highways 30 and 30N, and *returned shipments* on return and (2) *Soybean oil*, from Bellevue, Ohio, to Philadelphia, Pa., and *returned shipments* on return, under contract with Cargill, Inc. NOTE: Applicant holds common carrier authority under MC 128302 and subs thereunder, therefore dual operations and common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Washington, D.C.

No. MC 112617 (Sub-No. 302), filed September 5, 1972. Applicant: LIQUID TRANSPORTERS, INC., Post Office Box 21395, Louisville, KY 40221. Applicant's representative: L. A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20032. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adhesives*, in bulk, in tank vehicles, from Nicholasville, Ky., to points in Alabama, Arkansas, Georgia, Illinois, Indiana, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia, and West Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky., or Washington, D.C.

No. MC 113678 (Sub-No. 472), filed October 24, 1972. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, (1) from Grand Island and York, Nebr., to points in Minnesota, Wisconsin, Iowa, Illinois, Indiana, Ohio, New York, Pennsylvania, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, District of Columbia, North Carolina, South Carolina, Tennessee, Alabama, Georgia, Florida, Colorado, New Mexico, Arizona, Utah, Nevada, and California; (2) from York, Nebr., to points in Montana, Idaho, Washington, and Oregon. NOTE: Applicant states that although tacking possibilities exist it has no present intention to tack. However, applicant cautions that an unopposed application may result in an unrestricted grant of authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr., Washington, D.C., or Denver, Colo.

No. MC 114457 (Sub-No. 134), filed October 23, 1972. Applicant: DART TRANSIT COMPANY, a corporation 780 North Prior Avenue, St. Paul, MN 55104. Applicant's representative: James C. Hardman, 127 North Dearborn Street, Chicago, IL 60607. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from the plantsite and storage facilities of Midland

Glass Co., at or near Shakopee, Minn., to Milwaukee, Wis. (Restricted to traffic originating at the named origin point and destined to the named destination.) NOTE: If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 115331 (Sub-No. 335), filed October 27, 1972. Applicant: TRUCK TRANSPORT, INCORPORATED, 1931 North Geyer Road, St. Louis, MO 63131. Applicant's representative: J. R. Ferris, 230 St. Clair Avenue, East St. Louis, IL 62201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale and retail grocery houses, from the facilities of United Facilities, Inc., at Galesburg, Ill., to points in Minnesota, Iowa, Wisconsin, North Dakota, South Dakota, Nebraska, Kansas, Missouri, Oklahoma, Arkansas, Michigan, Indiana, Kentucky, and Tennessee. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 115669 (Sub-No. 134), filed October 24, 1972. Applicant: HOWARD N. DAHLSTEN, doing business as DAHLSTEN TRUCK LINE, Post Office Box 95, Clay Center, NE 68933. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry feed ingredients*, from Van Buren, Ark., to points in Arkansas, Colorado, Kansas, Iowa, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 116073 (Sub-No. 245) (Amendment), filed July 24, 1972, published in the FEDERAL REGISTER issue of August 17, 1972, and republished as amended this issue. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., Post Office Box 919, Moorhead, MI 56560. Applicant's representative: Robert G. Tessar, 1819 Fourth Avenue South, Moorhead, MI 56560. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Buildings and sections of buildings*, from points in Roosevelt County, Mont., to points in the United States (except Alaska and Hawaii); and (2) *trailers* designed to be drawn by passenger automobiles in initial movements; *buildings*, complete or in sections; and *pickup caps*, from points in Ravalli County, Mont., to points in Wyoming, South Dakota, Idaho, North Dakota, Utah, Washington, and Oregon. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to redescribe the authority being sought. If a hearing is deemed necessary, applicant requests it be held at Helena, Mont.

No. MC 116725 (Sub-No. 19), filed October 27, 1972. Applicant: INDIAN VALLEY ENTERPRISES, INC., 855 Maple Avenue, Harleysville, PA 19438. Applicant's representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Butter and foodstuffs* (except frozen foodstuffs and foodstuffs in bulk), between Harleysville, Pa., and points in Franconia Township (Montgomery County), Pa., south of Cowpath Road, on the one hand, and, on the other, points in Michigan, restricted to the transportation of shipments originating and destined to points in the above-named territory. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa.

No. MC 117101 (Sub-No. 8), filed October 24, 1972. Applicant: LEFFLER TRANSPORTATION CO., a Corporaton, 225 East Main Street, Richland, PA 17087. Applicant's representative: S. Berne Smith, 100 Pine Street, Post Office Box 116, Harrisburg, PA 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials, agricultural related chemicals*, in containers, and *seed*, from East Hempfield Township, Lancaster County, Pa., to points in New York, New Jersey, Delaware, Maryland, Virginia, West Virginia, Ohio, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 117119 (Sub-No. 468), filed October 23, 1972. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., Post Office Box 188, Elm Springs, AR 72728. Applicant's representative: Bobby G. Shaw (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from the plantsites and warehouse facilities of Jeno's, Inc., at Duluth, Minn., to points in Kansas, Nebraska, Missouri, Oklahoma, Arkansas, Tennessee, Mississippi, Louisiana, Texas, Nevada, New Mexico, Arizona, California, Colorado, Utah, Idaho, Washington, and Oregon. NOTE: Common control may be involved. Applicant states that by combining No. MC 117119 (Sub-No. 53) with No. MC 117119 it can serve all destinations sought herein on the transportation of frozen foods and in No. MC 117119 (Sub-No. 459) it can transport foodstuffs from points in Minnesota to 11 of the destination States named above, therefore duplicating authority may be involved. Applicant further states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Duluth, Minn., or Washington, D.C.

No. MC 117565 (Sub-No. 69), filed October 27, 1972. Applicant: MOTOR SERVICE COMPANY, INC., Route 3, Post Office Box 448, Coshocton, OH 43812. Applicant's representative: John R. Hafner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel shot, abrasives and abrasive products, and cleaning machines and replacement parts thereof*, from Adrian, Mich., to points in the United States (except Alaska and Hawaii). NOTE: Applicant has pending a motor contract carrier application in No. MC 135701 (Sub-No. 1), therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich., or Columbus, Ohio.

No. MC 117565 (Sub-No. 70), filed October 30, 1972. Applicant: MOTOR SERVICE COMPANY, INC., Route 3, Post Office Box 448, Coshocton, OH 43812. Applicant's representative: John R. Hafner (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic polystyrene foam shapes, rolls, sheets, and forms* (except commodities in bulk) from Troy, Ohio, to points in the United States (except Alaska and Hawaii); and (2) *returned, rejected, or damaged shipments* of the commodities described above, from points in the United States to Troy, Ohio. NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus or Cincinnati, Ohio.

No. MC 117589 (Sub-No. 22), filed October 26, 1972. Applicant: PROVISIONERS FROZEN EXPRESS, INC., 2535 Airport Way South, Seattle, WA 98139. Applicant's representative: George R. La Bissoniere, 1424 Washington Building, Seattle, WA 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Canned seafood, vegetables, fruit, and meat products* when moving in vehicles equipped with mechanical refrigeration, from Jersey City and East Brunswick, N.J., and Hanover, Pa., to points in Washington and Oregon; and (2) *frozen human blood plasma*, from Tacoma, Wash., to Los Angeles and San Francisco, Calif. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a

hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 119577 (Sub-No. 20), filed October 27, 1972. Applicant: OTTAWA CARTAGE, INC., Post Office Box 458, Rural Route 3, Ottawa, IL 61530. Applicant's representative: Albert A. Andrin, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, from La Salle County, Ill., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that duplicating authority may be involved with the authority it presently holds in: (1) No. MC 119577 (Sub-No. 2), authorizing transportation of sand from La Salle County, Ill., to points in Indiana, Kentucky, Michigan, Iowa, Missouri, Minnesota, Ohio, and Wisconsin; (2) No. MC 119577 (Sub-No. 17), authorizing transportation of silica sand from Ottawa and Utica, Ill., to points in Pennsylvania, West Virginia, Nebraska, and Kansas; and (3) No. MC 119577 (Sub-No. 19), authorizing transportation of silica sand from Ottawa and Utica, Ill., to points in Arkansas and Oklahoma. Applicant further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119656 (Sub-No. 9), filed October 19, 1972. Applicant: NORTH EXPRESS, INC., 219 East Main Street, Winamac, IN 46996. Applicant's representative: Donald W. Smith, 900 Circle Tower, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Portage, Ind., to points in Illinois, Iowa, Missouri, Kansas, Nebraska, and Arkansas. NOTE: Applicant states that the requested authority can be tacked with its existing authority at Portage, Ind., but indicates that it has no present intention to tack. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119789 (Sub-No. 127), filed November 1, 1972. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188 (1616½ Irving Boulevard), Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the reports in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, and hides), from Morton, Tex., to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Ohio, Indiana, Michigan, Illinois, Delaware, Maryland, Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Alabama, Georgia, Florida, and the District of Columbia: NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Washington, D.C.

No. MC 119789 (Sub-No. 128), filed November 8, 1972. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188 (1612 East Irving Boulevard), Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, canned or preserved (except frozen foods), from Austin, Ind., to points in Texas, Oklahoma, Arkansas, Louisiana, Kansas, and Missouri. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Washington, D.C.

No. MC 120257 (Sub-No. 14) (Amendment), filed May 17, 1972, published in the FEDERAL REGISTER issue if June 22, 1972, and republished as amended this issue. Applicant: K. L. BREEDER & SONS, INC., 401 Alamo Street, Terrell, TX 75160. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe, tubing, pipe fittings, and pipe accessories*, in straight or mixed truckloads, from Lone Star, Tex., and points within 5 miles thereof, to points in Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Mississippi, Oklahoma, Texas and Tennessee. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to redescribe the territory sought. If a hearing is deemed necessary, applicant requests it be held at Dallas or Fort Worth, Tex.

No. MC 120927 (Sub-No. 3), filed October 19, 1972. Applicant: BESTWAY EXPRESS, a corporation, 1112 Key Road, Columbia, SC 29202. Applicant's representative: John H. Caldwell, 914 Washington Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Motion picture films and materials, supplies and equipment* used or useful in a motion picture theater, *newspapers, magazines, periodicals, and other publications;* and *general commodities* (except petroleum products in bulk, in tank vehicles, high explosives and other dangerous commodities, and household goods); (a) between points in Lexington and Richland Counties, S.C., and (b) between points in Lexington and Richland Counties, S.C., on the one hand, and, on the other, points in South Carolina; (2) *general commodities* (except petroleum products in bulk, in tank vehicles, high explosives and other dangerous commodities, and household goods): (a) between points in Charleston County, S.C.; (b) between points in Charleston County, on the one hand, and, on the other, points in South Carolina; (c) between points in Beaufort County, S.C., and (d) between points in Beaufort County, S.C.; on the one hand, and, on the other points in South Carolina. NOTE: Applicant states it seeks herein to convert its present operating authority, as evidenced by its certificates of registration (Nos. MC 120927, Sub-Nos. 1 and 2), to certificates of public convenience and necessity. This conversion is necessitated by a concurrently filed section 212(b) transfer application in MC–FC 74039, pursuant to which applicant seeks to acquire the operating rights of HC&D Lines, Inc., a multistate operator in No. MC 120668 (Sub-Nos. 3 and 4). This conversion application and the concurrently filed transfer application would theoretically permit to a limited extent performance of a through service to and between points not included in this application, however, it does not intend to tack its existing authorities as converted with HC&D's operating authorities. Operations under the combined authorities could, however, result in minimal duplication with respect to transportation between Darlington and Florence Counties and Beaufort and Charleston Counties, S.C. If a hearing is deemed necessary, applicant requests it be held at either Columbia, Charleston, or Beaufort, S.C.

No. MC 123819 (Sub-No. 34), filed October 12, 1972. Applicant: ACE FREIGHT LINE, INC., Post Office Box 2103, Memphis, TN 38102. Applicant's representative: Bill R. Davis, 1208 Gas Light Tower, Atlanta, GA 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in containers, from Baton Rouge, La., to points in Arkansas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Baton Rouge, La., or Memphis, Tenn.

No. MC 124341 (Sub-No. 4), filed October 13, 1972. Applicant: LAWRENCE LAWYER, 757 North Indiana Street, Mooresville, IN 46158. Applicant's representative: Robert C. Smith, 711 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Brick, cinderblocks, tile, clay and clay products, shale and shale products, concrete and concrete products, and materials and supplies* used in the manufacture of brick, between the plantsite of General Shale Products Corp. near Mooresville, Ind., on the one hand, and, on the other, points in Tennessee, Wisconsin, Missouri, and Minnesota; (2) *materials and supplies* used in the manufacture of brick, between the plantsite of General Shale Products Corp. near Mooresville, Ind., on the one hand, and,

on the other, points in Illinois, Ohio, and Kentucky; (3) *brick, cinderblocks, tile, clay and clay products, shale and shale products, concrete and concrete products,* between the plantsite of General Shale Products Corp. near Evansville, Ind., on the one hand, and, on the other, points in Illinois, Missouri, Kentucky, Tennessee, and Ohio; and (4) *brick, cinderblocks, tile, clay and clay products, shale and shale products, concrete and concrete products, and materials and supplies* used in the manufacture of brick, between the plantsite of General Shale Products Corp. near Coral Ridge, Ky., on the one hand, and, on the other, points in Illinois, Missouri, Tennessee, and Ohio. Restriction: Restricted to a continuing contract or contracts, with General Shale Products Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind.

No. MC 125010 (Sub-No. 12), filed October 24, 1972. Applicant: GIBCO MOTOR EXPRESS, INC., 3405 North 33d Street, Terre Haute, IN 47808. Applicant's representative: Warren C. Moberly, 777 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Scrap metal* between Kokomo, Ind., on the one hand, and, on the other, points in Vermilion County, Ill., under contract with Mervis & Sons, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Washington, D.C.

No. MC 126102 (Sub-No. 16), filed October 24, 1972. Applicant: ANDERSON MOTOR LINES, INC., 86 Washington Street, Plainsville, MA 02762. Applicant's representative: Robert G. Parks, 306 Dartmouth Street, Boston, MA 02116. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are sold or used in drugstores, chain, discount, and department stores, and *return shipments of such commodities,* from Walpole, Mass., to points in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, North Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia, under contract with D. W. Jewelry Co., Inc. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Boston, Mass.

No. MC 126844 (Sub-No. 18), filed October 19, 1972. Applicant: R. D. S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Applicant's representative: Jacob P. Billig, 1108 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Canned and bottled foodstuffs,* from Cade and Lozes, La., to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, and West Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 133627 (Sub-No. 4) (Correction), filed September 5, 1972, published in the FEDERAL REGISTER issue of September 28, 1972, and republished this issue. Applicant: COMMON MARKET DISTRIBUTING CORPORATION, 335 West Elwood, Phoenix, AZ 85030. Applicant's representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 312, Phoenix, AZ 85008. Authority sought to operate as a *contract carrier,* by motor vehicle over irregular routes, transporting: *Iron and steel articles* as described in Appendix 5 to the Commission's report in Descriptions in Motor Carrier Certificates, ex parte, MC 45, 61 MCC 209 and 766, from points in California, to points in California, Arizona, New Mexico, Texas Colorado, Nevada, Utah, and Idaho, under a continuing contract, or contracts, with Common Market Trading Corp. at Los Angeles, Calif. NOTE: Application pending in No. MC 136503 for motor common carrier authority suggests that dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of the republication is to indicate that applicant's requested operations will be carried out under a contract, or contracts, with Common Market Trading Corp. of Los Angeles, Calif., which was inadvertently omitted in the previous publication. If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz., or Los Angeles, Calif.

No. MC 133913 (Sub-No. 1), filed October 30, 1972. Applicant: FROST TRUCKING CO., INC., 677 Washington Street, New York, NY 10014. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Books and equipment, materials, and supplies* used in the composition, printing, and binding of books (except commodities in bulk), between points in New York, New Jersey, Massachusetts, Connecticut, and Brattleboro, Vt., and Philadelphia, Pa. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Newark, N.J.

No. MC 134145 (Sub-No. 32), filed October 16, 1972. Applicant: NORTH STAR TRANSPORT, INC., Post Office Box 51, Thief River Falls, MN 56701. Applicant's representative: Robert P. Sack, Post Office Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Phonographs and phonographs and radios combined, tape players, and recorders,* from Rochester, Minn., to points in Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Washington, Wisconsin, and the District of Columbia and (2) *parts, materials, and accessories* used in the manufacture of the above-described commodities, from points in Arkansas, California, Connecticut, Iowa, Illinois, Indiana, Massachusetts, Michigan, New Jersey, Washington, and Wisconsin to Rochester, Minn., under contract with Waters Conley Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis or St. Paul, Minn.

No. MC 134323 (Sub-No. 34), filed October 24, 1972. Applicant: JAY LINES, INC., 720 North Grant Street, Amarillo, TX 79105. Applicant's representative: Gailyn Larson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Compressors, electric motors, and other materials, parts, and supplies* used in the manufacture and production of household appliances, furnaces, air cleaners and conditioners, humidifiers, dehumidifiers, and related items, under contract with Fedders Corp., (1) from Elkton, Md., to Effingham, Ill., Edison, N.J., Buffalo, N.Y., and Herrin, Ill., and (2) from Trenton, N.J., to Effingham, Ill., Buffalo, NY., and Herrin, Ill. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Washington, D.C.

No. MC 134449 (Sub-No. 6), filed October 19, 1972. Applicant: LESTER V. MOZNIK, an individual, 3753 Grandview Highway, Burnaby, BC, Canada. Applicant's representative: Joseph O. Earp, 411 Lyon Building, 607 Third Avenue, Seattle, WA 98104. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Kitchen cabinets, countertops, and parts thereof,* from ports of entry on the international boundary line between the United States and Canada at or near Blaine and Sumas, Wash., Eastport, Idaho, and Sweetgrass, Mont., to points in Oregon, Idaho, Wyoming, Utah, Colorado, Montana, and Washington (except King and Pierce Counties), under a continuing contract, or contracts, with Crestwood Kitchens, Ltd. of Richmond, British Columbia, Canada. NOTE: If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 134599 (Sub-No. 60), filed October 24, 1972. Applicant: INTERSTATE CONTRACT CARRIER CORP., Post Office Box 748, Salt Lake City, UT 84110. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate

as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Rubber, rubber products and equipment, chemicals, materials and supplies* used in the manufacture and production of rubber products except commodities in bulk and except commodities, which because of size or weight, require special handling or special equipment, between North Reading, Medford, and Chicopee Falls, Mass.; Providence and Coventry, R.I., Naugatuck and Sandy Hook, Conn., and Beaver Falls, N.Y., on the one hand, and, on the other, points in Washington, Oregon, California, Nevada, Idaho, Utah, Arizona, Montana, Wyoming, Colorado, New Mexico, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, and Louisiana, under contract with Uniroyal, Inc. NOTE: No duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah, or Lincoln, Nebr.

No. MC 134599 (Sub-No. 61), filed October 26, 1972. Applicant: INTERSTATE CONTRACT CORP., Post Office Box 748, Salt Lake City, UT 84110. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Rubber, rubber products and equipment, chemicals, materials and supplies* used in the manufacture and production of rubber products except commodities in bulk and except commodities which, because of size or weight, require special handling or special equipment, between Philadelphia and Mountain Top, Pa., and Farmville and Scottsville, Va., on the one hand, and, on the other, points in Washington, Oregon, California, Nevada, Idaho, Utah, Arizona, Montana, Wyoming, Colorado, New Mexico, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, and Louisiana, under contract with Uniroyal, Inc. NOTE: No duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah, or Lincoln, Nebr.

No. MC 134599 (Sub-No. 62), filed October 30, 1972. Applicant: INTERSTATE CONTRACT CARRIER CORP., Post Office Box 748, Salt Lake City, UT 84110. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Rubber, rubber products and equipment, chemicals, materials and supplies* used in the manufacture and production of rubber products except commodities in bulk and except commodities which, because of size or weight, require special handling or special equipment, between North Reading, Medford, and Chicopee Falls, Mass., Providence and Coventry, R.I.; Naugatuck and Sandy Hook, Conn., and Beaver Falls, N.Y., on the one hand, and, on the other, points in Tennessee, South Carolina, North Carolina, Mississippi, Alabama, Georgia, and Florida, under contract with Uniroyal, Inc. NOTE: No duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah, or Lincoln, Nebr.

No. MC 134906 (Sub-No. 8), filed October 25, 1972. Applicant: CAPE AIR FREIGHT, INC., Post Office Box 834, Elizabethtown, KY 42701. Applicant's representative: John M. Nader, Post Office Box E, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment, restricted to traffic having an immediately prior or subsequent movement by air, between Outlaw Field, near Clarksville, Tenn., and points in Missouri north of Missouri Highway 136, points in Illinois north of Interstate Highway 80, Iowa, Minnesota, and Wisconsin. NOTE: Applicant seeks no duplicating authority. Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., or Louisville, Ky.

No. MC 135007 (Sub-No. 21), filed October 26, 1972. Applicant: AMERICAN TRANSPORT, INC., 108 East Renfro Circle, Millard, NE. 68137. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New unfinished or semifinished furniture*, from (a) Loveland, Colo., to points in New Mexico and Texas, and (b) from Spangle, Wash., to points in Montana, Utah, and Idaho, under a continuing contract, or contracts, with William Volker & Co. in both (a) and (b) above. NOTE: If a hearing is deemed necessary, applicant requests it be held at San Francisco or Los Angeles, Calif.

No. MC 135007 (Sub-No. 22), filed October 27, 1972. Applicant: AMERICAN TRANSPORT, INC., 108 East Renfro Circle, Millard, NE 68137. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New finished furniture*, from (a) Portland, Oreg., to points in Missouri, Kansas, Nebraska, Idaho, Montana, Colorado, Utah, California, Arizona, New Mexico, Texas, Oklahoma, Washington, and Nevada, and (b) from Tacoma, Wash., to points in California and Oregon, under a continuing contract, or contracts, with William Volker & Co. in parts (a) and (b) above. NOTE: If a hearing is deemed necessary, applicant requests it be held at San Francisco or Los Angeles, Calif.

No. MC 135634 (Sub-No. 3), filed October 20, 1972. Applicant: JOSEPH M. HANEY, SR., doing business as, J. M. HANEY TRUCKING CO., 4754 Mahoning Avenue, Youngstown, OH 44151. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tail and exhaust pipes; tail and exhaust pipe hangers and clamps; brake parts; mufflers; and shock absorbers*, from the plantsite of Midas-International Corp. at Detroit, Mich., to points in Ohio and Erie, Pittsburgh, New Castle, and Beaver Falls, Pa., under a continuing contract with Midas-International Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich.

No. MC 136037 (Sub-No. 1), filed August 25, 1972. Applicant: LEUNING TRUCKING INC., Route 1, Box 323, Zillah, WA 98953. Applicant's representative: Elwood Leuning (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shakes and shingles* from points in Washington to points in California. NOTE: If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg.

No. MC 136545 (Sub-No. 5), filed October 24, 1972. Applicant: NUSSBERGER BROS. TRUCKING CO., INC., Post Office Box 97, Prentice, WI 54556. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul, MN 55114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed*, from Abbotsford, Wis., and New Holstein, Wis., to points in Illinois, Indiana, Iowa, Michigan, Minnesota, and Ohio. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 136646 (Sub-No. 1), filed October 30, 1972. Applicant: DYKSTRA TRANSPORT, INC., 317 Fourth Avenue SE., Sioux Center, Iowa 51250. Applicant's representative: Earl H. Scudder, Jr., Post Office 82028, 605 South 14th Street, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, (1) from Algona, Early, Fort Dodge, Garner, and Spencer, Iowa, to points in Minnesota, and (2) from East Dubuque, Ill., to points in Iowa, Minnesota, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Chicago, Ill.

No. MC 136744 (Amendment), filed May 25, 1972, published in the FEDERAL REGISTER issue of July 7, 1972, and republished as amended, this issue. Applicant: KASHMARK TRUCKING, INC., Box 437, Clinton, MN 56225. Applicant's representative: Robert E. Swanson, 1211 South Sixth Street, Stillwater, MN 55082. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food, food preparations, and foodstuffs*, except fresh or cured meat, between points in Minnesota, and points in North Dakota, South Dakota, Iowa, Nebraska, and Wisconsin, for the Big Stone Canning Co. at Ortonville, Minn. NOTE: Applicant states that the granting of this application will result in an improvement of the environmental qualities that now exist because of the elimination of additional vehicles that are now being operated to perform the same service herein requested. The vehicles which will be used are mechanically more efficient and adaptable to the transportation needs. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 136775 (Sub-No. 1), filed October 16, 1972. Applicant: ERKEL TRANSFER INC., 255 South Cordova, Le Center, MN 56057. Applicant's representatice: John La Framboise, Jr., 480 North Park, Le Center, MN 56057. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precut homes*, from Montgomery, Minn., to points in North Dakota, South Dakota, Iowa, Wisconsin, Michigan, and Illinois, under contract with Martin Homes, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Le Center or Minneapolis, Minn.

No. MC 136777 (Sub-No. 3), filed October 10, 1972. Applicant: POPELKA TRUCKING CO., a corporation, doing business as, THE WAGGONERS, Post Office Box 990, Livingston, MT 59047. Applicant's representative: Jacob P. Billig, 1108 16th Street NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by discount or department stores, from points in Washington, Oregon, and Ohio to points in Montana and Idaho, for the account of Golden Rule Department Stores, Inc. NOTE: Applicant holds common carrier authority under MC 26396 and subs thereunder, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Billings, Mont.

No. MC 136997 (Sub-No. 1), filed October 24, 1972. Applicant: CARDINAL MOVING & STORAGE, INC., 1215 North 23d Street, Wilmington, NC 28401. Applicant's representative: John W. Cockman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Brunswick, New Hanover, Columbus, Pender, Bladen, and Robeson Counties, N.C. Restrictions: The service applied for is to be restricted to the transportation of traffic having a prior or subsequent movement in containers beyond the points above referred to and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating and decontainerization of such traffic. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Wilmington or Raleigh, N.C.

No. MC 138003, filed August 22, 1972. Applicant: ROBERT F. KAZIMOUR, 1200 Norwood Drive SE., Post Office Box 2011, Cedar Rapids, IA 52409. Applicant's representative: Michael J. Myers, 2101 Court Street, Sioux City, IA 51102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Appliances and parts*, from Newton, Webster City, and Fort Dodge, Iowa, to points in Washington, Oregon, California, Utah, Arizona, New Mexico, Texas, Louisiana, Mississippi, Alabama, Georgia, Nevada, and Florida, under contract with the Maytag Co. and the Franklin Manufacturing Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Des Moines, Iowa.

No. MC 138017 (Sub-No. 1), filed September 5, 1972. Applicant: LEONARD CAPONE, doing business as, KELINE TRUCKING COMPANY, Lafayette Avenue, West Berlin, N.J. 08091. Applicant's representative: Robert D. Stair, Sr., 2122 Meeting House Road, Cinnaminson, NJ 08077. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Building materials*, viz, *precast concrete*, in forms and slabs, from the plantsite of Camden Lime Co. at Kresson, N.J., to plant- or jobsites in points in Delaware, New Jersey, New York, and Pennsylvania and (2) *materials*, viz, *steel articles* used in the manufacture of precast concrete, from Philadelphia, Pa., to Kresson, N.J., under contract with Camden Lime Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Philadelphia or Washington, D.C.

No. MC 138027 (Sub-No. 2) (Correction), filed October 20, 1972, and published in the FEDERAL REGISTER issue of November 23, 1972, republished in part, as corrected, this issue. Applicant: BANNER, INC., 1205 South Denver, Tulsa, OK 74119. Applicant's representative: Dean Williamson, 280 National Foundation Life Building, 3535 Northwest 58th Street, Oklahoma City, OK 73112. NOTE: The purpose of this partial republication is to indicate the correct docket number as MC 138027 (Sub-No. 2), in lieu of No. MC 139027 (Sub-No. 2) which was erroneously published. The rest of the application remains as previously published.

No. MC 138042 (Amendment), filed September 12, 1972, published in the FEDERAL REGISTER issues of October 5, 1972, and November 23, 1972, and republished as amended this issue. Applicant: MARK INTERSTATE CARRIERS CO., INC., 58–19 Maspeth Avenue, Maspeth, NY 11378. Applicant's representative: Morris Honig, 150 Broadway, New York, NY 10038. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Shoes*, boxed in cartons, (1) from Jersey City and Secaucus, N.J., and New York, N.Y., to East Farmingdale and Brentwood, N.Y.; (2) from John F. Kennedy International Airport, New York, N.Y., to East Farmingdale and Brentwood, N.Y., restricted to shipments having a prior movement by air; (3) from points in the New York, N.Y., commercial zone, as defined by the Commission in which exempt operations may be conducted, and from Port Newark and Port Elizabeth, N.J., to East Farmingdale and Brentwood, N.Y., restricted to shipments having a prior movement by water; and (4) from East Farmingdale and Brentwood, N.Y., to Alexandria, Va., Greenbelt, Md., Newark, Woodbridge, Wayne, Cherry Hill, and East Brunswick, N.J., and Philadelphia, Springfield, Levittown, and Glen Olden, Pa., under contract with F & M Shoe Corp., New York, N.Y. NOTE: The purpose of this republication is to include Brentwood, N.Y., to the territorial scope of the application. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 138128 (Sub-No. 2), filed October 24, 1972. Applicant: LEMMONS & CO., INC., 535 South Second Street, Boonville, IN 47601. Applicant's representative: Warren C. Moberly, 777 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Coal*, from points in Jefferson and Saline Counties, Ill., to points in Posey, Warrick, and Vanderburgh Counties, Ind.; and (2) *sand and gravel*, from points in White County, Ill., to points in Warrick County, Ind. NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Washington, D.C.

No. MC 138166, filed October 10, 1972. Applicant: DOLPHIN TRANSPORTATION INCORPORATED, 2332 South Peck Road, Whittier, CA 90601. Applicant's representative: Floyd C. Ellis, Suite 757, Roosevelt Building, 727 West Seventh Street, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metals, faucets, plumbing fittings, valves, aircraft landing mats, metal pipe and tubing, aluminum foil, chemicals, scrap metals, waste materials, supplies, machinery, and plant equipment and materials* between points in California NOTE: If a hearing is deemed necessary applicant requests it be held at Los Angeles, Calif.

No. MC 138167 filed October 16, 1972. Applicant: ED'S MOVING & STORAGE CO., INC., 1632 East 26th, Tacoma, WA 98421. Applicant's representative: Ed Scheidt (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between Pierce, King, Snohomish, Thurston, Kitsap, Mason, Lewis, and Grays Harbor Counties, Wash., restricted to shipments having a prior or subsequent movement beyond said points by land, air, or sea in containers and further restricted to pickup and delivery services incidental to and in connection with packing, carting, and containerization, or unpacking, uncrating, and decontainerization of such shipments. NOTE: If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 138170 filed October 2, 1972. Applicant: HARLAN OPPERMAN, an individual, 302 East Eighth Street, Gregory, SD 57533. Applicant's representative: Harlan Opperman (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Crushed rock and rock dust*, from points in Gregory, Tripp, Todd, Millette, Bennett, Washabaugh, Shannon, Fall River, and Custer Counties, S. Dak. and that part of Pennington, Jackson, Jones, and Lyman Counties, S. Dak., which lies south of U.S. Highway 16, to points in Holt, Rock, Boyd, Brown, Keyapaha, Cherry, Sioux, Dawes, Sheridan, and Box Butte Counties, Nebr.; and (2) *sand and gravel* (washed, screened or pit-run), between points in the destinations and origins named in (1) above. NOTE: If a hearing is deemed necessary, applicant requests it be held at Sioux Falls or Pierre, S. Dak.

MOTOR CARRIER OF PASSENGERS

No. MC 15364 (Sub-No. 15), filed October 27, 1972. Applicant: WISCONSIN-MICHIGAN COACHES, INC., 725 Smith Street, Green Bay, WI 54302. Applicant's representative: Rolfe E. Hanson, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in charter operations, beginning and ending at Mount Prospect, Ill., and extending to points in Chippewa County, Wis., restricted to the transportation of passengers who are either Girl Scouts, Girl Scout leaders or advisors, camp counselors or other personnel working at or employed by Girl Scout camps. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Madison, Wis., or Chicago, Ill.

APPLICATION FOR FREIGHT FORWARDER

No. FF-367 (Sub-No. 1) (Four Winds Forwarding, Inc., Extension—Domestic Service), filed November 15, 1972. Applicant: FOUR WINDS FORWARDING, INC., 7035 Convoy Court, San Diego, CA 92138. Applicant's representative: Alan F. Wholstetter, 1700 K Street NW., Washington, DC 20006. Authority sought under section 410, Part IV of the Interstate Commerce Act for an amended permit authorizing operations as a freight forwarder, in the forwarding of *used household goods* and *unaccompanied baggage*, between points in the United States (including Hawaii, but excluding Alaska), without restriction to import-export traffic.

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING HAS BEEN REQUESTED

No. MC 113908 (Sub-No. 241) (Republication), filed October 6, 1972, and published in the FEDERAL REGISTER, issue of November 16, 1972, and republished as clarified this issue. Applicant: ERICKSON TRANSPORT CORP., 2105 East Dale Street, Springfield, MO 65804. Applicant's representative: B. B. Whitehead (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in bulk, in tank and/or hopper type containers and empty tank and hopper type containers, between points in the United States (including Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant respectfully submits that the grant of the instant application will have a beneficial impact on the human environment. The purpose of this republication is to exclude the restriction contained in previous notice of filing.

No. MC 136587 (Sub-No. 5), filed October 30, 1972. Applicant: ALFRED J. WELLER, doing business as, A. J. WELLER, 396 Clarmont, Willowick, OH 44095. Applicant's representative: George S. Maxwell, 526 East Superior Avenue, Cleveland, OH 44114. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Green salted cattle hides and green salted sheep pelts*, from Cleveland, Ohio, to Chicago, Ill.; Fond du Lac and Milwaukee, Wis.; Grand Haven, Mich.; Pownal, Vt.; points in the New York, N.Y., commercial zone and points in the Boston, Mass., commercial zone, under contract with D. E. Rose & Co.

By the Commission.

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

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PART II

DEPARTMENT OF LABOR

Employment Standards Administration

■

COAL MINE HEALTH AND SAFETY

Claims for Black Lung Benefits

Title 20—EMPLOYEES' BENEFITS

Chapter VI—Employment Standards Administration, Department of Labor

SUBCHAPTER B—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, AS AMENDED

PART 725—CLAIMS FOR BLACK LUNG BENEFITS PAYABLE UNDER PART C OF TITLE IV OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT AS AMENDED

Pursuant to authority contained in title IV of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742, 30 U.S.C. 901, et seq., as amended by Public Law 92-303, 86 Stat. 156, entitled the Black Lung Benefits Act of 1972, Chapter VI of Title 20 of the Code of Federal Regulations is hereby amended by adding thereto a new Part 725 as set forth below. The new Part 725 will implement and effectuate provisions of the Act concerning claims subject to the provisions of Part C of Title IV thereof after December 31, 1973 which are filed with the Secretary of Labor for benefits payable under the Act to coal miners and their surviving dependents in cases of a miner's total disability due to pneumoconiosis and in cases of a miner's death due to pneumoconiosis or while totally disabled due to pneumoconiosis.

On September 7, 1972, at 37 F.R. 18152, 18167, public comment was invited, and was later received and considered, concerning the substance of certain proposals under consideration for inclusion in this Part 725. However, with respect to other matter contained in this Part 725 as today adopted, it has not been possible to provide a period for public comment on specific proposals in advance of final adoption of these rules. This is so because the Act requires these rules to be issued in final form not later than November 30, 1972, and requires further that they give effect to provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, a large number of which have been recently amended effective November 26, 1972. Accordingly, I find on the basis of good cause as above set forth that it is impracticable to provide for notice, public procedure, and delayed effective date in accordance with 5 U.S.C. 553. However, notwithstanding this promulgation of the rules in final form the Employment Standards Administration will receive and consider comments submitted before February 1, 1973 on any provisions of these rules and will make such changes as may appear to be warranted through subsequent amendment of the rules. Inasmuch as these rules will not be operative after adoption until the claims to which they apply are filed many months hence, the foregoing provision should provide ample opportunity for persons affected to participate in the formulation of the rules which will actually be effective when claims are filed. Interested persons are accordingly invited to submit written data, views, or arguments concerning the rules in this new Part 725 to the Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, before February 1, 1973.

The new Part 725 reads as follows:

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AUTHORITY: The provisions of this Part 725 issued under Title IV, Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742, 30 U.S.C. 901, et seq., as amended by Public Law 92-3-3, 86 Stat. 156, and pursuant to such Act, under 44 Stat. 1424, 33 U.S.C. 902 et seq., as amended by Public Law 92-576, 86 Stat. 1251.

Subpart A—General

INTRODUCTORY

§ 725.1 Statutory provisions for black lung benefits.

(a) *General.* Title IV of the Federal Coal Mine Health and Safety Act of 1969 as amended by the Black Lung Benefits Act of 1972 provides for the payment of prescribed benefits to coal miners who are totally disabled due to pneumoconiosis and to surviving widows, children, parents, brothers, and sisters as provided in the Act in cases of coal miners who die due to pneumoconiosis or are totally disabled by pneumoconiosis at the time of death, whether or not being paid disability benefits therefor under the Act.

(b) *Benefits under Part B of Title IV of the Act in general.* Part B of Title IV of the Act provides for the determination and the payment by the Federal Government of such benefits to coal miners and their surviving widows and dependents on disability claims filed before January 1, 1974, and on death claims filed before such date or within 6 months of the death of a miner who dies before such date, whichever is the later date. In the case of claims filed before such terminal date, Federal payment of benefits to which entitlement is established under Part B of Title IV of the Act continues beyond such terminal filing date so long as the claimant remains eligible therefor, except in those cases which are subject to special provisions terminating liability for Federal payment of benefits under Part B at the end of the Part B filing period with respect to claims therefor which were not filed before July 1, 1974.

(c) *Transition period benefits under Parts B and C of Title IV.* (1) In the case of claims for benefits under Part B of Title IV of the Act filed after June 30, 1973, and subject to the special provisions mentioned in paragraph (b) of this section, section 415 of Part B provides for the filing of such claims at the places and in the manner provided by joint regulations of the Secretary of Labor and the Secretary of Health, Education, and Welfare (Part 717 of this chapter) and for the transfer of such claims to the Secretary of Labor who is to determine such claims in accordance with the procedures provided in section 415 and regulations promulgated thereunder by the Secretary of Labor after consultation with the Secretary of Health, Education, and Welfare (Parts 715, 718, 720 of this chapter).

(2) Under section 115 of the Act, benefits to which the claimant is determined to be entitled under Part B of Title IV are to be paid by the Secretary of Labor for the period from the filing date to the date of termination of Federal Part B payments as provided in the special provisions mentioned in paragraph (b) of this section. For periods thereafter, liability for continued payment of benefits is placed in the responsible coal mine operators as determined in accordance with Part C of Title IV of the Act and section 422 thereof or, if a workmen's compensation law of a State is found by the Secretary to provide adequate coverage for pneumoconiosis, under such workmen's compensation law as provided in section 421 of Part C. (The Department has determined, pending an opinion by the Attorney General as to the meaning of section 422(e) of the Act, that the Federal Government shall be required to pay all benefits to which an individual is entitled for any period subsequent to December 31, 1971, provided that a claim for benefits has been filed with the Department prior to January 1, 1982). For any periods after December 31, 1973, when the payment

by a responsible operator of benefits to which the claimant is found entitled pursuant to section 415 of the Act is not assured, or the payment of equivalent or greater benefits under an applicable State workmen's compensation law is not assured, the Secretary of Labor is to make benefit payments from Federal funds pursuant to the provisions of section 415 of Part B and section 424 of Part C as appropriate.

(3) These provisions are intended to assure the uninterrupted receipt of benefits by claimants filing therefor on or after July 1, 1973 during the period of transition from full Federal liability for benefits under Part B of Title IV to mine operators' liability under Part C or under adequate State workmen's compensation laws identified as provided in Part C.

(d) Part C of Title IV of the Act, the provisions of which are implemented by this Part 725, makes provision for payment of pneumoconiosis disability and death claims filed on or after January 1, 1974. Under the provisions of Part C, in States having a workmen's compensation law meeting the criteria set forth in Part 722 of this subchapter, such claims are to be filed pursuant to such State law. In periods when no such law is applicable, the Secretary of Labor is charged with administering a program following the provisions of the Longshoremen's and Harbor Workers' Compensation Act under which responsibility for payment of pneumoconiosis benefits is placed upon operators of coal mines in which the miners who contracted pneumoconiosis were employed. Benefit payments by the Secretary of Labor are made in cases where payments to which a claimant is entitled are not available from the sources specified.

§ 725.2 Purpose and scope of this part.

(a) This Part 725 sets forth the rules applicable to the filing of claims for black lung benefits with the Secretary of Labor after December 30, 1973, and the rules for processing, determining and adjudicating, and paying benefits pursuant to Part C of Title IV of the Act as amended, with respect to black lung claims filed by any eligible miner, widow, child, parent, brother or sister.

(b) This subpart A describes generally the statutory framework governing the manner in which claims filed between January 1, 1974 and December 30, 1981 are to be processed and paid, as well as the applicability of other related parts contained in this subchapter to such claims.

(c) Subpart B of this part prescribes the procedure by which an individual claimant shall file his claim for black lung benefits with the Secretary of Labor after December 31, 1973, and sets forth the rules for the preliminary processing of claims for such benefits.

(d) Subpart C of this part sets forth the relationship and dependency requirements for widows, children, parents, brothers, and sisters and relationship and dependency requirements which affect the amount of benefits to which any miner and/or widow is entitled.

(e) Subpart D of this part prescribes the criteria and procedures which shall be followed by the Secretary of Labor in determining the identity and establishing the liability of any coal operators responsible under Title IV of the Act for the payment of black lung benefits after December 31, 1973.

(f) Subpart E of this part sets forth the rules which shall be applied by the Secretary of Labor in the determination and adjudication of claims for black lung benefits pursuant to Part C of Title IV of the Act.

(g) Subpart F of this part sets forth the rules under which the Secretary of Labor shall provide for payment of benefits to eligible claimants determined to be entitled thereto pursuant to the procedures enumerated in subpart E of this part.

APPLICABILITY OF OTHER PARTS IN THIS SUBCHAPTER B

§ 725.5 Applicability of Part 715 of this chapter.

All of the matter contained in Part 715 of this chapter pertaining to general definitions and use of terms as well as the public disclosure of program information and records is fully applicable to this Part 725 (see §§ 715.101, 715.301 of this chapter). As noted in Part 715 of this chapter, the matter therein subsumed under the center heading "Benefits Provided by the Act and Eligibility Therefor" is applicable to Part C claims.

§ 725.6 Inapplicability of 20 CFR Part 717.

Part 717 of this chapter is a joint regulation promulgated by the Secretary of Health, Education, and Welfare and the Secretary of Labor which sets out the procedure for filing claims for black lung benefits in the transition period during which the primary Federal responsibility for the administration of new claims under the Act is transferred from the Secretary of Health, Education, and Welfare to the Secretary of Labor. The procedures for filing claims contained in Part 717 of this chapter are applicable only to that transition period and are not applicable to claims filed with the Secretary of Labor after December 31, 1973 under Part C of Title IV of the Act.

§ 725.7 Applicability of Part 718 of this chapter.

(a) Part 718 of this chapter incorporates in this subchapter B the applicable medical standards and presumptions promulgated by the Secretary of Health, Education, and Welfare for determining whether a coal miner's total disability or death was due to pneumoconiosis or whether a coal miner was totally disabled by pneumoconiosis at the time of his death. Section 422(h) of Part C of Title IV of the Act makes these standards applicable to claims filed with the Secretary of Labor for benefits under Part C.

(b) The medical standards and presumptions incorporated by Part 718 of this chapter are, therefore, applicable to all claims filed for black lung benefits which must be determined pursuant to this Part 725, except that for the purpose of determining the applicability of the presumption established by section 411 (c)(4) of the Act to claims filed under Part C of Title IV of the Act, section 430 of the Act provides no period of employment after June 30, 1971, shall be considered in determining whether a miner was employed for at least 15 years in one or more underground mines.

§ 725.8 Inapplicability of Part 720 of this chapter.

Part 720 of this chapter sets out the procedures for processing, determining and adjudicating claims and paying benefits in respect to the Secretary of Labor's responsibility for administering the provisions of section 415 of Part B of Title IV of the Act. No section of that Part 720 is incorporated by reference in this Part 725. Part 720 of this chapter relates exclusively to the transition period claims to be determined by the Secretary as provided in section 415 of the Act and is inapplicable to any new claims filed after December 31, 1973, which are to be processed, adjudicated, and paid pursuant to subparts A–F of this Part 725.

§ 725.9 Applicability of Part 726 of this chapter.

Part 726 of this chapter relates to the criteria to be used by the Secretary of Labor in determining whether a coal mine operator in appropriate circumstances has taken the necessary steps to comply with insurance requirements which section 423 of Title IV of the Act prescribes for securing the payment of black lung benefits by qualifying as a self-insurer or contracting with an authorized insurance carrier. Part 726 of this chapter is applicable to this Part 725 insofar as it affects the responsibility of coal operators to fulfill their obligations under Title IV of the Act.

Subpart B—Filing and Preliminary Processing of Claims

GENERAL

§ 725.101 Scope and applicability of this subpart.

All claims for black lung benefits filed on or after January 1, 1974, under Part C of Title IV of the Act (except claims within the purview of a workmen's compensation law of a State listed in § 722.401 of this subchapter) shall be filed and preliminarily processed pursuant to the provisions of this subpart. This subpart does not apply to the filing of claims for black lung benefits under Part B of Title IV, or to any claims filed before January 1, 1974. Claims filed prior to July 1, 1973, under Part B of Title IV shall be filed within the Social Security Administration pursuant to the provisions of Part 410 of this title. Claims filed on or after July 1, 1973, under section 415 of Part B of Title IV shall be filed pursuant to Part 717 of this Subchapter B.

WHO MAY FILE CLAIMS

§ 725.111 Who may execute a claim.

The Office of Workmen's Compensation Programs (OWCP) determines who is the proper party to execute a claim in accordance with the following rules:

(a) If the claimant has attained the age of 18, is mentally competent, and is physically able to execute the claim, the claim shall be executed by him. Where, however, paragraph (d) of this section applies, the claim may also be executed by the claimant's legal guardian, committee, or other representative.

(b) If the claimant is between the ages of 16 and 18, is mentally competent, has no legally appointed guardian, committee, or other representative, and is not in the care of any person, such claimant may execute the claim upon filing a statement on the prescribed form indicating capacity to act on his own behalf.

(c) If the claimant is mentally competent but has not attained age 18 and is in the care of a person, the claim may be executed by such person.

(d) If the claimant (regardless of his age) has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or representative.

(e) If the claimant (regardless of his age) is mentally incompetent or is physically unable to execute the claim, it may be executed by the person who has the claimant in his care or by a legally appointed guardian, committee, or other representative.

(f) Where the claimant is in the care of an institution and is not mentally competent or physically able to execute a claim, the manager or principal officer of such institution may execute the claim.

(g) For good cause shown, the Office may accept a claim executed by a person other than one described in paragraph (a), (b), (c), (d), (e), or (f) of this section.

§ 725.112 Evidence of authority to execute a claim on behalf of another.

Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, submit evidence of his authority to execute the claim on behalf of such claimant in accordance with the following rules:

(a) If the person executing the claim is the legally appointed guardian, committee, or other legal representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(b) If the person executing the claim is not such a legal representative, the evidence shall be a statement describing his relationship to the claimant, the extent to which he has the care of such claimant, or his position as an officer of the institution of which the claimant is an inmate. The Office may, at any time, require additional evidence to establish the authority of any such person.

§ 725.113 Claimant must be alive when claim is filed.

For a claim to be effective, the claimant must be alive at the time the claim is filed with the Office.

FILING OF CLAIMS

§ 725.121 Claims forms.

(a) Claims shall be filed on approved forms and in accordance with instructions (provided thereon or attached thereto) as are prescribed by the Office of Workmen's Compensation Programs (OWCP).

(b) The forms for filing claims after December 31, 1973, for benefits under Part C of Title IV of the Act and the regulations in this part are CM–903 (Coal Miner's Claim for Benefits), CM–903A (Widow's Claim for Benefits), CM–903B (Dependent Survivor's Claim for Benefits), and CM–904 (Medical Report—Pneumoconiosis). These forms will be made generally available to the public at all OWCP offices throughout the coal mining regions and in Washington, D.C.

§ 725.122 Inquiry and assistance.

(a) *Information requests.* Inquiries or requests concerning claims and claims forms may be made by any individual by mail or in person to any of the field offices of the Office of Workmen's Compensation Programs (OWCP) which are located in various cities throughout the coal mining regions of the United States and in Washington, D.C. When appropriate, in response to inquiries or requests the Office shall tender to prospective claimants explanations of eligibility under the Act, of statutory requirements concerning disability and death claims, and of procedures for filing and processing of claims.

(b) *Assistance in the preparation of claims forms.* The OWCP will assist claimants, if necessary, in completing their claims forms, including the listing of information required to establish previous periods of a miner's coal mine employment and to determine which of these periods of employment were spent in the service of any particular coal mine operator. The OWCP will also assist claimants in securing other evidence necessary to support their claims.

(c) *Development of employment history.* Designated officials of the OWCP will assist any claimant in establishing a chronological employment history from the date of the last employment in a coal mine. Such development entails the acquisition of such facts as are necessary to identify the dates of employment with each coal mine operator with whom a disabled or deceased miner was employed. It shall not be necessary to secure documentary evidence to support a claimant's allegations in respect to these periods of employment. If, however, a claimant desires to utilize the medical presumption prescribed in section 411(c)(4) of Part B of Title IV of the Act and section 422(f)(2) of Part C of Title IV of the Act, documentary evidence of coal mine employment during the 15-year period must be obtained. No period of employment after June 30, 1971 may be considered as part of such 15-year period. The Office will assist any claimant in obtaining the necessary evidence required to establish a right to utilize this presumption (see also Part 718 of this Subchapter B).

§ 725.123 Place of filing claim.

Claims for benefits under Part C of Title IV of the Act and this Part 725 may be delivered, mailed, or otherwise presented for filing at any of the various offices of the Office of Workmen's Compensation Programs, throughout the coal mining regions of the United States or in Washington, D.C.

§ 725.124 Time limits for filing claim.

(a) Every claim for benefits filed under this part must be filed within 3 years of the discovery of total disability due to pneumoconiosis or, in the case of death due to pneumoconiosis, within 3 years of the date of such death.

(b) Any claim for benefits in the case of a disabled miner filed under Part C of Title IV of the Act and this Part 725 on the basis of eligibility under section 411(c)(4) of Part B of Title IV of the Act, must be filed within 3 years from the date of last exposed employment in a coal mine or, in the case of death from a respiratory or pulmonary impairment for which benefits would be payable under section 411(c)(4), incurred as a result of employment in a coal mine, such claim must be filed within 15 years from the date of last exposed employment in a coal mine.

(c) The time limitations described in paragraphs (a) and (b) of this section are mandatory and may not be waived or otherwise avoided for any reason.

§ 725.125 When a claim is considered to have been filed; time of filing claim.

(a) *Date of receipt.* (1) Except as otherwise provided in this section, for the purposes of determining when a claim has been filed within the meaning of Part C of Title IV of the Act, a claim is considered to have been filed only as of the date it is received at an office of the Office of Workmen's Compensation Programs or by an employee of the Office who is authorized to receive such claims.

(2) Claims submitted to any other agency or subdivision of the United States Government shall be forwarded promptly to an office of the OWCP. Such a claim shall be deemed filed with the OWCP as of the date it was received by the other governmental unit.

(3) Claims by or on behalf of a claimant residing outside the United States, submitted to an office maintained by the Foreign Service of the United States, shall be considered to have been filed with the OWCP as of the date it is received at such office of the Foreign Service.

(b) *Date of mailing.* If the claim is deposited in and transmitted by the United States mail and the fixing of the date

of delivery as the date of filing would result in a loss or impairment of benefit rights, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence may be used to establish the mailing date.

(c) *Prospective filing of a claim.* A claim which is filed before the first month in which the claimant meets the requirements for entitlement to benefits is a valid claim only if the claimant meets such requirements before a final decision on his claim is made. Such a claim is deemed to have been filed on the first day such requirements are met.

(d) *Abandoned claims.* A claim considered an abandoned claim pursuant to § 725.415 shall, if once again pursued by the same claimant at a later date, be considered filed for purposes of § 725.124 as of the date the claim which was abandoned was filed.

§ 725.126 When a written statement is considered a claim.

(a) *Written statement filed by claimant on his own behalf.* Where an individual files a written statement which indicates an intention to claim benefits and such statement bears his signature or his mark properly witnessed, the filing of such written statement shall be considered to be the filing of a claim for benefits, provided that:

(1) The claimant or a proper person on his behalf (see § 725.111) executes a prescribed claims form (see § 725.121) that is filed with the Office during the claimant's lifetime and within the period prescribed in paragraph (c)(1) of this section; or

(2) In the case of a claimant who dies prior to the filing of such prescribed claims forms within the period prescribed in paragraph (c)(1) of this section, a prescribed claims form is filed with the Office within the period prescribed in paragraph (c)(2) of this section by a person acting on behalf of the deceased claimant's estate.

(b) *Written statement filed by an individual on behalf of another.* A written statement filed by an individual which indicates an intention to claim benefits on behalf of another person shall, unless otherwise indicated thereon, be considered to be the filing of a claim for such purposes, provided that:

(1) The written statement bears the signature (or mark properly witnessed) of the individual filing the statement; and

(2) The individual filing the statement is the claimant on whose behalf the statement is being filed, or a proper person to execute a claim on behalf of the claimant; and

(3) A prescribed claims form (see § 725.121) is executed and filed in accordance with the provisions of paragraph (c)(1) of this section.

(c) *Period within which prescribed claims forms must be filed.* After the OWCP has received from an individual a written statement as described in paragraph (a) or (b) of this section:

(1) Notice in writing shall be sent to the claimant or to the individual who filed the written statement on his behalf, stating that an initial determination will be made with respect to such written statement if a prescribed claims form executed by the claimant or by a proper party on his behalf is filed with the OWCP within 6 months from the date of such notice; or

(2) If notice is received that the death of such claimant occurred before the mailing of the notice described in subparagraph (1) of this paragraph, or within the 6-month period following the mailing of such notice but before the filing of a prescribed claims form by or on behalf of such individual, notification in writing shall be sent a person acting on behalf of his estate, or to the deceased's last known address. Such notification will include information that an initial determination with respect to such written statement will be made only if a prescribed claims form is filed within 6 months from the date of such notification.

(3) If, after the notice as described in this paragraph (c) has been sent, a prescribed claims form is not filed (in accordance with the provisions of paragraph (a) or (b) of this section) within the applicable period prescribed in subparagraph (1) or (2) of this paragraph, it will be deemed that the filing of the written statement to which such notice refers is not to be considered the filing of a claim for the purposes set forth in paragraphs (a) and (b) of this section.

§ 725.127 Withdrawal of a claim.

(a) *Before adjudication of claim.* A claimant (or an individual who is authorized to execute a claim on his behalf under § 725.111), may withdraw his previously filed claim provided that:

(1) He files a written request for withdrawal;

(2) The claimant is alive at the time his request for withdrawal is filed;

(3) The OWCP approves the request for withdrawal; and

(4) The request for withdrawal is filed on or before the date the Office makes a determination on the claim.

(b) *After adjudication of claim.* A claim for benefits may be withdrawn by a written request filed after the date the OWCP makes a determination on the claim, provided that:

(1) The conditions enumerated in paragraphs (a)(1) through (3) of this section are met; and

(2) There is repayment of the amount of benefits previously paid because of the claim that is being withdrawn or it can be established to the satisfaction of the Office that repayment of any such amount is assured.

(c) *Effect of withdrawal of claim.* Where a request for withdrawal of a claim is filed and such request for withdrawal is approved by the Office, such claim will be deemed not to have been filed. After the withdrawal (where made before or after the date the Office makes a determination) further action will be taken by the Office only upon the filing of a new claim, except as provided in § 725.128.

§ 725.128 Cancellation of a request for withdrawal.

Before or after a written request for withdrawal has been approved by the Office, the claimant (or a person who is authorized under § 725.111 to execute a claim on his behalf) may request that the request for withdrawal be canceled and that the withdrawn claim be reinstated. Such request for cancellation must be in writing and must be filed, in a case where the requested withdrawal was approved by the Office, no later than 60 days after such approval. The claimant must be alive at the time the request for cancellation of the request for withdrawal is filed with the Office.

§ 725.129 Requests and notices to be in writing.

Any request for a determination or a decision relating to an individual's right to benefits, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for, by, or pursuant to this part, shall be in writing and shall be signed by the person authorized to execute a claim under § 725.111.

PREPARATION AND FILING OF CLAIM FOR ADJUDICATION

§ 725.131 Action to be taken by the OWCP—General.

(a) When a claim filed pursuant to the provisions of this Subpart B has been received by the OWCP it shall be examined together with the supporting evidence transmitted with respect thereto. The Office shall promptly take such further action as may be necessary to assure that sufficient information, medical evidence, employment history, and properly executed claims forms have been submitted and that the claim is complete and ready for adjudication.

(b) At such time as all information required has been completed, a case file including the claims forms and supporting documents shall be established and filed with a deputy commissioner, who shall take such further action as may be necessary for determination and disposition of the claim. (See § 725.135.) In the following sections the action to be taken in circumstances described therein is set forth in more detail.

§ 725.132 Development of evidence—General.

(a) *Employment history.* The claimant shall furnish a complete and detailed history of the miner's coal mine employment which is pertinent to the claimant's eligibility for benefits and to the liability of any coal mine operator for payment of the benefits.

(b) *Matters of record.* In appropriate cases it shall be necessary to develop evidence pertaining to or obtain proof of

age, marriage, or termination of marriage, death, relationship of parent and child, other relationship or dependence, or any other fact which may be proven as a matter of public record. (For substantive requirements as to relationship and dependency see Subpart C of this part.) Evidence pertaining to these matters shall be obtained by the claimant and submitted to an office of the OWCP. For purposes of claims under this part, the Office and the deputy commissioner may require this evidence to be submitted in such manner as would be acceptable for Social Security Act benefit applications under the regulations of the Social Security Administration (see § 410.240(g) of this title).

(c) *Documentary evidence.* In developing documentary evidence as to any matter, the "best evidence rule" shall be applicable. This rule requires that the original document or a certified copy thereof must be produced if available. Secondary evidence in this regard may only be used in those cases where the original document is unaccounted for and an adequate explanation is given as to why it cannot be produced.

(d) *Certification of evidentiary documents.* In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of any such record or by an employee of the Office authorized to make certifications of any such evidence.

(e) *Evidence of miner's death due to or while disabled by pneumoconiosis.* Any reliable and probative evidence shall be admissible as part of the case record if such evidence supports a claimant's allegation that the death of the miner on whose death a claim is predicated was due to pneumoconiosis or that such miner was totally disabled by pneumoconiosis at the time of his death.

(f) *Insufficient evidence of eligibility.* Whenever a claimant for benefits has submitted no evidence or insufficient evidence of eligibility, the Office will inform the claimant what evidence is necessary for a determination of eligibility and will request him to submit such evidence within a specified reasonable time which may be extended for a further reasonable time upon the claimant's request. The claimant's failure to submit such evidence as requested shall be a basis for determining that the conditions of eligibility concerning which such evidence was requested have not been met.

§ 725.133 Action to be taken by the OWCP—Miner's claim.

(a) Upon receipt of a completed medical report form CM–904, the Office shall tentatively determine whether the medical evidence of record indicates an impairment for which benefits may be paid as determined with reference to standards promulgated by the Secretary of Health, Education, and Welfare as Subpart D of Part 410 of this title (see Part 718 of this subchapter, which incorporates these standards).

(b) If it appears that the claimant may be considered disabled in accordance with the standards published in Subpart D of Part 410 of this title, then the claim shall be prepared for such further action by the deputy commissioner, as provided in § 725.135, as may be appropriate, including consideration of the receipt of any additional medical evidence developed and obtained pursuant to §725.137 or § 725.139 and the notification and reply of any possibly responsible operator as provided in §§ 725.151 and 725.152.

(c) In cases where the medical evidence received by the Office in respect to any claim does not indicate an impairment sufficient under such Department of Health, Education, and Welfare medical criteria (see Part 718 of this subchapter) to support a claim for benefits, the claimant will be advised of the deficiency in his claim and invited to submit any additional medical evidence. Any additional reasonably necessary medical evidence shall be secured at the Department's expense or at the expense of the operator or carrier as the case may be (see §§ 725.137, 725.139).

(d) In the event that the medical evidence received by the Office pursuant to this subpart does not provide credible support for the miner's claim for benefits, any further evidentiary investigations shall be discontinued until further notice.

(e) If a miner whose claim is not considered to be supported by the medical evidence of record desires a determination thereon of the issue of his disability under the standards set forth in Subpart D of Part 410 of this title, the claim will be made ready for action by the deputy commissioner and a hearing or informal conference may be arranged pursuant to Subpart E of this part.

§ 725.134 Action to be taken by the OWCP—widows' or dependent survivor's claim.

(a) Upon receipt of a completed claims form CM–903A or CM–903B, the Office shall tentatively determine whether the evidence of record indicates that the deceased miner's death was due to pneumoconiosis or that the miner was totally disabled by pneumoconiosis at the time of his death. Such determination shall be made with reference to the standards promulgated by the Secretary of Health, Education, and Welfare contained in Subpart D of Part 410 of this title (see Part 718 of this subchapter which incorporates these standards).

(b) The Office shall also determine whether the evidence of record supports the claimant's allegation that he meets the relationship and dependency requirements for eligibility contained in Subpart C of this Part 725.

(c) If it appears that the conditions existing when the miner's death occurred satisfy the medical standards and the relationship and dependency conditions referred to in paragraph (a) and (b) of this section, then the claim shall be prepared for such further action by the deputy commissioner, as provided in § 725.135, as may be appropriate, including consideration of the receipt of any additional evidence developed and obtained pursuant to § 725.132(e) and the notification and reply of any possibly responsible operator as provided in §§ 725.151 and 725.152.

(d) In cases where the medical evidence received by the Office in respect to any claim does not indicate that the circumstances of a miner's death are sufficient under such Department of Health, Education, and Welfare medical criteria (see Part 718 of this subchapter) to support a claim for benefits, the claimant will be advised of the deficiency in his claim and invited to submit any additional medical evidence. Any additional reasonably necessary medical evidence or other documentary evidence shall be secured at the Department's, or the operator's or carrier's expense as the case may be (see § 725.141).

(e) In the event that the evidence received by the Office pursuant to this subpart does not provide credible support for the survivor's claim for benefits, any further evidentiary investigations shall be discontinued until further notice.

(f) If a survivor whose claim is not considered to be supported by the evidence desires a determination thereon of the issues of the miner's death or the sufficiency of his relationship or dependency, the claim will be made ready for filing with the deputy commissioner and filed with him as provided in § 725.131. Thereafter a hearing or informal conference may be arranged pursuant to Subpart E of this part.

§ 725.135 Procedure on filing of claim with deputy commissioner.

The deputy commissioner shall, after the filing of a claim with him as provided in §§ 725.131, 725.133, or 725.134, review the case file and, if he is satisfied that the claim is one within the jurisdiction of the Secretary of Labor under section 422 of the Act, shall proceed to make a tentative determination of the identity of any responsible coal mine operator pursuant to the criteria set forth in Subpart D of this Part 725, insure that any such operator is notified as provided in § 725.151, and take any other action he deems necessary to prepare the claim for adjudication or other final disposition. The deputy commissioner may require such further development of evidence and may cause to be made such investigations as he considers necessary in respect to the claim, and take other action as authorized under Subpart E of this part, following, to the extent appropriate, the procedures provided in section 19 of the Longshoremen's and Harbor Workers' Compensation Act as amended (44 Stat. 1424, 33 U.S.C. 919, as amended by section 14 of Public Law 92–576).

§ 725.136 Referral to State agency.

If the deputy commissioner determines that the claim is one subject to adjudication by a State agency of a State having

a workmen's compensation law which provides black lung benefits and has been listed in Part 722 of this chapter as a law meeting the criteria of the Secretary of Labor prescribed pursuant to section 421 of Part C of Title IV of the Act, the deputy commissioner shall advise the claimant of such determination and of the Act's requirement that under such circumstances his claim for benefits must be filed under the applicable State workmen's compensation law. In such a case, evidence submitted to the OWCP in support of the claim including claims forms, will be forwarded to the appropriate State compensation agency. The claimant's case will then be closed.

§ 725.137 Medical evidence—notified operator.

(a) An operator who has been notified of his potential liability on a miner's claim pursuant to § 725.151 shall within 20 days of the receipt of such notice tender to the miner-claimant a list of physicians practicing in the vicinity of the miner's residence designated and approved by the Secretary to conduct examinations in connection with the black lung benefits program.

(b) The miner shall select a physician from such list and notify the office promptly of his selection.

(c) The deputy commissioner will promptly arrange for a medical examination to be conducted, after appropriate notification to the parties in interest, at a time and place convenient to both the miner and the approved physician and as soon as is practicable.

(d) The designated physician will complete an examination of the miner to determine the nature and extent of that miner's impairment, enter his findings on form CM–904 pursuant to the instructions on the form, and transmit the form within 20 days from the date of the examination to the office of the OWCP which is processing the claim.

(e) The bill for the physician's services shall be remitted to the operator or carrier allegedly liable for the payment of benefits in respect to the claim.

(f) Paragraphs (b), (c), (d), and (e) of § 725.139 shall apply with respect to examinations conducted pursuant to the provisions of this section.

§ 725.138 Medical evidence—no responsible operator.

(a) In cases of miners' claims where no responsible operator has been identified or notified the Office shall provide the miner-claimant with a list of previously designated and approved physicians from among whom the miner shall select a physician to examine him with respect to his black lung claim. The miner shall promptly notify the Office of his selection.

(b) The deputy commissioner will arrange for the examination to be conducted at a time and place convenient to both the miner and the approved physician and as soon as is practicable, after notice to the parties in interest.

(c) The designated physician will complete an examination of the miner to determine the nature and extent of that miner's impairment, enter his findings on form CM–904 pursuant to the instructions on the form and transmit the form together with the physician's bill for services directly to the office of the OWCP which is processing the claim.

(d) Proceedings shall be suspended and no benefits shall be payable for any period during which the miner may refuse to submit to examination.

§ 725.139 Additional medical evidence.

(a) *Report of examination by physician.* In the event that medical questions are raised at any time in any case of a miner's claim for benefits, the deputy commissioner may cause the claimant to be examined by a physician employed or selected by the office and may obtain from such physician a report containing his estimate of the miner's disability and such information as may be appropriate. Any party in interest (see § 725.403) who is dissatisfied with such report may request a review or reexamination of the miner by one or more different physicians employed or selected by the Secretary. The deputy commissioner shall order such review or reexamination unless he finds that it is clearly unwarranted. Such review or reexamination shall be completed within 2 weeks from the date ordered unless the deputy commissioner finds that because of extraordinary circumstances a longer period is required.

(b) *Conduct of examination.* No other physician selected by the operator, his insurance carrier, or the miner shall be present at or participate in any manner in such examination, nor shall conclusions of such physicians as to the nature or extent of impairment or the cause of impairment be available to the examining physician unless otherwise ordered, for good cause, by the deputy commissioner. Such operator or carrier shall, upon request, be entitled to have the miner examined immediately thereafter and upon the same premises by a qualified physician or physicians in the presence of such physician as the miner may select, if any.

(c) *Submittal to examination at place designated.* The miner shall submit to a physical examination under paragraph (a) of this chapter at such place as the deputy commissioner may require. The place, or places, shall be designated by the deputy commissioner and shall be reasonably convenient for the miner. Proceedings shall be suspended and no benefits shall be payable for any period during which the miner may refuse to submit to examination.

(d) *Examination by disinterested physician.* Unless the parties in interest agree the Office shall not employ or select any physician for the purpose of making examinations or reviews under paragraph (a) of this section who, during such employment, or during the period of 2 years prior to such employment, has been employed by, or accepted or participated in any fee relating to a workmen's compensation claim from any insurance carrier or any self-insurer.

(e) *Payment for examination.* The deputy commissioner shall have the power in his discretion to charge the cost of examination or review under this section to the notified operator, if he is a self-insurer, or to the operator's insurance carrier, or if there is no responsible operator, to the Office.

§ 725.140 Fees for medical services.

(a) All fees and other charges for medical examinations, treatment or service shall be limited to such charges as prevail in the same community for such treatment.

(b) Any complaint concerning a physician's fee shall be directed to the Office of Workmen's Compensation Programs in Washington, D.C.

(c) The office shall investigate the complaint or may on its own initiative investigate a fee and where appropriate inform a physician that his fee is in excess of the permissible amount for the services performed. The physician may then adjust his fee to within the permissible limits or contest the determination of the office. In the event that the fee is contested, a physician may request a hearing pursuant to subpart E of this part.

(d) Any physician who refuses to obey a final decision and order concerning his fee or refuses to adjust his fee pursuant to paragraph (c) of this section within 30 days from the date he is notified that his fee is in excess of a permissible amount, shall forthwith be removed from the Secretary's list of approved physicians and shall not otherwise be authorized to conduct black lung examinations or treatments. No subsequent treatments or examinations conducted by a physician barred under this section shall be reimbursable medical expenses pursuant to § 725.141 and no debarred physician shall be reinstated on the Secretary's list until such time as the physician affirmatively demonstrates that he shall adjust his fees to within permissible levels.

§ 725.141 Reimbursement for reasonable expenses in obtaining medical evidence.

(a) Claimants for benefits under this part shall be reimbursed promptly by the Office of Workmen's Compensation programs or the responsible operator or his insurance carrier for reasonable medical expenses incurred by them for services from medical sources of their choice in establishing their claims, including the reasonable and necessary cost of travel incident thereto. A medical expense generally is not "reasonable" when the medical evidence for which the expense was incurred is of no value in the adjudication of a claim. Medical evidence will be considered to be of "no value" when, for instance, it is wholly duplicative or when it is wholly extraneous to the medical issue of whether the claimant is disabled or, in the case of death claims, whether the miner's death occurred due to pneumoconiosis or while totally disabled therefrom. In order to minimize inconvenience and expense to the claimant,

he should not generally incur any medical expense for which he intends to claim reimbursement without first contacting the office to determine what types of evidence not already available may be useful in adjudicating his claim, what types of medical evidence may be reimbursable, and what would constitute a "reasonable medical expense" in a given case. However, a claimant's failure to contact the office before the expense is incurred will not preclude the office from later approving reimbursement for any reasonable medical expense. Where a reasonable expense for medical evidence is ascertained, the office in appropriate cases may authorize direct payment to the provider of such evidence.

(b) Medical services required for the processing of claims and those to which a miner-beneficiary is entitled under the Act shall be considered "benefits" provided by the Act and the failure to reimburse a claimant for his medical expenses within the specified time period shall subject an operator or carrier to the additional benefits provisions of §§ 725.333—725.334.

NOTIFICATION OF OPERATORS

§ 725.151 Notice of claim and issue of liability.

(a) Before a claim for benefits under Title IV of the Act is filed with a deputy commissioner for determination, the Office will have ascertained, to the extent possible, the identity of any coal mine operators whose liability as responsible operators for payment of benefits to the claimant for any month or months after December 31, 1973 may be established by the evidence submitted or obtained in connection with the claim. From the information in the case file the deputy commissioner will then make his tentative determination as to whether there are any such operators and, if there are, which operator or operators should be alleged to have such liability. (See §§ 725.131, 725.135.) Each such operator will promptly thereafter be notified of the pending claim filed with the deputy commissioner and of the fact that his liability for payment of such benefits will be one of the issues to be resolved in the determination of the claim. Such notification will include copies of the claimant's completed claim form and of the pertinent medical evaluation reports, with a cover letter informing the operator of the nature of the evidence relied on by the Office to support, prima facie, a determination that the operator is liable for payment of benefits to the claimant. Also included if the claimant is a miner will be a list of approved physicians for transmittal by the operator to the miner-claimant as provided in § 725.137. The notification shall advise the operator that a response to the notice as provided in § 725.152 shall be made as soon as possible and that in the event of a failure to respond within 20 days from the date of mailing of the notice the Office will proceed to the final determination of the claim.

(b) The notification described in paragraph (a) of this section shall be made by certified mail, with proof of delivery requested.

§ 725.152 Operator's response to notification.

(a) Within the 20-day period described in § 725.151 a notified coal mine operator shall respond to the notice as provided in the following paragraphs.

(b) If the operator does not contest the claim or his liability under the Act for payment of benefits to which the claimant may be found entitled for any month or months after December 31, 1973, he shall so state either:

(1) By letter mailed to the Office of Workmen's Compensation Programs, U.S. Department of Labor, Washington, D.C. 20211; or

(2) By completing and mailing form CM-902 (Employer's First Report and Answer to Claim for Benefits) to such address.

(c) If the notified operator contests the claim or his liability for payment of benefits to the claimant for any period after December 31, 1973, he shall so state by transmitting to the Office a completed form CM-902 setting forth generally his reasons for controverting the claim or his liability to pay benefits that may be awarded, together with a detailed description of any evidence relied upon as a basis for such contest.

FURTHER ACTION ON CLAIM

§ 725.161 Proceedings for determination of claim.

(a) *No responsible operator.* If after the deputy commissioner has received all the evidence developed with respect to a claim as provided in this subpart and there is no identifiable responsible operator, he shall proceed to a final determination of the claim pursuant to Subpart E of this Part 725.

(b) *Claim for which operator may have liability.* If after the deputy commissioner has received all the evidence developed with respect to a claim as provided in this subpart and has identified and notified an operator or operators who may be liable for payment of benefits to the claimant, a response has been received pursuant to § 725.152 or the time for such response has expired, he shall proceed to a final determination of the claim as provided in Subparts D and E of this Part 725.

Subpart C—Relationship and Dependency

§ 725.200 Relationship and dependency; general.

(a) In order to establish entitlement to benefits, a widow, child, parent, brother, or sister, must meet relationship and dependency requirements with respect to the miner or widow, as applicable, prescribed by or pursuant to the Act.

(b) In order for an entitled miner or widow to qualify for augmented benefits because of one or more dependents, such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act.

(c) References in §§ 725.210(c), 725.220(c), 725.230(d), and 725.235, to the "same right to share in the intestate personal property" of a deceased miner (or widow), refer to the right of an individual to share in such distribution in his own right and not by right or representation.

§ 725.210 Determination of relationship; wife.

An individual will be considered to be the wife of a miner if:

(a) The courts of the State in which such miner is domiciled would find that such individual and the miner were validly married; or

(b) The courts of the State in which such miner is domiciled would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's wife; or

(c) Under State law, such individual has the same right she would have if she were the wife to share in the miner's intestate personal property; or

(d)(1) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment would have been a valid marriage. However, such purported marriage shall not be considered a valid marriage if such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household in the month in which there is filed a request that the miner's benefits be augmented because such individual qualifies as his wife. The provisions of this paragraph shall not apply, however, if the miner's benefits are or have been augmented under § 725.507 because another person qualifies or has qualified as his wife and such other person is, or is considered to be, the wife of such miner under paragraph (a), (b), or (c) of this section at the time such request is filed.

(2) The qualification for augmentation purposes of an individual who would not be considered to be the wife of such miner but for this paragraph (d), shall end with the month before the month in which (i) the Office determines that the benefits of the miner should be augmented on account of another person, if such other person is (or is considered to be) the wife of such miner under paragraph (a), (b), or (c) of this section, or (ii) if the individual who previously qualified as a wife for purposes of § 725.625(c), entered into a marriage valid without regard to this paragraph, with a person other than such miner.

§ 725.215 Determination of relationship; divorced wife.

An individual will be considered to be the divorced wife of a miner if her marriage to such miner has been terminated by a final divorce on or after the 20th anniversary of the marriage: *Provided,* That if she was married to and divorced from him more than once, she was married to him in each calendar year of the period beginning 20 years immediately

before the date on which any divorce became final and ending with the year in which that divorce became final.

§ 725.220 Determination of relationship; widow.

An individual will be considered to be the widow of a miner if:

(a) The courts of the State in which such miner was domiciled (see § 725.280) at the time of his death would find that the individual and the miner were validly married; or

(b) The courts of the State in which such a miner was domiciled (see § 725.280) at the time of his death would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual was the miner's widow; or

(c) Under State law, such individual has the same right she would have as if she were the miner's widow to share in the miner's intestate personal property; or

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment (see § 725.275) would have been valid marriage. However, such purported marriage shall not be considered a valid marriage if such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household at the time of the miner's death. The provisions of this paragraph shall not apply if another person is or has been entitled to benefits as the widow of the miner and such other person is, or is considered to be, the widow of such miner under paragraph (a), (b), or (c) of this section at the time such individual files her claim for benefits.

§ 725.225 Determination of relationship; surviving divorced wife.

An individual will be considered to be the surviving divorced wife of a deceased miner if her marriage to such miner had been terminated by a final divorce on or after the 20th anniversary of the marriage: *Provided,* That, if she was married to and divorced from him more than once, she was married to him in each calendar year of the period beginning 20 years immediately before the date on which any divorce became final and ending with the year in which the divorce became final.

§ 725.230 Determination of relationship; child.

As used in this section, the term "beneficiary" means only a widow entitled to benefits at the time of her death (see § 715.207 of this chapter), or a miner, except where there is a specific reference to the "father" only, in which case it means only a miner. An individual will be considered to be the child of a beneficiary if:

(a) The courts of the State in which such beneficiary is domiciled (see § 725.280) would find, under the law they would apply in determining the devolution of the beneficiary's intestate personal property, that the individual is the beneficiary's child; or

(b) Such individual is the legally adopted child of such beneficiary; or

(c) Such individual is the stepchild of such beneficiary by reason of a valid marriage of his parent or adopting parent to such beneficiary; or

(d) Such individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) Such individual is the natural son or daughter of a beneficiary but does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if the beneficiary and the mother or the father, as the case may be if such individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.275) would have been a valid marriage.

(f) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if:

(1) Such beneficiary, prior to his entitlement to benefits has acknowledged in writing that the individual is his son or daughter, or has been decreed by a court to be the father of the individual, or he has been ordered by a court to contribute to the support of the individual (see § 725.290(c)) because the individual is his son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

§ 725.235 Determination of relationship; parent, brother, or sister.

An individual will be considered to be the parent, brother, or sister of a miner if the courts of the State in which such miner was domiciled (see § 725.280) at the time of his death would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's parent, brother, or sister. Where, under such law, the individual does not bear the relationship to the miner of parent, brother, or sister, but would, under State law, have the same status (i.e., right to share in the miner's intestate personal property) as a parent, brother, or sister, the individual will be deemed to be such.

§ 725.240 Determination of dependency; wife.

An individual who is the miner's wife (see § 725.210) will be determined to be dependent upon the miner if:

(a) She is a member of the same household as the miner (see § 725.285); or

(b) She is receiving regular contributions from the miner for her support (see § 725.290(c)); or

(c) The miner has been ordered by a court to contribute to her support (see § 725.290(e)); or

(d) She is the natural mother of the son or daughter of the miner; or

(e) She was married to the miner (see § 725.210) for a period of not less than 1 year.

§ 725.245 Determination of dependency; divorced wife.

An individual who is the miner's divorced wife (see § 725.215) will be determined to be dependent upon the miner if:

(a) She is receiving at least one-half of her support from the miner (see § 725.290(g)); or

(b) She is receiving substantial contributions from the miner pursuant to a written agreement (see § 725.290(c), (f)); or

(c) There is in effect a court order for substantial contributions to her support to be furnished by such miner (see § 725.290(c)).

§ 725.250 Determination of dependency; widow.

An individual who is the miner's widow (see § 725.220) will be determined to have been dependent on the miner if, at the time of the miner's death:

(a) She was living with the miner (see § 725.285); or

(b) She was dependent upon the miner for support or the miner has been ordered by a court to contribute to her support (see § 725.290); or

(c) She was living apart from the miner because of his desertion or other reasonable cause; or

(d) She is the natural mother of his son or daughter; or

(e) She had legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18; or

(f) He had legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18; or

(g) She was married to him at the time both of them legally adopted a child under the age of 18; or

(h) She was married to him for a period of not less than 9 months immediately prior to the day on which he died (but see paragraph (i) of this section).

(i) Waiver of 9-month requirement.

(1) *General.* Except as provided in paragraph (g) of this section, the requirement in paragraph (h) of this section that the surviving spouse of a miner must have been married to him for a period of not less than 9 months immediately prior to the day on which he died in order to qualify as such miner's widow, shall be deemed to be satisfied where such miner dies within the applicable 9-month period, is his death:

(i) Is accidental (as defined in subparagraph (2)) of this paragraph, or

(ii) Occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in § 404.1013(f) (2) and (3) of this title), and such surviving spouse was married to such miner for a period of not less than 3 months immediately prior to the day on which he died.

(2) *Accidental death.* For purposes of subparagraph (1)(i) of this paragraph, the death of a miner is accidental if such individual receives bodily injuries solely through violent, external, and accidental means, and as a direct result of the bodily injuries and independently of all other causes, loses his life not later than 3 months after the day on which he receives such bodily injuries. The term "accident" means an event that was unpremediated and unforeseen from the standpoint of the deceased individual. To determine whether the death of an individual did, in fact, result from an accident the Office will consider all the circumstances surrounding the casualty. An intentional and voluntary suicide will not be considered to be death by accident; however, suicide by an individual who is so insane as to be incapable of acting intentionally and voluntarily will be considered to be death by accident. In no event will the death of an individual resulting from violent and external causes be considered a suicide unless there is direct proof that the fatal injury was self-inflicted.

(3) *Applicability.* The provisions of this section shall not apply if the Office determines that at the time of the marriage involved, the miner would not reasonably have been expected to live for 9 months.

§ 725.255 Determination of dependency; surviving divorced wife.

An individual who is the miner's surviving divorced wife (see § 725.225) will be determined to have been dependent on the miner if, for the month preceding the month in which the miner died:

(a) She was receiving at least one-half of her support from the miner (see § 725.290(g)); or

(b) She was receiving substantial contributions from the miner pursuant to a written agreement (see § 725.290(c), (f)); or

(c) There was in effect a court order for substantial contributions to her support to be furnished by such waiver (see § 725.290(c), (f)).

§ 725.260 Determination of dependency; child.

(a) For purposes of augmenting the benefits of a miner or widow (see § 725.625(c)), the term "beneficiary" as used in this section means only a miner or widow entitled to benefits (see §§ 725.205, 715.207); or, for purposes of an individual's entitlement to benefits as a surviving child (see § 715.211 of this chapter), the term "beneficiary" as used in this section means only a deceased miner or a deceased widow who was entitled to benefits for the month prior to the month of her death. An individual who is the beneficiary's child (see § 725.230) will, as applicable, be determined to be, or to have been dependent on the beneficiary, if the child:

(1) Is unmarried; and

(2)(i) Is under 18 years of age; or

(ii) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d). For purposes of entitlement to benefits as a surviving child (see § 715.211), such disability must have begun before the child attained age 18, or, in the case of a student, before he ceased to be a student (see paragraph (b) of this section).

(iii) Is 18 years of age or older and is a student.

(b)(1) The term "student" means a "full-time student" as defined in section 202(d)(7) of the Social Security Act, 42 U.S.C. 402(d)(7), (see § 404.320(c) of this title) or an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State or by a State-recognized or nationally-recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof, providing courses of not less than 3 months duration that prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be "pursuing a full-time course of study or training at an institution" if he is enrolled in a noncorrespondence course and carrying a subject load which is considered full-time for day students under the institution's standards and practices. However, a student will not be considered to be "pursuing a full-time course of study or training" if he is enrolled in a course of study or training of less than 13 school weeks' duration. A student beginning or ending a full-time course of study or training in part of any month will be considered to be pursuing such course for the entire month.

(3) A child is deemed not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and he shows to the satisfaction of the office that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim; or

(ii) During the periods of reasonable duration during which, in the judgment of the office, he is prevented by factors beyond his control from pursuing his education.

(4) A student whose 23d birthday occurs during a semester or other enrollment period in which he is pursuing a full-time course of study or training shall continue to be considered a student for as long as he otherwise qualifies under this section until the end of such period.

§ 725.265 Determination of dependency; parent, brother, or sister.

An individual who is the miner's parent, brother, or sister will be determined to have been dependent on the miner if, during the 1-year period immediately prior to such miner's death:

(a) Such individual and the miner were living in the same household (see § 725.285); and

(b) Such individual was totally dependent on the miner for support (see § 725.290(h)).

§ 725.270 Time of determinations.

(a) *Relationship and dependency of wife or child.* With respect to the wife or child of a miner entitled to benefits, and with respect to the child of a widow entitlement to benefits, the determination as to whether an individual purporting to be a wife or child is related to or dependent upon such miner or widow shall be based on the facts and circumstances with respect to the period of time as to which such issue of relationship or dependency is material.

(b) *Relationship and dependency of widow.* The determination as to whether an individual purporting to be the widow of a miner was related to or dependent upon such miner is made after such individual effectively files a claim for benefits as a widow. Such determination is based on the facts and circumstances with respect to the time of the miner's death. A prior determination to be, or not to be, the wife of such miner, pursuant to §§ 725.210 and 725.240, for purposes of augmenting the miner's benefits for a certain period, is not determinative of the issue of whether the individual is the widow of such miner or of whether she was dependent on such miner.

(c) *Relationship and dependency of surviving divorced wife.* The determination as to whether an individual purporting to be a surviving divorced wife of a miner was related to or dependent upon such miner is made when such individual effectively files a claim for benefits as a surviving divorced wife. Such determination is made with respect to the time of the miner's death. A prior determination that such individual was, or was not, the divorced wife of such miner, pursuant to §§ 725.215 and 725.245, for purposes of augmenting the miner's benefits for a certain period, is not determinative of the issue of whether the individual is the surviving divorced wife of such miner or of whether she was dependent on such miner.

§ 725.275 Legal impediment.

For purposes of this subpart C, "legal impediment" means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

§ 725.280 Domicile.

(a) For purposes of this subpart C, the term "domicile" means the place of an individual's true, fixed, and permanent home to which, whenever he is absent, he has the intention of returning.

(b) The domicile of a deceased miner or widow is determined as of the time of his or her death.

(c) The domicile or a change in domicile of a beneficiary or other individual is determined with respect to the period or periods of time as to which the issue of domicile is material.

(d) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied as if such individual were then domiciled there.

§ 725.285 Member of the same household; "living with"; "living in the same household"; and "living in the miner's household."

(a) *Defined.* (1) The term "member of the same household" as used in section 402(a)(2) of the Act (with respect to a wife); the term "living with" as used in section 402(e) of the Act (with respect to a widow); and the term "living in the same household" as used in §§ 725.210(d) and 725.250(d) of this subpart, means that a husband and wife were customarily living together as husband and wife in the same place of abode.

(2) The term "living in the miner's household" as used in section 412(a)(5) of the Act (with respect to a parent, brother, or sister), means that the miner and such parent, brother, or sister were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either the miner, or his wife, parent, brother, or sister (as the case may be), does not preclude a finding that one was "living with" the other, or that they were "members of the same household", etc. The absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months, and neither individual was outside the United States, and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together at some time in the reasonably near future.

(c) *Death during absence.* Where the death of one of the parties occurred while away from the residence for treatment or care of an illness or an injury (e.g., in a hospital), the fact that the death was foreseen as possible or probable does not, in and of itself, preclude a finding that the parties were "living with" one another or were "member(s) of the same household", etc., at the time of death.

(d) *Absences other than temporary.* In situations other than those described in paragraphs (b) and (c) of this section, the absence shall not be considered temporary, and the parties may not be found to be "living with" one another or to be "member(s) of the same household, etc." A finding of temporary absence would not be justified where one of the parties was committed to a penal institution for life or for a period exceeding the reasonable life expectancy of either, or was under a sentence of death; or where the parties had ceased to live in the same place of abode because of marital or family difficulties and had not resumed living together before death.

(e) *Relevant period of time.* (1) The determination as to whether a widow had been "living with" her husband shall be based upon the facts and circumstances as of the time of death of the miner.

(2) The determination as to whether a wife is a "member of the same household" as her husband shall be based upon the facts and circumstances with respect to the period or periods of time as to which the issue of membership in the same household is material.

(3) The determination as to whether a parent, brother, or sister was "living in the miner's household" shall take account only of the 1 year period immediately prior to the miner's death.

§ 725.290 Contributions and support.

(a) *"Support" defined.* The term "support" includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the person supported.

(b) *"Contributions" defined.* The term "contributions" refers to contributions actually provided by the contributor from his own property, or the use thereof, or by the use of his own credit.

(c) *"Regular contributions" and "substantial contributions" defined.* The terms "regular contributions" and "substantial contributions" mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support.

(d) *Contributions and community property.* When a wife receives and uses for her support, income from her services or property and such income, under applicable State law, is the community property of herself and the miner, no part of such income is a "contribution" by the miner to his wife's support regardless of any legal interest the miner may have therein. However, when a wife receives and uses for her support, income from the services and the property of the miner and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the miner to his wife's support.

(e) *"Court order for support" defined.* References to support orders in §§ 725.230(f)(1), 725.240(c), and 725.250(b) mean any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(f) *"Written agreement" defined.* The term "written agreement" in the phrase "substantial contributions * * * pursuant to a written agreement" (see §§ 725.245(b), 725.255(b)) means an agreement signed by the miner providing for substantial contributions by him for the individual's support. It must be in effect at the applicable time but it need not be legally enforceable.

(g) *"One-half support" defined.* The term "one-half support" means that the miner made regular contributions in cash or in kind, to the support of a divorced wife (see § 725.245(a)), or of a surviving divorced wife (see § 725.255(a)), at the specified time or for the specified period, and that the amount of such contributions equalled or exceeded one-half the total cost of such individual's support at such time or during such period.

(h) *"Totally dependent for support" defined.* The term "totally dependent on the miner for support" as used in § 725.265(b), means that such miner made regular contributions to the support of his parent, brother, or sister, as the case may be, and that the amount of such contributions at least equalled the total cost of such individual's support.

Subpart D—Responsible Coal Mine Operators

GENERAL PROVISIONS

§ 725.301 Scope and policy.

(a) In enacting the Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972 ("the Act" as used in this part means such Act as amended), Congress sought to transfer the responsibility for the payment of black lung benefits, to the greatest extent possible, from the Federal Government to the coal mine operators as of January 1, 1974. It is the policy of the Department of Labor to implement and execute in this part this congressional intent as fully and fairly as is practicable.

(b) The provisions of this subpart D apply to coal mine operators in States whose workmen's compensation laws have not been listed by the Secretary in Part 722 of this chapter, pursuant to section 421 of Title IV of the Act and such Part 722, as providing adequate coverage

for pneumoconiosis. Reference should also be made to Part 726 of this chapter, which sets forth insurance requirements for securing the payment of black lung benefits under the Act which are applicable to every coal mine operator in any State not listed in Part 722 of this chapter.

(c) The rules in this Subpart D prescribe the manner in which the identity of a responsible operator will be determined, the extent of any responsible operator's liability for the payment of pneumoconiosis benefits in any particular case, and the nature and extent of such coal operators' duties and responsibilities as prescribed in Part C of Title IV of the Act. Included in the latter are those duties and responsibilities incorporated by reference in section 422 of Part C of the Act to certain specific provisions of the Longshoremen's and Harbor Workers' Compensation Act as amended (44 Stat. 1424, 33 U.S.C. 901 as amended by Public Law 92–576, effective November 26, 1972).

§ 725.302 Responsible operator defined.

A "responsible operator", within the meaning of this subchapter, is a coal mine operator who, (a) under the provisions of section 422 or section 415 of Title IV of the Federal Coal Mine Health and Safety Act, as amended, and of this subchapter is liable for the payment of benefits for any month or months after December, 1973 to any individual entitled thereto under the Act on account of death or disability of a coal miner, due to pneumoconiosis arising at least in part out of his employment in a mine during a period when it was operated by such operator, or (b) is liable for payment of such benefits as provided in § 725.303.

§ 725.303 Prior operator, successor operator.

(a) In accordance with section 422(i) of the Act, any coal mine operator who, after December 30, 1969, acquired his mine or substantially all the assets of his mine from a prior operator who was an operator of that mine on or after December 30, 1969, shall be liable for and shall, in accordance with section 423 of the Act and Part 726 of this subchapter, secure the payment of all benefits which would have been payable by the prior operator with respect to miners previously employed in that mine if the acquisition had not occurred and the prior operator had continued to operate the mine.

(b) Paragraph (a) of this section notwithstanding, any prior operator may, under appropriate circumstances and in accordance with the requirements of due process of law and considerations of fairness and equity, be held liable for the payment of all benefits awarded pursuant to the Act.

DETERMINING RESPONSIBLE OPERATOR

§ 725.311 Criteria for identifying a responsible operator.

The following criteria shall apply in determining the identity of the responsible operator:

(a) *Periods of employment.* From the evidence presented of the miner's employment history, the identity of the coal mine operator or operators with whom the miner had the most recent periods of cumulative employment of not less than 1 year and the beginning and ending dates of such periods shall be ascertained.

(b) *Financial responsibility of operators.* The financial responsibility of the operators identified pursuant to paragraph (a) shall be determined, if in question, as provided in § 725.303.

(c) *Determination of responsible operator.* From the foregoing information the responsible operator shall be determined as follows:

(1) The operator with whom the miner had the latest period of cumulative employment of not less than 1 year shall, if financially responsible, be deemed to be the responsible operator.

(2) If such operator is not financially responsible, then the responsible operator shall be deemed to be the financially responsible operator with whom the miner had the latest period of cumulative employment of not less than 1 year.

(3) In the event that a coal mine operator is determined to be a "responsible operator" pursuant to the provisions of subparagraph (1) or (2) of this paragraph (c), there shall be a presumption that the miner's work-related pneumoconiosis arose in whole or in part sufficiently to occasion liability, out of his employment with such operator during the period or periods when he was employed in a mine or mines operated by such operator. The responsible operator as so determined shall accordingly be liable for payment and securing of benefits awarded to the claimant on account of the disability or death of the miner who was so employed.

§ 725.312 Procedure for determination of operator's liability.

(a) At any time after a mine operator notified pursuant to § 725.151 has responded to the allegations of his liability pursuant to § 725.152 the deputy commissioner with whom the case has been filed may proceed with the determination of the claimant's entitlement to benefits and the operator's liability for payment The deputy commissioner may order a prehearing conference to be held, at a time and place convenient to all parties, or he may refer the case to the Chief Administrative Law Judge for a formal hearing before an administrative law judge when it appears that resolution of all issues necessary to a determination of entitlement to benefits or liability of an operator cannot be accomplished without such a hearing. The particulars describing the organization and conduct of both the prehearing conference and the formal hearing are described fully in Subpart E of this part.

(b) In the event that the operator does not contest his liability he shall be deemed the responsible operator and the deputy commissioner if he determines the claimant is entitled to benefits, shall without further proceedings order the payment by the operator of such benefits to commence as of a specified date, and shall so notify the operator. This procedure shall be known as "benefits payable without a final decision and order."

(c) If a notified operator does not respond within the 20-day period described in § 725.151 the deputy commissioner shall proceed to the determination of the claim. In such a case a prehearing conference may be scheduled pursuant to Subpart E of this part. The alleged responsible operator will be given at least 10-days notice by certified mail of the prehearing conference, and advised by such notice that if he or his representative does not appear at the conference and at that time contest his liability, he will be deemed to have waived his right to a hearing and an order may be issued requiring such operator to pay any benefits to which the claimant may be found to be entitled upon determination of the claim. If no appearance is made at the conference by such operator, the deputy commissioner may order payment as provided in paragraph (b) of this section.

(d) If at any time after the running of the 20-day period described in § 725.151 but prior to the issuance of a final decision and order, an allegedly responsible operator seeks to be heard, that operator may be required to complete and transmit a Form CM–902 to the Office.

(e) No operator may be bound by any determination as to his liability to pay benefits to any claimant unless he has been properly notified of the proceedings therefor and offered an opportunity to participate. An operator may be permitted to intervene without prejudice in the proceedings at any time prior to final adjudication of his alleged liability to pay benefits, but a final determination of a claimant's entitlement to benefits will not be reopened at the instance of any operator who did not avail himself of an opportunity to controvert such entitlement provided by a timely notice of the determination proceeding.

§ 725.313 Operator's medical evidence.

(a) Any operator who is dissatisfied with the medical record compiled by the Office in respect to a particular case may make a timely request for a review or reexamination of a miner by one or more different physicians employed or selected by the Office. Such review or reexamination shall be ordered and conducted subject to the provisions of § 725.139 of this part, unless it is found to be clearly unwarranted.

(b) In the event that any claimant refuses to submit to a medical examination ordered under this section, the deputy commissioner shall be promptly notified. The deputy commissioner shall forthwith notify the claimant that no further action on his claim may be had until such claimant is in compliance with the order for the examination.

§ 725.314 Determination of operator's liability in formal hearing.

(a) If, as provided in § 725.312, or where an allegedly responsible operator does not appear at the prehearing conference, a formal hearing is ordered to be conducted pursuant to Subpart E of this part, the operator will be given 10-

days notice by certified mail of the time and place of the hearing and he or his authorized representative may appear at and fully participate in the formal hearing, and the liability of the operator to pay benefits shall be adjudicated therein. If an allegedly responsible operator does not appear at the formal hearing and has not filed an answer to the allegations of his liability, then it shall be presumed that such operator does not contest his liability and the administrative law judge shall proceed to the conduct of the formal hearing and shall issue findings of fact, conclusions of law, and an order for benefits pursuant to Subpart E of this part. The notified operator shall be bound by this determination and may not thereafter contest his liability for the payment of benefits to the claimant. Nothing in this part shall be construed to require any operator to pay any benefits for any month prior to January 1, 1974.

(b) In the event that a notified coal mine operator or his representative does not appear at the formal hearing and has not responded to the claim filed against him, the hearing shall nevertheless be conducted and stenographically reported pursuant to Subpart E of this Part 725. In respect to the issue of such notified coal mine operator's liability, the administrative law judge shall admit into the record the medical evidence contained in the approved physician's report (see §§ 725.137–725.139), evidence of the employment history of the miner, and any other information deemed pertinent to the question of the notified mine operator's liability. Upon this record, the administrative law judge shall determine his findings of fact, conclusions of law, and final decision and order, and shall determine and in his written opinion state whether or not and the extent if any to which such notified coal mine operator is an operator responsible for the payment of benefits to the claimant for any months after December 31, 1973.

§ 725.315 Deferred identification of responsible operator; liability determination.

If at the time a claim under the Act is ready for determination there appears to be no known or identifiable responsible operator, the claimant's entitlement to benefits shall be determined and payment of benefits authorized from Federal funds as provided in this part. However, if at any time during or after the adjudicatory proceedings the claimant or the Secretary of Labor becomes aware of the existence of a possibly responsible operator, that operator shall be given notice of the claim, informed that he may be held liable for payment of benefits, supplied with copies of the record of all proceedings already conducted, and given 60 days within which to submit the answer specified in § 725.152. If it becomes necessary to hold a new formal hearing to determine the responsibility of such a coal mine operator, the subject matter of that hearing shall be limited to the responsibility of that coal mine operator for the payment of benefits on the particular claim after December 31, 1973. There shall be no reopening or readjudication of the claimant's entitlement to benefits.

Operator's Financial Responsibility

§ 725.321 Financial responsibility defined.

Within the meaning of this part a coal mine operator shall be deemed "financially responsible" and capable of assuming his liability for the payment of benefits under the provisions of Part C of Title IV of the Act and this subchapter if he has:

(a) Obtained a policy or contract of insurance pursuant to section 423 of Title IV of the Act and Part 726 of this chapter, or;

(b) Qualified as a self-insurer pursuant to section 423 of the Act and Part 726 of this chapter, or;

(c) If such operator is an individual, partnership, joint venture, corporation, or other business entity, determined under this Subpart D to be the "responsible operator (see § 725.311)," and possessed of any assets that may be made available for the payment of benefits as provided in this Part 725 or through an action brought as provided in section 424 of the Act.

§ 725.322 Insurance coverage.

(a) Pursuant to the provisions of section 423 of the Act (see § 726.1 of this chapter), coal mine operators shall be subject to the following requirements: During any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of Title IV of the Act and Part 722 of this chapter, each operator of a coal mine in such State shall secure the payment of benefits for which he may be found liable under section 422 or section 415 of the Act and this Part 725 by—

(1) Qualifying as a self-insurer as provided in Part 726 of this Chapter VI, or

(2) Insuring and keeping insured the payment of such benefits with an authorized insurance carrier in accordance with the provisions of Part 726 of this chapter.

(b) Every operator who has secured the payment of benefits as provided in paragraph (a) of this section shall keep posted, in a conspicuous place or places in and about each mine which he operates, typewritten or printed notices, in accordance with a form prescribed by the Office, stating that such operator has secured the payment of benefits in accordance with the provisions of the Federal Coal Mine Health and Safety Act as amended. Such notices shall contain the name and address of the insurance carrier, if any, with whom the operator has secured payment of benefits, and the date of the expiration of the policy.

(c) Under section 422 of the Act and section 15 of the Longshoremen's Act:

(1) No agreement by a miner to pay any portion of a premium paid to a carrier by the operator of a coal mine in which such miner is employed, or to contribute to a benefit fund or department maintained by such operator for the purpose of providing benefits or medical services and supplies as required by this part, shall be valid; and any operator who makes a deduction for such purpose from the pay of any miner entitled to the benefits of the Act under this part shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000;

(2) No agreement by a miner to waive his right to benefits under the Act and the provisions of this part shall be valid.

§ 725.323 Benefits a lien against assets.

Pursuant to the provisions of section 422 of the Act and section 17 of the Longshoremen's Act as incorporated therein, any person entitled to benefits under the provisions of the Act shall have a lien against the assets of the carrier or operator for such benefits without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or operator, or both, be entitled to preference and priority in the distribution of the assets of such carrier or operator, or both.

§ 725.324 Security for payments of benefits.

Whenever the deputy commissioner deems it advisable he is authorized, pursuant to section 422 of the Act and section 14(i) of the Longshoremen's Act, to require any operator to make a deposit with the Treasurer of the United States to secure the prompt and convenient payment of benefits, and payments therefrom upon any awards shall be made upon order of the deputy commissioner.

§ 725.325 Liability of operator for Federal payments made.

In any case where the Secretary has paid benefits to a miner or his widow, child, parent, brother, or sister because the responsible coal mine operator has not obtained a policy or contract of insurance or qualified as a self-insurer as provided in Part 726 of this subchapter or has not paid such benefits within a reasonable time, such operator shall be liable to the United States in a civil action in an amount equal to the amount paid to such beneficiary under Title IV of the Act (Act, sec. 424).

Operator's Payments

§ 725.331 Scope of payment obligations.

Benefits shall be paid to claimants entitled thereto under the Act by a responsible coal mine operator as provided in this Subpart D and Subpart F of this Part 725, and in accordance with the obligations imposed on coal mine operators by section 422 of the Act, including those obligations of employers under the Longshoremen's Act with respect to payment of disability or death benefits thereunder to employees which are incorporated by reference in such section 422 and implemented by the rules in this Part 725.

§ 725.332 Prompt payment.

Where entitlement of an individual to benefits under the Act has been determined or is not controverted, and liability as a responsible operator for payment of such benefits is not controverted by a coal mine operator, such operator shall pay benefits periodically as provided in this part, promptly, and directly to the person entitled thereto, without an adjudication of such liability. The first installment shall be due as provided in § 725.502 or, where action described therein has not been taken, on the 14th day after such operator has knowledge of the disability or death for which entitlement to such benefits is not controverted, and benefits shall be paid then and thereafter as provided in such section.

§ 725.333 Late payments.

(a) If any installment of benefits payable without a final decision and order (see §§ 725.312(b) and 725.332) is not paid within 14 days after it becomes due, as provided in § 725.332, there shall be added to such unpaid installment an amount equal to 10 percent thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the deputy commissioner after a showing by the operator or carrier that owing to conditions over which he had no control the installment could not be paid within the period prescribed for the payment. (See section 14(e) of the Longshoremen's Act.)

(b) If any benefits, payable by an operator determined to be responsible therefor under the terms of an award, are not paid within 10 days after they become due, there shall be added to such unpaid benefits an amount equal to 20 percent thereof, which shall be paid at the same time as, but in addition to, such benefits, unless review of the order making such award is had as provided in Subpart E of this part and an order staying payment has been issued by the court.

§ 725.334 Payment of interest.

In the event that an operator or carrier controverts a claimant's right to benefits and therefore pays no benefits and it is later determined that the claimant was entitled to benefits for any time prior to such time as the operator or carrier finally is adjudged liable for the payment of benefits, such operator or carrier shall be liable for the past benefits owed and, in addition, an amount equal to 6 percent simple annual interest, computed on the basis of all past due benefits.

§ 725.335 Suspension of payments.

(a) There may be no suspension in the payment of benefits except upon notice to the deputy commissioner pursuant to § 725.341 and to the party or parties to whom benefits are being paid. Any suspension of benefit payments which is not preceded by such notice shall be considered late and defaulted payments pursuant to §§ 725.333 and 725.345.

(b) If at any time during which benefits are being paid to an eligible individual an operator determines to suspend his payments on any grounds, the deputy commissioner shall make such investigations, cause such medical examinations to be made, or refer for such hearings, and take such further action as he considers will properly protect the rights of all parties.

(c) In the event that the deputy commissioner, or the administrative law judge to whom the matter was assigned for hearing, determines that the suspension of payments was invalid, such deputy commissioner or judge shall order the reinstatement of benefits and shall order the operator or carrier to pay to the entitled individual all unpaid amounts due for the periods during which the payment of benefits was suspended, with interest as provided in § 725.334.

§ 725.336 Advance payments.

If an operator has made advance payments of benefits he shall be entitled to be reimbursed out of any unpaid installment or installments of benefits due.

§ 725.337 Receipt for payment.

A disabled miner or in case of death his dependents or personal representative, shall give receipts for payment of benefits to the operator paying the same and such operator shall produce the same for inspection by the deputy commissioner, whenever required.

§ 725.341 Reporting requirements.

(a) *First payment, suspension of payments.* Upon making the first payment, and upon suspension of payment for any cause, the operator shall immediately notify the deputy commissioner, in accordance with a form prescribed by the Office, that payment of benefits has begun or has been suspended, as the case may be.

(b) *Final payment of benefits.* Within 16 days after final payment of benefits has been made, the operator shall send to the deputy commissioner a notice, in accordance with a form prescribed by the Office, stating that such final payment has been made, the total amount of benefits paid, the name of the miner and of any other person to whom benefits have been paid, the date of the disability or death, and the date to which benefits have been paid. If the operator fails to so notify the deputy commissioner within such time the Secretary shall assess against such operator a civil penalty in the amount of $100.

§ 725.345 Defaulted payments.

(a) In case of default by an operator in the payment of benefits due from him under any award for a period of thirty days after the benefits are due and payable, the person to whom such benefits are payable may, within 1 year after such default, make application to the deputy commissioner making the order for a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in Subpart E of this part, the deputy commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the final decision and order (see § 725.482). In case the payment in default is an installment of the award, the deputy commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the operator has his principal place of business or maintains an office. In case such principal place of business or office is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the United States District Court for the District of Columbia. Such supplementary order of the deputy commissioner shall be final, and the court shall upon the filing of the copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplmentary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later benefits order upon presentation of a certified copy thereof to the court.

(b) In cases where judgment cannot be satisfied by reason of an insolvency or other circumstances precluding payment, the Secretary shall make payment pursuant to section 424 of Part C of Title IV of the Act upon any award made under this Act, and in addition, provide any necessary medical, surgical, and other treatment required by section 7 of the Longshoremen's Act in any case of disability where there has been a default in furnishing medical treatment by reason by the insolvency of the operator. Such an operator shall be liable to the United States for payment of the amounts paid by the Secretary of Labor under this subsection; and for the purpose of enforcing this liability, the Secretary of Labor shall be subrogated to all the rights of the person receiving such payments or benefits, including the right of lien and priority provided for by section 17 of the Longshoremen's Act, as against the operator and may by a proceeding in the name of the Secretary of Labor under section 18 or under subsection (c) of section 21 of the Longshoremen's and Harbor Worker's Compensation Act, or both seek to recover the amount of the default or so much thereof as in the judgment of the Secretary is possible, or the Secretary may settle and compromise any such claim.

Subpart E—Adjudicatory Process

General

§ 725.401 Scope and applicability of this subpart.

Every dispute arising in respect to any claim for benefits or any action taken by an adjudication officer pursuant to this Part 725, and any other issue of fact or law arising out of the Department of Labor's administration of any of the provisions of Part C of Title IV of the Act as amended shall be determined or adjudicated pursuant to the procedures enumerated in this subpart, except as otherwise specifically provided in this Part 725 or as elsewhere provided by statute or treaty. Disputes arising out of or in respect to claims for benefits under Part B of Title IV of the Act filed under section 415 of the Act shall be determined or adjudicated pursuant to procedures contained in Part 720 of this subchapter.

§ 725.402 Adjudication officers.

(a) *Who are adjudication officers.* The deputy commissioner, the administrative law judge, or the Benefits Review Board before whom a benefit claim proceeding under the Act is pending are the Department's adjudication officers with respect to such claim.

(b) *Deputy Commissioner.* The deputy commissioner is that official of the Office of Workmen's Compensation Programs or his designee authorized to make initial recommendations for determinations with respect to any case and to insure that any case is developed and processed according to these regulations. He may also under appropriate circumstances conduct prehearing conferences, prepare or issue motions and orders as provided in this part, prepare stipulations for the signatures of the parties in interest in any case, and sign benefits orders in cases for which no formal hearing procedure is required. The deputy commissioner shall not hold formal hearings.

(c) *Administrative Law Judge.* The administrative law judge is that official of the Department of Labor empowered by the Secretary to conduct formal hearings whenever necessary, in respect of any claim for black lung benefits. Each such administrative law judge shall be qualified under 5 U.S.C. 3105 to conduct hearings in accordance with the provisions of 5 U.S.C. 554 et seq.

(d) *Benefits Review Board.* The Benefits Review Board is that body appointed by the Secretary pursuant to section 21 (b) of the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, which is empowered to hear and determine finally for the Department of Labor appeals raising a substantial question of law or fact taken by any party in interest from decisions and orders of any duly authorized Department of Labor official with respect to any claim for black lung benefits.

§ 725.403 Powers of adjudication officers.

(a) *Conduct of proceedings.* The adjudication officer in any case shall have power to preserve and enforce order during any proceedings for determination or adjudication of entitlement to benefits or liability for benefit payments; to issue subpoenas for, to administer oaths to and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office (Act, section 422 and Longshoremen's Act, sections 19(d) and 27(a)).

(b) *Contumacy.* Pursuant to section 19(d) of the Longshoremen's Act as incorporated by sections 415 and 422 of the Act, if any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the adjudication officer shall certify the facts to the Federal district court having jurisdiction in the place in which he is sitting (or to the U.S. District Court for the District of Columbia if he is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

§ 725.404 Legal services.

(a) *Approval of fees and assessment against operators.* If a claimant is represented by an attorney at law, the Act requires approval of such fees as provided in section 28 of the Longshoremen's Act; and if there is a responsible operator liable for payment of benefits such fees may, under the circumstances set forth in subsections (a) and (b) of such section 28, be awarded to the claimant to be paid by the operator or his insurance carrier in addition to amounts otherwise payable as benefits under the Act. In cases where the obligation to pay the attorney's fee is upon the claimant, it may be made a lien upon the benefits due under an award as provided in section 28(d) of the Longshoremen's Act and, as therein provided, the adjudication officer or court shall fix in the award approving the fee, such lien and manner of payment.

(b) *Unapproved fees; solicitation of claimants.* Under the provisions of section 28(e) of the Longshoremen's Act as incorporated in Part C of Title IV of the Act, any person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of a claimant, unless such consideration or gratuity is approved by the adjudication officer or court, or who makes it a business to solicit employment for a lawyer, or for himself in respect of any claim or award for black lung benefits under the Act, shall upon conviction thereof, for each offense be punished by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or by both fine and imprisonment.

(c) *Procedure for approval of fees by adjudication officer.* No contract for a stipulated fee or for a fee on a contingent basis will be recognized, and no fee shall be approved, except upon an application to the appropriate adjudication officer supported by a complete statement of the extent and character of the necessary work done on behalf of the claimant. The fee approved by the appropriate adjudication officer shall be reasonably commensurate with the actual necessary work performed by the representative, taking into account the capacity in which the representative has appeared, the amount of benefits involved and the financial circumstances of the claimant.

(d) *Witness fees and mileage.* In cases where an attorney's fee is awarded against an operator or carrier, there may be further assessed against such operator or carrier as costs, fees, and mileage for necessary witnesses attending the hearing at the request of claimant. Both the necessity for the witnesses and the reasonableness of the fee of expert witnesses must be approved by the appropriate adjudication officer. The amounts awarded against an operator or carrier as attorney's fees, costs, fees, and mileage for witnesses shall not in any respect affect or diminish the disability, death, or medical benefits payable (Act, section 422 and Longshoremen's Act, section 28(d)).

(e) *Legal assistance for claimants.* The Secretary may, upon request, provide a claimant with legal assistance in processing a claim for benefits payable under section 422 or 424 of Part C of Title IV of the Act. Such assistance may be made available to a claimant at any time prior to or during which the claim is being processed and shall be furnished without charge to the claimant. Legal assistance may be provided only in the processing of the claim; legal representation of the claimant in adjudicatory proceedings is not authorized under this section.

§ 725.405 Disqualification of adjudication officer.

(a) No adjudication officer shall conduct any proceeding in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for decision before him. Notice of any objection which a party may have to any adjudication officer who will conduct the proceeding, shall be made by such party at his earliest opportunity. The adjudication officer shall consider such objection and shall, in his discretion, either proceed with the case or withdraw. If the adjudication of-

ficer withdraws, another such officer shall be designated by the Director of the Office of Workmen's Compensation programs or the Chief Administrative Law Judge as the case may be. If the interested officer is a member of the Benefits Review Board, the procedure in case of disqualification of any board member who has an irreconcilable interest shall be in accordance with the applicable regulations and rules to be promulgated by the Secretary and the board.

(b) Neither a deputy commissioner, administrative law judge, or board member, nor any business associate of a deputy commissioner, administrative law judge, or board member, shall appear as attorney in any proceeding under the Act, and no deputy commissioner, administrative law judge, or board member, shall act in any such case in which he is interested, or when he is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree as determined by the common law (Act, section 422 and Longshoremen's Act, sections 19(d), 40(f)).

PROCEDURES, GENERALLY

§ 725.411 Procedures by and before deputy commissioner.

(a) Each claim for benefits under this part received by the Office of Workmen's Compensation programs will be filed with a deputy commissioner after preliminary processing as provided in § 725.131. The deputy commissioner will be responsible thereafter for compiling the case record, notifying any operator who may be liable to pay benefits to the claimant after December 31, 1973, of the pendency of the claim, notifying a claimant of any deficiency in the medical record, scheduling and conducting prehearing conferences pursuant to this subpart E effecting the settlement or compromise of disputes, whenever possible at the prehearing stage, drafting stipulations of fact for the signature of the parties in interest, conclusions of law and orders for cases in which no further proceedings are necessary beyond the prehearing stage, and making recommendations in respect to any case for which a formal hearing is to be conducted.

(b) At any time after a claim has been filed with the Office of Workmen's Compensation programs, the deputy commissioner, having jurisdiction over the claim may, with the approval of the office, transfer such case to any other office of the Department for the purpose of making investigation, taking testimony, making physical examinations, or the taking of such other necessary action therein as may be directed. Such transfer is to be made in accordance with procedures established by the office.

§ 725.412 Determinations of disability.

(a) By State agencies: In any State which has entered into an agreement with the Secretary of Labor providing therefor, determinations as to whether a miner is under a total disability due to pneumoconiosis, as to the date total disability began, and as to the date total disability ceases, shall be made by the State agency or agencies designated in such agreement on behalf of the Secretary of Labor with respect to all individuals in such State, or with respect to such class or classes of individuals in the State as may be designated in the agreement.

(b) By the Social Security Administration: Determinations as to whether a miner is under a total disability due to pneumoconiosis as to the date the total disability began, and to the date total disability ceases, made by the Social Security Administration under part B of title IV of the Act on behalf of the Secretary of Health, Education, and Welfare with respect to individuals in any State which has not entered into an agreement to make such determinations, or with respect to any class or classes of individuals to which such an agreement is not applicable, or with respect to any individuals outside the United States may be accepted by the Secretary of Labor for purposes of part C of title IV of the Act.

(c) Review by Office of Workmen's Compensation Programs of State agency determinations: The Secretary of Labor may review a determination made by a State agency but not a determination made by the Social Security Administration, that a miner is under a total disability and, as a result of such review, may determine that such individual is not under a total disability, or that the total disability began on a date later than that determined by the State agency, or that the total disability ceased on a date earlier than that determined by the State agency.

(d) All other determinations of disability shall be made by the Secretary of Labor pursuant to the regulations contained in this subpart.

§ 725.413 General procedures for determination of benefit claims.

(a) In the event that there are contested issues of fact in any case, those issues generally will be resolved by the following procedure:

(1) If in the opinion of the deputy commissioner the medical evidence does not support the claim for benefits, the claimant will be given an opportunity to submit additional medical evidence at the expense of the Department of Labor or the responsible operator or carrier (see §§ 725.133, 725.134, 725.139). If the additional evidence is still insufficient in the deputy commissioner's opinion to support the claim and no resolution may or might be reached at the prehearing stage, the case will be forwarded to the Chief Administrative Law Judge for assignment to an administrative law judge who will conduct a hearing pursuant to this Subpart E and issue a final order granting or denying the claim, or where appropriate, remand the case to the Office for further evidentiary development or for the completion of the case record.

(2) The deputy commissioner will make every effort to resolve any dispute at a prehearing conference conducted pursuant to this Subpart E. If no resolution can be achieved at the prehearing stage the case will be forwarded with the deputy commissioner's recommendation to the Chief Administrative Law Judge for assignment to an administrative law judge who will schedule and conduct a formal hearing pursuant to this Subpart E and issue a formal order granting or denying the claim and, where appropriate (see Subpart D of this part), establishing the identity of any operator or operators who will either be liable or not liable for payment of benefits to the claimant for any periods after December 31, 1973.

(b) In the event that there are no contested issues of fact or law the deputy commissioner will prepare stipulations of fact, identifying any operator or operators who will be liable for payments of such benefits for any periods after December 31, 1973. These stipulations will be signed by the parties in interest and the deputy commissioner who will either approve and sign a benefits order or take any other action he deems appropriate. If the proposed order is signed by a deputy commissioner it will become a final order pursuant to this Subpart E.

(c) If there has been no final resolution of a case after 60 days from the date upon which any claim has been filed with the deputy commissioner pursuant to § 725.131 and there has been no prior request for a formal hearing, the deputy commissioner assigned the case shall either:

(1) Make an award in respect of the case pursuant to § 725.442; or

(2) Declare the case abandoned pursuant to § 725.415; or

(3) Transfer the case to the Chief Administrative Law Judge pursuant to paragraph (a) of this section for the purpose of making the formal hearing procedures described in this subpart available to any or all of the parties in interest.

§ 725.414 Presumptions.

In any proceeding for the enforcement of liability on a claim for benefits under the Act it shall be presumed, in the absence of substantial evidence to the contrary, that the claim comes within the provisions of the Act, and that sufficient notice of such claim has been given.

§ 725.415 Abandonment of a claim.

(a) If a claimant at any time during the proceedings to adjudicate his claim, chooses to terminate those proceedings he may do so in his discretion by:

(1) Notifying the appropriate adjudication officer or the Office of his intention in this regard; or

(2) Failing to comply with a lawful order of any adjudication officer in respect to his claim, provided that such failure to comply is not later excused for good cause; or

(3) Failing in a significant way to pursue his claim with reasonable diligence. A finding that a claimant has failed to pursue his claim with reasonable diligence may be made by the adjudication officer who is processing the claim, at any time during formal or informal proceedings, where, for instance, the claimant fails to undergo a required

medical examination or submit medical evidence, fails or refuses to submit evidence of relationship or dependency, or fails or refuses to participate in the adjudicatory process. Any claim in which proceedings are suspended or terminated pursuant to subparagraph (1), (2) of this paragraph, or this subparagraph (3) shall be deemed an "abandoned claim."

(b) Notwithstanding any other provision of this part, before any claim may be considered an "abandoned claim" the appropriate adjudication officer shall notify the claimant of the pending termination of proceedings and afford such claimant 10 days within which to take affirmative action to cure the deficiency in his claim. If no response is received within the 10-day period, all proceedings and evidentiary developments in respect to the claim shall cease. If the claimant expresses his intent to continue his pursuit of the claim, the adjudication officer shall suspend or continue whatever proceedings are in progress in such a manner as he deems appropriate.

(c) In the event that a claim is abandoned the claimant's original filing date (see § 725.125) shall remain for purposes of § 725.124 the date on which the claim was filed should such claimant later decide to once again pursue his claim.

PARTIES TO PROCEEDINGS

§ 725.421 Parties in interest.

(a) Except as provided in § 725.422, persons other than the Secretary of Labor and authorized personnel of the Department of Labor may not participate at any stage of the adjudicatory process unless they are determined by the adjudication officer to qualify under the provisions of this section as parties in interest. The following persons may qualify as parties in interest:

(1) The claimant;

(2) A person other than a claimant authorized to execute a claim on such claimant's behalf pursuant to § 725.111;

(3) A dependent who may be entitled to receive augmented benefits or for whom augmented benefits are payable pursuant to Subpart F of this Part 725;

(4) Any coal mine operator who has been notified pursuant to § 725.151 of his possible liability to the claimant for benefits payable for any month after December 31, 1973; and

(5) Any insurance carrier of such operator.

(b) The Secretary of Labor is a party in interest in any proceeding in which his obligation to pay benefits under section 424 of the Act or to take other action under provisions of the Act may depend on the resolution of an issue or issues to be determined or adjudicated in that proceeding.

(c) A widow, surviving child, parent, brother, or sister or representative of a decedent's estate, who makes a showing in writing that an individual's rights with respect to benefits may be prejudiced by a decision that may be made, may be made a party in interest.

(d) Any coal mine operator or prior operator or insurance carrier who has not been notified pursuant to § 725.151 and who makes a showing in writing that its rights may be prejudiced by any final decision of an adjudication officer may in the discretion of the deputy commissioner or administrative law judge be made a party in interest.

(e) Any other individual may be made a party in interest if that individual's rights with respect to benefits may be prejudiced by the decision, upon notice given to him by the deputy commissioner or administrative law judge to appear at the hearing or otherwise present evidence as to fact or law as he may desire in support of his interest.

§ 725.422 Party amicus curiae.

At the discretion of the Chief Administrative Law Judge or the administrative law judge assigned to the case, a party not named in § 725.421 may be allowed to participate, fully or partially, in a formal hearing only, as to an issue of law. If a party wishes to participate amicus curiae in a formal hearing he shall request such status in writing with supporting arguments at least 10 days prior to the hearing. If the request is granted, the Chief Administrative Law Judge or the administrative law judge hearing the case will inform the party of the extent to which he may participate. The request may, however, be denied summarily and without explanation.

§ 725.423 Representation of parties.

Except for the Secretary of Labor, whose interests shall be represented by the Solicitor of Labor or an authorized attorney on his staff, each of the parties in interest may appoint an individual to represent his interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the party in interest or his legal guardian and shall be sent to the Office or, for representation at a formal hearing, to the Chief Administrative Law Judge. In any case such representative must be qualified under § 725.424.

§ 725.424 Qualifications of representative.

(a) *Attorney.* Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession or before the Supreme Court of the United States or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative may be appointed as a representative.

(b) *Other person.* Any other person with the approval of the adjudication officer may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 725.425 Authority of representative.

A representative, appointed and qualified as provided in §§ 725.423 and 725.424 may make or give, on behalf of the party he represents, any request or notice relative to any proceeding before an adjudication officer under part C of title IV of the Act, including reconsideration, hearing and review, except that such representative may not execute a claim for benefits, unless he is a person designated in § 725.111 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and allegations as to facts and law in any proceeding affecting the party he represents and to obtain information with respect to the claim of such party to the same extent as such party. Notice to any party of any administrative action, determination, or decision, or request to any party for the production of evidence may be sent to the representative of such party, and such notice or request shall have the same force and effect as if it had been sent to the party represented.

PREHEARING CONFERENCES

§ 725.431 Nature of conferences.

(a) In cases which cannot be disposed of summarily and on the record, prehearing conferences are to be scheduled to expedite the handling of contested issues and to avoid, whenever possible, the need for formal hearings.

(b) The proceedings are to be informal and are presided over by a deputy commissioner. Testimony is not stenographically reported. The parties in interest are not required to be represented by counsel, but may be so represented if they desire. The conference is not a formal hearing and witnesses may not be produced.

§ 725.432 Purpose of conferences.

Among the purposes of a prehearing conference are:

(a) To amicably dispose of controversies whenever possible;

(b) To narrow issues; and

(c) To simplify the subsequent methods of proof.

§ 725.433 Notification of parties.

When, after reviewing the record, the deputy commissioner assigned the case determines that a prehearing conference might fulfill one or more of the purposes listed in § 725.432 he shall notify all parties in interest that a conference has been called. Conferences may be called upon at least 10 days notice to the parties in interest or a shorter period if agreed upon by the parties. In any event, every effort shall be made to give all parties sufficient notice to insure that the conference will be productive.

§ 725.434 Time and place of conference.

The deputy commissioner shall assign a definite time and place for the prehearing conference and shall include this information in his notice to the parties. Whenever practicable the conference shall be held in the area of the claimant's residence and be convenient to public transportation.

§ 725.435 Preparation for conferences.

Prior to scheduling a conference the deputy commissioner shall review his file

to be certain that it contains all the necessary material to insure that the conference will be productive. His file shall contain information submitted by the parties in interest indicating that they have made every possible effort to resolve all the issues and delineating the issues which are still unresolved and which require a conference. The file should also contain copies of all medical reports from all parties in interest and there should be evidence in the file that the parties have exchanged all medical reports and any other material pertinent to the case. If this information does not appear in the file the deputy commissioner may advise the parties of these requirements and postpone the setting of the conference.

§ 725.436 Cancellation of conferences.

Any party may request cancellation and rescheduling of a conference upon 5 days written notice prior to the conference date sent to the Office or the deputy commissioner assigned the case. Such request shall state the reasons warranting cancellation. The deputy commissioner may, if reasonable cause is shown, grant the request, and should do so when all parties agree to the cancellation.

§ 725.437 Attendance at conferences.

(a) The claimant and/or his representative and any operator whose liability for payment of benefits after December 31, 1973, may be determined by a final order in the case and/or the operator's insurance carrier and/or their representatives must attend all prehearing conferences. The deputy commissioner may, in his discretion, grant or deny such waiver.

(b) Any representative of an operator or of an operator's insurance carrier must have sufficient authority to expedite settlement.

§ 725.438 Participation by the deputy commissioner.

A characteristic of an informal conference under the Act is the active participation in the proceedings by the deputy commissioner. It is his responsibility to see that the conference is productive. He shall assist the parties whenever possible by answering questions pertaining to the law and offer compromises for the parties to consider. He shall direct the discussion of the parties. He has the authority to conduct direct examinations of the claimants, operators whose liabilities may be determined, and their insurance carriers' representatives and he may conduct such examinations whenever necessary.

§ 725.439 File record.

(a) During the course of the conference the deputy commissioner shall take notes upon which to base his written memorandum of conference. The information which must appear in the memorandum of conference is:

(1) Date, time, and place of conference;

(2) Names, addresses, telephone numbers, and status (i.e., claimant, attorney, operator, carrier's representatives, etc.), of all persons attending the conference;

(3) Reason why conference was held;

(4) Issues discussed at conference;

(5) Additional material presented (i.e., medical reports, employment reports, marriage certificates, birth certificates, etc.);

(6) Issues resolved at conference; and

(7) Deputy Commissioner's recommendation.

§ 725.440 Memorandum of conference.

At the conclusion of the conference the deputy commissioner shall issue a comprehensive but brief memorandum summarizing the conference for the record. Copies of the memorandum shall be sent to each party in interest no more than 20 days after the date on which the conference is terminated.

§ 725.441 Reply to memorandum of conference.

Each party shall, in writing either accept or reject in part or in whole the deputy commissioner's recommendations, stating in appropriate cases the reasons for rejecting any recommendation. If no reply is received within 10 days from the date on which the recommendations were sent to the parties, the recommendations shall be deemed rejected. If the recommendations are not wholly agreed upon, the deputy commissioner or any party in interest may request a formal hearing. If it appears that final settlement might be reached without formal hearing, the deputy commissioner may schedule one or more additional prehearing conferences, notwithstanding a party's request for formal hearing.

§ 725.442 Adjudication without a hearing.

(a) If the parties in interest indicate that they are willing to dispose of the issues in the case based on the recommendations made, the deputy commissioner shall obtain stipulations to this effect signed by the parties. The stipulations shall contain all the information required for inclusion in a formal order and shall show that the parties agree that a final order may be issued by the deputy commissioner without a formal hearing. The deputy commissioner shall then proceed to prepare and sign a final decision and order based on the stipulations.

(b) If no formal hearing is requested by any party or ordered by the deputy commissioner within 10 days from the close of any prehearing conference the deputy commissioner shall notify the parties by certified mail that a final adjudication of the case shall be made on the basis of the record and the stipulations made by the parties at the prehearing stage, if any. Each party shall have 10 days from the date of such notice to request a formal hearing describing the issues on which that party desires to be heard. If no request is received by the deputy commissioner within the 10-day period the deputy commissioner in appropriate cases shall proceed to a final adjudication of the case and issue formal findings of fact, conclusions or law, and a final decision and order.

§ 725.443 Accelerated hearing.

Notwithstanding any other provision of this Part 725, after 30 days from the date upon which a claim is filed with the deputy commissioner pursuant to § 725.131, a claimant, a notified operator, or the Secretary may request and shall have a right to a formal hearing to be conducted by an administrative law judge pursuant to this subpart E. In the event that a formal hearing is requested pursuant to this paragraph, all responsibility and authority pertaining to the evidentiary development and settlement of the case vested in the deputy commissioner shall be vested in the Chief Administrative Law Judge or the administrative law judge assigned the case.

HEARINGS

§ 725.451 Right to a hearing.

(a) A person affected by proceedings under this part has a right to a formal hearing concerning any issue of fact or law unresolved in a prehearing conference if:

(1) He is a party in interest as defined in § 725.421; and

(2) No final disposition of the case has been achieved in prior proceedings within the period specified in § 725.443.

§ 725.452 Request for hearing.

Any party in interest may in writing or on the record at a prehearing conference request a formal hearing as to any contested issue of fact or law. In addition, a deputy commissioner may on his own initiative refer a case for hearing, when he determines a hearing necessary to protect the rights of any party in interest. If a hearing is requested by any party in interest, that request shall state the reasons for which a hearing is needed and the issues the requesting party intends to discuss and resolve at the hearing. If the deputy commissioner determines that a hearing is required under this part or is necessary to resolution of any issues, he shall refer the case to the Chief Administrative Law Judge who will assign it for a hearing.

§ 725.453 Type of hearing; parties.

In contested cases for which a formal hearing is deemed necessary, the hearing shall be conducted by an administrative law judge designated by the Chief Administrative Law Judge. The necessary parties to this hearing are the administrative law judge and all parties in interest or their designated representatives, except that any party may in writing or on the record at the hearing waive his right to be heard as to any or all issues. All hearings shall be conducted in accordance with the provisions of 5 U.S.C. 554 et seq. If any party in interest chooses to plead his own case at a formal hearing he may do so only upon the written approval of the administrative law judge. No party shall be permitted to represent himself in a formal hearing if it appears to the administrative law judge that such party may

not be sufficiently able to protect the rights granted him by the Act.

§ 725.454 Notice of hearing.

In each case in which a hearing is ordered the deputy commissioner shall prepare a notice of hearing for the signature of the Chief Administrative Law Judge and by service thereof shall give all parties in interest at least 10 days notice of the time and place at which the hearing is to be conducted and the issues to be resolved. The notice of hearing shall be sent to each party in interest by certified mail. No issue may be raised or discussed at a hearing if the party who must contest the issue has not had at least 10 days notice that the issue was to be raised at the hearing, unless he waives such notice in writing or on the record in the proceeding.

§ 725.455 Hearing on new issues.

(a) At any time after a hearing has been ordered but before a final decision has been mailed, the administrative law judge may in his discretion, either on the application of a party or on his own motion, give notice that he will consider any specified new issue. In such a case the administrative law judge shall give the parties at least 10 days notice of the hearing on the new issue, unless they stipulate that the issue may be heard at an earlier time, and shall proceed to hearing on the new issue in the same manner as he would on an issue initially considered.

(b) A hearing on any new issue shall be limited to a discussion of that new issue.

(c) In the event that a new issue is raised at the time any formal hearing is conducted, the party confronted with that new issue may, upon request to the administrative law judge, be granted a continuance of not less than 5 days with respect to that new issue.

§ 725.456 Time and place of hearing.

The Chief Administrative Law Judge shall assign a definite time and place for the formal hearing and shall include this information in his notice to the parties. Whenever practicable, the hearing shall be held in the area of the claimant's residence and be convenient to public transportation.

§ 725.457 Change of time and place for hearing; transfer of cases.

(a) The Chief Administrative Law Judge or the administrative law judge may change the time and place for the hearing, either on his own motion or for good cause shown by a party. The Chief Administrative Law Judge or administrative law judge may adjourn or postpone the hearing, or he may reopen the hearing for the receipt of additional evidence at any time prior to the mailing of notice to the party of the decision in the case. Unless otherwise agreed, at least 10 days notice shall be given to the parties of any change in the time or place of hearing or of an adjournment or a reopening of the hearing.

(b) At any time after a notice of hearing has been issued the Chief Administrative Law Judge may for good cause transfer such case from one administrative law judge to another.

CONDUCT OF HEARINGS

§ 725.461 Hearings procedure, generally.

All hearings shall be attended by the parties or their representatives and such other persons as the administrative law judge deems necessary and proper. The administrative law judge shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the administrative law judge believes that there is relevant and material evidence available which has not been presented at the hearing, he may adjourn the hearing or, at any time, prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence. The order in which evidence and allegations shall be presented and the procedures at the hearing generally, except as these regulations otherwise expressly provide, shall be in the discretion of the administrative law judge and of such nature as to afford the parties a reasonable opportunity for a fair hearing.

§ 725.462 Evidence.

In making an investigation or inquiry or conducting a hearing the administrative law judge shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart; but may make such investigation or inquiry or conduct such hearing in such a manner as to best ascertain the rights of the parties. Declarations of a deceased miner concerning the disability or death in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the disability or death.

§ 725.463 Witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation or as directed by the administrative law judge unless they are excused by the administrative law judge for cause. The administrative law judge may examine the witnesses and shall allow the parties or their representatives to do so. If the administrative law judge conducts the examination of a witness, he may allow the parties to suggest matters as to which they desire the witness to be questioned, and the administrative law judge shall question the witness with respect to such matters if they are relevant and material to any issue pending for decision before him.

(b) No person shall be required to attend as a witness in any proceeding before an administrative law judge at a place outside the State of his residence and more than 100 miles from his place of residence, unless his lawful mileage and fee for 1 day's attendance shall be paid to him in advance of the hearing date.

§ 725.464 Depositions; interrogatories.

The testimony of any witness may be taken by deposition or interrogatory according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the U.S. District Court for the District of Columbia if the case is pending in the District).

§ 725.465 Witness fees.

Witnesses summoned in a formal hearing before an administrative law judge or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States (Act, section 422 and Longshoremen's Act, section 25). Before any witness fees are incurred the Chief Administrative Law Judge or administrative law judge shall determine, in his discretion, that the presence of any witness was necessary. If it is determined that the presence of a witness is not necessary then that witness shall not be entitled to witness fees pursuant to this section.

§ 725.466 Oral argument and written allegations.

The parties, upon their request, shall be allowed a reasonable time for the presentation of oral argument or for the filing of briefs or other written statements of allegations as to facts or law. Where there is more than one party to the hearing, copies of any brief or other written statement shall be filed with the administrative law judge and served on all parties in interest by the party submitting the statement.

§ 725.467 Waiver of right to appear and present evidence.

If all parties waive their right to appear before the administrative law judge or to present evidence or argument personally or by representative, it shall not be necessary for the administrative law judge to give notice of and conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Chief Administrative Law Judge or the administrative law judge. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a formal hearing, such officer may, nevertheless, give notice of a time and place and conduct a hearing, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts in issue in the case. Where such a waiver has been filed by all parties, and they do not appear before the administrative law judge personally or by representative, the administrative law judge shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and other documents which were considered in connection with the recommendations of the deputy commissioner, and whatever additional relevant

and material evidence the party or parties may present in writing for consideration by the administrative law judge. Such documents shall be considered as all of the evidence in the case and the decision shall be based on them.

§ 725.468 Consolidated issues.

When one or more additional issues are raised by the administrative law judge pursuant to § 725.455, such issues may, in the discretion of the Chief Administrative Law Judge, be consolidated for hearing and decision with other issues pending before the administrative law judge upon the same request for a hearing, whether or not the same or substantially similar evidence is relevant and material to the matters in issue. A single decision may be made upon all such issues.

§ 725.469 Joint hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters in issue at each such hearing the Chief Administrative Law Judge may upon motion by any party in interest, or on his own motion or on the motion of an adjudication officer, order the administrative law judge assigned the case to fix the same time and place for each such hearing and conduct all such hearings jointly. Where joint hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others and a separate or joint decision shall be made, as appropriate.

§ 725.470 Record of hearing.

All formal hearings shall be open to the public and shall be stenographically reported. All evidence upon which the administrative law judge relies for his final decision shall be contained in the transcript of testimony either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record either in whole or in material part shall be incorporated into the record either by reference or as an appendix.

DISMISSALS

§ 725.471 Dismissal of request for hearing; by application of party.

With the approval of the Chief Administrative Law Judge or administrative law judge at any time prior to the mailing of notice of the decision, a request for a hearing may be withdrawn or dismissed upon the application of the party or parties filing the request for such hearing. A party may request a dismissal by filing a written notice of such request with the Chief Administrative Law Judge or administrative law judge or orally stating such request at the hearing.

§ 725.472 Dismissal by abandonment of party.

Notwithstanding the provisions of § 725.415, with the approval of the Chief Administrative Law Judge or administrative law judge, a request for hearing may also be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his representative appears at the time and place fixed for the hearing and either (a) prior to the time for hearing such party does not show good cause as to why neither he nor his representative can appear or (b) within 10 days after the mailing of a notice of hearing to him to show cause, such party does not show good cause for such failure to appear and failure to notify the Chief Administrative Law Judge or administrative law judge prior to the time fixed for hearing that he cannot appear.

§ 725.473 Dismissal for cause.

The Chief Administrative Law Judge or administrative law judge may, on his own motion dismiss a hearing request, either entirely or as to any stated issue, under any of the following circumstances:

(a) *Res judicata.* Where there has been a previous determination or decision by the Secretary with respect to the rights of the same party on the same facts pertinent to the same issue or issues which has become final either by judicial affirmance or, without judicial consideration, upon the claimant's failure timely to request reconsideration, or hearing, or to commence a civil action with respect to such determination or decision.

(b) *No right to hearing.* Where the party requesting a hearing is not a proper party under § 725.452 or does not otherwise have a right to a hearing under the provisions of this part.

§ 725.474 Notice of dismissal and right to request review thereon.

Notice of the Chief Administrative Law Judge's or administrative law judge's dismissal action shall be given to the parties or mailed to them at their last known addresses, within 20 days from the date on which the hearing was scheduled. Such notice shall advise the parties of their right to request review by the Benefits Review Board pursuant to § 725.491.

§ 725.475 Effect of dismissal.

The dismissal of a request for hearing shall be final and binding unless vacated.

§ 725.476 Vacation of dismissal of request for hearing.

The Chief Administrative Law Judge or administrative law judge may, upon request of the party and for good cause shown, vacate any dismissal of a request for hearing at any time within 3 months from the date of mailing notice of the dismissal to the party requesting the hearing at his last known address.

COMPLETION OF FINAL ADJUDICATION

§ 725.481 Final decision and order.

Within 20 days after the close of a hearing the administrative law judge shall by order reject the claim or make an award in respect of the claim.

§ 725.482 Form of final decision and order.

(a) Orders adjudicating claims for benefits or suspending payments of benefits shall be designated by the term "final decision and order" followed by a descriptive phrase designating the particular type of such order, such as "award of benefits," "rejection of claims," "suspension of benefits," "modification of award." All final decisions and orders shall contain the name of the Office and agency, the names of the parties in interest, a statement of the basis for, findings of fact, an award, rejection, or other appropriate paragraph containing the action of the administrative law judge, and appended thereto shall be a paragraph headed "proof of service," containing the certification of the administrative law judge that a copy of the final decision and order was, on a date stated, sent by certified mail, with the names and addresses of the parties to whom sent. Final decisions and orders shall be signed by the administrative law judge at two places, (1) following the action paragraph, and (2) following the certification under the "proof of service."

(b) Copies of final decisions and orders shall be served personally or by certified mail upon the claimant, and upon any operator and his insurance carrier when applicable at the last known address of each.

§ 725.483 Contents of final decision and order.

(a) *Findings of Fact.* (1) All original final decisions and orders shall contain, in the paragraph headed "Findings of Fact," findings with respect to the names and addresses of the parties in interest, the dates and places of employment pertinent to the claim, the circumstances surrounding the coal miner's exposure to respirable coal dust, the nature and extent of the disability, notice of total disability or death, and such other facts as may be necessary to determine all of the issues raised before the administrative law judge upon the hearing of the case or otherwise, but in case of rejection of the claim the administrative law judge may in his discretion omit any findings unnecessary to support such action. In cases in which the claim is rejected, the ground for such rejection shall be stated in a paragraph following the findings of fact.

(2) In orders other than the original order, the statement of the basis for the order shall contain reference to all prior orders with the dates thereof. In such orders the findings of fact shall relate only to the immediate issues before the administrative law judge without restatement of facts found in any prior order relating to the same disability or death, unless necessary for the completeness of the order.

(3) Findings of fact shall be stated positively; that is, without equivocation or qualification.

(b) *Conclusions of law.* All final decisions and orders shall contain after the findings of fact a paragraph entitled

"Conclusions of Law." This paragraph shall, when appropriate, contain statements of all ultimate facts necessary to support the action of the administrative law judge. This paragraph shall contain among other things a statement as to the claimant's eligibility for benefits and, when appropriate, a statement asserting or denying the liability of an operator or his insurance carrier for the payment of benefits to the claimant for any periods after December 31, 1973.

(c) *Order.* All final decisions and orders shall contain after the conclusions of law the orders of the administrative law judge directing the parties to take any action consistent with the findings of fact and conclusions of law as required by the Act.

§ 725.484 Interlocutory matters to be disposed of without formal orders.

Final decisions and orders or other formal orders shall not be made or filed with respect to interlocutory matters of a procedural nature arising during the pendency of a case where benefits have been claimed.

§ 725.485 Finality of orders.

A final decision and order shall become effective when signed by the appropriate adjudication officer, and shall become final at the expiration of the 30th day thereafter.

§ 725.486 Modification of awards.

Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the administrative law judge the administrative law judge may, at any time prior to 1 year after the date of the last payment of benefits, whether or not an order has been issued, or at any time prior to 1 year after the rejection of a claim, review a case in accordance with the procedure prescribed in respect of claims in this subpart and in accordance therewith issue a new final decision and order which may terminate, continue, or reinstate, increase, or decrease such benefits, or award benefits. Such new order shall not affect any benefits previously paid, except that an award increasing the benefits rate may be made effective from the date of the entitlement and if any part of the benefit due or to become due is unpaid, an award decreasing the benefit rate may be made effective from the date of the entitlement, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid benefit pursuant to Subpart F of this part.

§ 725.487 Judicial enforcement.

Pursuant to section 21(d) of the Longshoreman's Act as incorporated by section 422 of the Act, if any operator or his officers or agents fails to comply with an order making an award, that has become final, any beneficiary of such award or the adjudication office making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the claimant resides (or to the U.S. District Court for the District of Columbia, if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such operator or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

APPEALS FROM FINAL DECISION AND ORDERS

§ 725.491 Right to appeal; Benefits Review Board.

Any party in interest, adversely affected or aggrieved by a final decision and order of an adjudication officer issued pursuant to § 725.481 may appeal such final decision and order to the Benefits Review Board.

§ 725.492 Procedure before the Board.

All appeals filed with the Board shall be processed and determined pursuant to rules and regulations duly promulgated by the Board as authorized by the Secretary.

§ 725.495 Judicial review.

Pursuant to section 21(c) of the Longshoremen's and Harbor Workers' Compensation Act as incorporated by section 422 of the Act, any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the U.S. Court of Appeals for the circuit in which the claimant resides or in the most convenient U.S. Circuit Court of Appeals if the claimant resides outside of the United States by filing in such court within 60 days following the issuance of such Board order a written petition praying that the order be modified or set aside. The statute provides that payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless irreparable injury would otherwise ensue to an operator or carrier. The order of the court allowing any stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the operator, and specifying the nature of the damage.

§ 725.496 Certification of record for judicial review.

Whenever the record of a hearing shall be required for review or otherwise by any court of competent jurisdiction, the Secretary or his designated representative shall transmit the record with a certification thereof over an appropriate signature as the official record of the case in his custody. The certification shall list each transcript of testimony and other paper included in the certification.

§ 725.497 Costs in proceedings brought without reasonable grounds.

If the court having jurisdiction of proceedings in respect of any claim or final decision and order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings (Act, section 422 and Longshoremen's Act, section 26).

Subpart F—Payment of Benefits

GENERAL

§ 725.501 Applicability of this subpart.

For purposes of the Department of Labor's administration of part C of title IV of the Act, benefits shall be determined and paid pursuant to the provisions of this subpart. This subpart applies to all new claims of eligible individuals filed after December 31, 1973, as well as new claims filed with the Department of Labor pursuant to section 415 of part B of title IV of the Act by claimants entitled thereby to benefit payments under part C of title IV after December 31, 1973. However, in respect to new claims filed under section 415 of the Act, no payment of benefits under this Subpart F of this Part 725 shall commence before January 1, 1974. Benefits due any eligible individual from the Department of Labor which are payable under part B of title IV of the Act shall be determined and paid pursuant to Subpart C of Part 720 of this subchapter.

§ 725.502 Manner of payment; payment periods.

(a) Benefits under this Act shall be paid periodically, promptly, and directly to the person entitled thereto. Coal mine operators shall be liable for such payments as provided in Subpart D of this Part 725.

(b) Benefits are payable for monthly periods. If the claimant meets all the requirements for entitlement to benefits in the same month in which his claim is filed, the filing will be effective for the whole month. If a claimant dies in the first month for which he meets all the requirements for entitlement to benefits, he will be considered to be entitled to benefits for that month.

(c) On the 14th day after the date when there has been a determination by a deputy commissioner or decision by an administrative law judge to the effect that the claimant is entitled to receive benefits, or the date when payment of benefits has been ordered pursuant to § 725.312(b), the first installment of benefits shall become due and all benefits then due shall be paid. Thereafter compensation shall be paid in monthly installments, except where the adjudicating officer determines that payment in installments should be made semimonthly or at some other period.

§ 725.503 Payees.

Benefits may be paid, as appropriate, to a beneficiary, to a qualified dependent, or to a representative authorized under this subpart to receive payments on behalf of such beneficiary or dependent. Also, where an amount is payable under part C of title IV of the Act for any month to two or more individuals who are members of the same family, the

OWCP may, in its discretion, certify to any two or more of such individuals joint payment of the total benefits payable to them for such period.

§ 725.504 Payment on behalf of another; "legal guardian" defined.

Benefits are paid only to the beneficiary or his legal guardian. As used in this section, "legal guardian" means an individual who has been appointed by a court of competent jurisdiction or otherwise appointed pursuant to law, to assume control of, and responsibility for, the care of the beneficiary, the management of his estate, or both.

§ 725.505 Guardian for minor or incompetent.

The deputy commissioner may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive benefits payable to such person under part C of title IV of the Act and to exercise the powers granted to or to perform the duties required of such person under the Act.

§ 725.506 Assignment and exemption from claims of creditors.

No assignment, release, or commutation of benefits due or payable under this part, except as provided by the Act as implemented by this Part 725, shall be valid, and such benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. (Act, section 422, and Longshoremen's Act, section 16.)

§ 725.507 Computation of benefits.

(a) *Basic rate.* The benefit amount of each beneficiary entitled to a benefit for any month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 50 percent of the minimum monthly payment to which a totally disabled Federal employee in grade GS–2 would be entitled for such period under the Federal Employees' Compensation Act, chapter 81, title 5, United States Code. Such basic rate is determined by:

(1) Ascertaining the lowest annual rate of pay ("step 1") for grade GS–2 of the General Schedule applicable to such period (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in subparagraph (1) of this paragraph by 12.

(3) Ascertaining the minimum monthly payment under the Federal Employees' Compensation Act by multiplying the amount determined in subparagraph (2) of this paragraph by 0.75 (that is, by 75 percent) (see 5 U.S.C. 8112); and

(4) Ascertaining the basic rate under the Act by multiplying the amount determined in subparagraph (3) of this paragraph by 0.50 (that is, by 50 percent).

(b) *Basic benefit.* When a miner or widow is entitled to benefits for a month for which he or she has no dependents who qualify under Part 715 of this chapter and when a surviving child of a miner or widow, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next higher multiple of 10 cents). This amount is referred to as the "basic benefit."

(c) *Augmented benefit.* (1) When a miner or widow is entitled to benefits for a month for which he or she has one or more dependents who qualify under Part 715 of this chapter, the amount of benefits to which such miner or widow is entitled is increased. This increase is referred to as an "augmentation."

(2) Any request to the Office that the benefits of a miner or widow be augmented in accordance with this paragraph shall be in writing on such form and in accordance with such instructions as are prescribed by the Office. Such request shall be filed with the Office in accordance with those provisions of Subpart B of this Part 725 dealing with the filing of claims as if such request were a claim for benefits, and as if such dependent were the "beneficiary" referred to therein. Ordinarily, such request is made as part of the claim of the miner or widow for benefits.

(3) The benefits of a miner or widow are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in Part 715 of this chapter and continue to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in Part 715 of this chapter, except in the case of a child who qualifies as a dependent because he is a student. In the latter case such benefits continue to be augmented through the month before the first month during no part of which he qualifies as a student.

(4) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents.

(d) *Survivor benefit.* (1) As used in this section, "survivor" means a surviving child of a miner or widow, or a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under the provisions of Part 715 of this chapter.

(e) *Computation and rounding.* (1) Any computation prescribed by this section is made to the third decimal place.

(2) Benefits are payable in multiples of 10 cents. Therefore, a payment of amounts derived under paragraph (c) (4) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

§ 725.508 Certification to dependent of augmentation portion of benefit.

(a) If the benefit of a miner or of a widow is augmented because of one or more dependents (§ 725.507), and it appears to the Director of the OWCP that the best interest of such dependent would be served thereby, the Director may certify payment of the amount of such augmentation (to the extent attributable to such dependent) to such dependent directly or to a representative payee for the use and benefit of such dependent.

(b) Any request to the Office to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section, shall be in writing on such instructions as are prescribed by the Office, and shall be filed with the Office in accordance with those provisions of Subpart B of this part dealing with the filing of claims as if such request were a claim for benefits (see Subpart A of this part).

(c) In determining whether it is in the best interest of such dependent to certify separate payment of the amount of the augmentation in benefits attributable to him, the Director of the Office shall apply the standards pertaining to representative payment in this subpart and the instructions issued pursuant thereto.

(d) When the Director of the Office determines that the amount of a miner's benefit attributable to the miner's wife or child should be certified for separate payment to a person other than such miner, or that the amount of a widow's benefit attributable to such widow's child should be certified for separate payment to a person other than the widow, and the miner or widow disagrees with such determination and alleges that separate certification is not in the best interest of such dependent, the Director shall reconsider that determination.

(e) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

§ 725.509 Commutation of payments, lump sum awards.

(a) Whenever the deputy commissioner determines that it is in the interest of justice, the liability for benefits or any part thereof as determined by a final adjudication, may, with the approval of the Director of the OWCP, be discharged by the payment of a lump sum equal to the present value of future benefits payments commuted, computed at 4 percent true discount compounded annually.

(b) Applications for commutation of future payments of benefits shall be made to the Office on the form provided for that purpose. If the deputy commissioner determines that an award of

a lump sum payment of such benefits would be in the interest of justice, he shall refer such application, together with the reasons in support of such determination, to the Director of the Office for consideration.

(c) The Director of the OWCP shall, in his discretion, grant or deny the application for commutation of payments. In the case of a denial an appeal may be taken pursuant to the adjudicatory procedures prescribed in Subpart E of this Part 725 as though such appeal were an appeal from a denial of benefits.

(d) The computation of all commutations of such benefits will be made by the Office of Workmen's Compensation Programs and for such purpose the deputy commissioner shall refer the file to the appropriate officer. For this purpose the file shall contain the date of birth of the person on whose behalf commutation is sought, as well as the date upon which such commutation shall be effective.

(e) For purposes of determining the amount of any lump sum award, the probability of the death of the disabled miner or other person entitled to benefits before the expiration of the period during which he is entitled to benefits, shall be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

MODIFICATION OF BENEFITS

§ 725.511 Modification of benefit amounts, general.

Under certain conditions, the amount of monthly benefits as computed in § 725.507 must be modified to determine the amount actually to be paid to a beneficiary. A modification of the amount of a monthly benefit may be required in the following instances:

(a) *Reduction.* A reduction from a beneficiary's monthly benefit may be required because of:

(1) In the case of benefits to a miner, parent, brother, or sister, the excess earnings from wages and from net earnings from self-employment of such miner, parent, brother, or sister, respectively; or

(2) Failure to report earnings from work in employment and self-employment within the prescribed period of time; or

(3) The receipt by a beneficiary of payments made on account of any disability of the miner under State or Federal laws relating to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(4) The fact that a claim for benefits from an additional beneficiary is filed, or that such a claim is effective for a payment prior to the month of filing, or a dependent qualifies under Part 715 of this chapter for an augmentation portion of a benefit of a miner or widow for a period in which another dependent has previously qualified for an augmentation.

(b) *Adjustment.* An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary.

(c) *Nonpayment.* No benefits under this part are payable to the residents of a State which reduces its payments made to beneficiaries pursuant to certain State laws (see § 725.662).

(d) *Suspension.* A suspension of a beneficiary's benefits may be required when the Office has information indicating that reductions on account of the miner's excess earnings (based on criteria in section 203(b) of the Social Security Act, 42 U.S.C. 403(b)) may reasonably be expected.

(e) *"Rounding" of benefit amounts.* See § 725.507(e).

(f) *Failure to disclose pertinent evidence.* Any individual entitled to a benefit who is aware of any circumstance which, under the provisions of this part could affect his entitlement to benefits, his eligibility for payment, or the amount of his benefits, or result in the termination, suspension, or reduction of his benefit, shall promptly report such circumstance to the Office of Workmen's Compensation Programs. The Office may at any time require an individual receiving, or claiming that he is entitled to receive a benefit, either on behalf of himself or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the act. If such individual fails to submit any such report or statement, properly executed, to the Office as herein required, the Office may subject such benefit to reductions, suspension, or termination as the case may be.

(g) *Reimbursement of trust fund.* Pursuant to the provisions of section 422 of the Act and section 17(b) of the Longshoremen's Act as incorporated therein, where a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947 (29 U.S.C. 186(c)) established pursuant to a collective bargaining agreement in effect between an employer and an employee entitled to benefits under this Act has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to benefits under this Act, the Secretary may authorize a lien on such benefits in honor of the trust fund if for the amount of such payments.

§ 725.512 Reductions; receipt of State benefit.

(a) As used in this section, the term "State benefit" means a payment to a beneficiary made on account of any disability of the miner under State laws relating to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(b) Benefit payments to a beneficiary for any month are reduced (but not below zero) by an amount equal to any payments of State benefits received by such beneficiary for such month.

(c) Where a State benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitute for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Office determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State benefit is multiplied by 4⅓ and a biweekly benefit is multiplied by 2⅙ to ascertain the monthly equivalent for reduction purposes.

(d) Amounts paid or incurred or to be incurred by the individual for medical, legal, or related expenses in connection with his claim for State benefits (defined in paragraph (a) of this section) or the injury or occupational disease, if any, on which such award of State benefits (or settlement agreement) is based, are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consonant with State law. Such medical, legal, or related expenses may be evidenced by the State benefit award, compromise agreement, or court order in the State benefit proceedings, or by such other evidence as the Office may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other clear and convincing evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable.

Such expenses will not be excluded unless established by evidence as required by the Office.

§ 725.513 Reductions; retroactive effect of an additional claim for benefits.

Beginning with the month in which a person other than a miner files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid.

§ 725.514 More than one reduction event.

If a reduction for receipt of State benefits and a reduction on account of excess earnings are chargeable to the same monthly period, the benefit for such period is first reduced (but not below zero) by the amount of the State benefits, and the remainder of the benefit for such period, if any, is then reduced (but

not below zero) by the amount of excess earnings chargeable to such period.

§ 725.515 Nonpayment of benefits to residents of certain States.

No benefits shall be paid under this part to the residents of any State which, after December 30, 1969, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance benefits which are funded in whole or in part out of employer contributions.

OVERPAYMENTS, UNDERPAYMENTS

§ 725.521 Overpayment.

(a) *General.* As used in this subpart, the term "overpayment" includes:

(1) Payment where no amount is payable under Part C of Title IV of the Act;

(2) Payment in excess ofthe amount due under Part C of Title IV of the Act;

(3) Payment resulting from the failure to reduce benefits under sections 412(b) and 430 of the Act;

(4) Payment to a resident of a State whose residents are not eligible for payment; and

(5) Payment resulting from the failure to terminate benefits of an individual no longer entitled thereto.

(b) *Adjustments for overpayment.* If the beneficiary to whom an overpayment was made is entitled to benefits at the time of a determination of such overpayment, or becomes so entitled, at any time thereafter, no such benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefit.* Adjustment under paragraph (b) of this section may be effected by withholding a part of the benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount of each payment period would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish material information; and

(3) Recoupment can be effected in an amount of not less than $10 a month and at a rate which would not extend the period of adjustment beyond 3 years after the initiation of the adjustment action.

(d) *Adjustment of overpayment to deceased beneficiary.* If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) or (c) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

§ 725.522 Notice of right to waiver consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, notice of the provisions of section 204(b) of the Social Security Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual and to any other individual against whom adjustment or recovery of the overpayment is to be effected.

§ 725.523 When waiver of adjustment or recovery may be applied.

There shall be no adjustment or recovery in any case where an incorrect payment under Part C of Title IV of the Act has been made with respect to an individual—

(a) Who is without fault, and

(b) Adjustment or recovery would either:

(1) Defeat the purpose of Title IV of the Act, or

(2) Be against equity and good conscience.

§ 725.524 Standards for waiver of adjustment or recovery.

The standards for determining the applicability of the criteria listed in § 725.523 shall be the same as those applied by the Social Security Administration pursuant to §§ 410.561–410.561(h) of this title.

§ 725.525 Collection and compromise of claims for overpayment.

(a) *General effect of the Federal Claims Collection Act of 1966.* Claims by the Office of Workmen's Compensation Programs against an individual for recovery of overpayments under Part C of Title IV of the Act, not exceeding the sum of $20,000, exclusive of interest, may be compromised, or collection suspended or terminated where such individual or his estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see paragraph (c) of this section) or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section) except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension or termination of collection of a claim for overpayment*—(1) *Overpaid individual living.* In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of false claim, or misrepresentation on the part of such individual or on the part of any other party having an interest in the claim.

(2) *Overpaid individual deceased.* In any case where the overpaid individual is deceased (i) a claim for overpayment in excess of $5,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such deceased individual, and (ii) a claim for overpayment regardless of the amount will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.* In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under Part C of Title IV of the Act, the Office will consider such individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Office will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Office will consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probalities.* Where the probable costs of recovering an overpayment under Part C of Title IV of the Act would not justify enforced collection proceedings for the full amount of the claim or there is doubt concerning the Office's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount will be considered.

(e) *Amount of compromise.* The amount to be accepted in compromise of a claim for overpayment under Part C of Title IV of the Act shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings giving due consideration to the exemptions available to the overpaid individual under State or Federal law and the time which collection will take.

(f) *Payment.* Payment of the amount which the Office has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under Part C of Title IV of the Act must be made within the time and in the manner set by the Office. A claim for such recovery of the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Office. Failure of the overpaid individual or his estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

§ 725.526 Underpayments.

(a) General: As used in this subpart, the term "underpayment" includes a payment in an amount less than the amount of the benefit due for any month, and nonpayment where some amount of such benefits are payable.

(b) Underpaid individual is living: If an individual to whom an underpayment is due is living, the amount of such underpayment will be paid to such individual either in a single payment (if he is not entitled to a monthly benefit) or by increasing one or more benefit payments to which such individual is or becomes entitled.

(c) Underpaid individual dies before adjustment of underpayment: If an individual to whom an underpayment is due dies before receiving payment or negotiating a check or checks representing such payment, such underpayment will be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household with the deceased individual at the time of such individual's death, or

(ii) In the case of a deceased miner, entitled for the month of death to widow's black lung benefits.

(2) In the case of a deceased miner or widow, his or her child entitled to benefits as the surviving child of such miner or widow for the month in which such miner or widow died (if more than one such child, in equal shares to each such child).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under subparagraph (1) of this paragraph.

(5) The child or children of the deceased individual who do not qualify under subparagraph (2) of this paragraph (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under subparagraph (3) of this paragraph (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (c) of this section.

(d) In the event that a person who is otherwise qualified to receive an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his share of the underpayment will be divided among the remaining living person(s) in the same order of priority. In the event that there is (are) no other such person(s), the underpayment will be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative:* The term "legal representative," for the purpose of qualifying to receive an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution, or organization acting on behalf of an unadministered estate, provided the person can give the Administration good acquittance (as defined in paragraph (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Administration good acquittance:

(1) A person who qualifies under a State's "small estate" statute; or

(2) A person resident in a foreign country who under the laws and customs of that country, has the right to receive assets of the estate; or

(3) A public administrator; or

(4) A person who has the authority, under applicable law, to collect the assets of the estate of the deceased beneficiary.

(f) Definition of "good acquittance": A person is considered to give the Administration "good acquittance" when payment to that person will release the Administration from further liability for such payment.

§ 725.527 Relation to provisions for reductions or increases.

The amount of an overpayment or underpayment is the difference between the amount actually paid to the beneficiary and the amount of the payment to which the beneficiary was actually entitled. Such overpayment or underpayment, for example, would be equal to the difference between the amount of a benefit in fact paid to the beneficiary and the amount of such benefit as reduced under section 412(b) of the Act, as increased pursuant to section 412(a)(1), or as augmented under section 412(a)(3), of the Act. In effecting an adjustment with respect to an overpayment, no amount can be considered as having been withheld from a particular benefit which is in excess of the amount of such benefit as so reduced. Overpayment and underpayment simultaneously outstanding on account of the same beneficiary are first adjusted against one another before adjustment pursuant to the other provisions of this subpart.

Representative Payees

§ 725.531 Payments on behalf of an individual.

(a) When it appears to the Office that the interest of a beneficiary entitled to a payment under Part C of Title IV of the Act would be served thereby, certification of payment may be made by the Office, regardless of the legal competency or incompetency of the beneficiary entitled thereto, either for direct payment to such beneficiary, or for his use and benefit to a relative or some other person as the "representative payee" of the beneficiary. When it appears that an individual who is receiving benefit payments may be incapable of managing such payments in his own interest, the Office shall, if such individual is age 18 or over and has not been adjudged legally incompetent, continue payments to such individual pending a determination as to his capacity to manage benefit payments and the selection of a representative payee.

(b) As used in this section and the related sections following, the term "beneficiary" includes the dependent of a miner or widow who could qualify for certification of separate payment of an augmentation portion of such miner's or widow's benefits.

§ 725.532 Submission of evidence by representative payee.

Before any amount shall be certified for payment to any relative or other person as representative payee for and on behalf of a beneficiary, such relative or other person shall submit to the Office such evidence as it may require of his relationship to, or his responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his authority to receive such payment. The Office may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility, or authority. If any such relative or other person fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him on behalf of the beneficiary unless for good cause shown, the default of such relative or other person is excused by the Office and the required evidence is thereafter submitted.

§ 725.533 Responsibility of representative payee.

A relative or other person to whom certification of payment is made on behalf of a beneficiary as representative payee shall, subject to review by the Office and to such requirements as it may from time to time prescribe, apply the payments certified to him on behalf of a beneficiary only for the use and benefit of such beneficiary in the manner and for the purposes determined by him to be in the beneficiary's best interest.

§ 725.534 Use of benefits for current maintenance.

Payments certified to a relative or other person on behalf of a beneficiary shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance—i.e., to replace current income lost because of the disability, retirement, or death of the insured individual. Where a beneficiary is receiving care in an institution, current maintenance shall include the customary charges made by the institution to individuals it provides with care and services like those it provides the beneficiary and charges made for current and foreseeable needs of the beneficiary which are not met by the institution.

§ 725.535 Conservation and investment of payments.

(a) Payments certified to a relative or other person on behalf of a beneficiary which are not needed for the current maintenance of the beneficiary except as they may be used pursuant to § 725.720, shall be conserved or invested on the beneficiary's behalf. Preferred investments are U.S. savings bonds, but such funds may also be invested in accordance with the rules applicable to investment of trust estates by trustees. For example, surplus funds may be deposited in an interest or dividend bearing

account in a bank or trust company or in a savings and loan association if the account is either federally insured or is otherwise insured in accordance with State law requirements. Surplus funds deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association must be in a form of account which clearly shows that the representative payee has only a fiduciary, and not a personal, interest in the funds.

(b) The preferred forms of such accounts are as follows:

(Name of beneficiary)
by

(Name of representative payee)
or

(Name of beneficiary)
by

(Name of representative payee), Trustee

(c) U.S. savings bonds purchased with surplus funds by a representative payee for a minor should be registered as follows:

(Name of beneficiary)
---, a minor, for whom
(Social Security No.)
--- is representative
(Name of payee)
payee for black lung benefits.

(d) U.S. savings bonds purchased with surplus funds by a representative payee for an incapacitated adult beneficiary should be registered as follows:

(Name of beneficiary)
---, for whom
(Social Security No.)
--- is representative
(Name of payee)
payee for black lung benefits.

A representative payee who is the legally appointed guardian or fiduciary of the beneficiary may also register U.S. savings bonds purchased with funds from the payment of benefits under Part B of Title IV in accordance with applicable regulations of the U.S. Treasury Department (31 CFR 315.5 through 315.8). Any other approved investment of the beneficiary's funds made by the representative payee must clearly show that the payee holds the property in trust for the beneficiary.

§ 725.536 Use of benefits for beneficiary in institution.

Where a beneficiary is confined in a Federal, State, or private institution because of mental or physical incapacity, the relative or other person to whom payments are certified on behalf of the beneficiary shall give highest priority to expenditure of the payments for the current maintenance needs of the beneficiary, including the customary charges made by the institution in providing care and maintenance. It is considered in the best interests of the beneficiary for the relative or other person to whom payments are certified on the beneficiary's behalf to allocate expenditure of the payments so certified in a manner which will facilitate the beneficiary's earliest possible rehabilitation or release from the institution or which otherwise will help him live as normal a life as practicable in the institutional environment.

§ 725.537 Support of legally dependent spouse, child, or parent.

If current maintenance needs of a beneficiary are being reasonably met, a relative or other person to whom payments are certified as representative payee on behalf of the beneficiary may use part of the payments so certified for the support of the legally dependent spouse, a legally dependent child, or a legally dependent parent of the beneficiary.

§ 725.538 Claims of creditors.

A relative or other person to whom payments under Part C of Title IV of the Act are certified as representative payee on behalf of a beneficiary may not be required to use such payments to discharge an indebtedness of the beneficiary which was incurred before the first monthly period for which payments are certified to a relative or other person on the beneficiary's behalf. In no case, however, may such payee use such payments to discharge such indebtedness of the beneficiary unless the current and reasonably foreseeable future needs of the beneficiary are otherwise provided for.

§ 725.539 Accountability.

A relative or other person to whom payments are certified as representative payee on behalf of a beneficiary as the Office may require, accounting for the payments certified to him on behalf of the beneficiary unless such payee is a court-appointed fiduciary and, as such, is required to make an annual accounting to the court, in which case a true copy of each such account filed with the court may be submitted in lieu of the accounting form prescribed by the Office. If any such relative or other person fails to submit the required accounting within a reasonable period of time after it is requested, no further payments shall be certified to him on behalf of the beneficiary unless for good cause shown, the default of such relative or other person is excused by the Office, and the required accounting is thereafter submitted.

§ 725.540 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested funds from payments under Part B of Title IV of the Act certified to him on behalf of a beneficiary shall, upon direction of the Office, transfer any such funds (including interest earned from investment of such funds) to a successor payee appointed by the Office, or, at the option of the Office, shall transfer such funds, including interest, to the Office for recertification to a successor payee or to the beneficiary.

MEDICAL BENEFITS

§ 725.551 Availability of medical benefits.

A responsible operator, its insurance carrier, or the Secretary, as the case may be, shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of a miner's pneumoconiosis and related disability, or the process of recovery may require.

§ 725.552 Approved physicians.

The Office shall designate authorized physicians who are to render medical care under the Act. The names of physicians so designated in the community shall be made available to employees through postings or in such other form as the Secretary may prescribe.

§ 725.553 Miner's physician.

(a) A miner shall have the right to choose an attending physician authorized by the Office to provide medical care under the Act. If, due to the nature of the disability, the miner is unable to select his physician and the nature of the disability requires immediate medical treatment and care, the responsible operator or the Office, as the case may be shall select a physician for him.

(b) The Office shall actively supervise the medical care rendered to disabled miners, shall require periodic reports as to the medical care being rendered to disabled miners, and shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished. The Director of the Office may, on his own initiative or at the request of the responsible operator, order a change of physicians or hospitals when in his judgment such change is desirable or necessary in the interest of the miner. Change of physicians at the request of miners shall be permitted only upon a showing made to the Office that the attending physician is unable or unwilling to provide adequate medical care and treatment for the miner or that the physician is in some way not in compliance with the rules governing physicians contained in this Part 725.

§ 725.554 Fees for medical services.

(a) Fees for medical services contemplated in this subpart shall be paid by a responsible operator if he is a self-insurer or by his insurance carrier. In the event there is no financially responsible operator, fees shall be paid by the Office.

(b) A miner shall not be entitled to recover any amount expended by him for medical treatment or services unless (1) he shall have requested the responsible operator or insurance carrier or the Office to furnish or authorize such services or to authorize provision of such services by the physician selected by the miner, and the operator, the carrier, or the Office shall have refused or neglected to do so; or unless (2) the nature of the disability required such treatment and services and the operator, carrier, or the Office, with knowledge thereof, refused or neglected to provide or authorize the same. No claim for medical or surgical treatment shall be valid and enforceable, as against operator, carrier, or the Secretary, unless within 10 days following the first treatment the physician giving

such treatment furnishes to the operator, carrier, or the Office a report of such treatment on a form prescribed by the Office. The Director of the Office may, however, excuse the failure to furnish such report within 10 days when he finds it to be in the interest of justice to do so, and he or a deputy commissioner may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the miner. If at any time the miner unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the operator, carrier, or the Office, a deputy commissioner may, by order, suspend the payment of further benefits during such time as such refusal continues, and no benefits shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.

(c) Fees for medical services shall be subject to the provisions of this part regulating physicians' charges in respect of a black lung benefits claim.

This part shall become effective November 30, 1972.

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

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

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PART III

DEPARTMENT OF LABOR

Office of the Secretary

■

LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

Provisions and Procedures

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

Subpart A—Service Contract Labor Standards Provisions and Procedures

MISCELLANEOUS AMENDMENTS

Pusuant to section 4 of the Service Contract Act of 1965 as amended (79 Stat. 1034, 86 Stat. 789; 41 U.S.C. 351 et seq.) and Secretary of Labor's Order No. 13–71 (36 F.R. 8755), amendments are hereby made to 29 CFR Part 4 as set forth below in order to conform the provisions of Part 4 to the provisions of such Act as amended by Public Law 92–473, 86 Stat. 789, enacted and effective October 9, 1972. These amendments to Part 4 also make editorial changes in references to officers and organizational components of the Department of Labor performing functions under the part so that they may be identified by their correct titles under the current organizational structure of the Department.

Since these amendments implement amendments to such Act having application to Government procurement procedures for public contracts, which statutory amendments are already in effect, and reflect currently effective revisions in the organization of the Department of Labor, I find that notice and public procedure on these amendments and delay in effective date as provided in 5 U.S.C. 553 would be contrary to the public interest. These amendments shall, therefore, be effective immediately, and shall be applicable, to the extent consistent with law and established procurement procedures, from the effective date of Public Law 92–473. Interested persons shall, notwithstanding, be afforded opportunity until December 31, 1972 to present any written data, views, or arguments concerning these amendments to the Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 for consideration in the same manner as if such amendments were being proposed for adoption. If, upon review of the comments so received, it is concluded that any of them warrant changes in these amendments as adopted, the provisions of these amendments will be further amended accordingly.

Part 4 of Subtitle A of Title 29 of the Code of Federal Regulations is amended as follows:

1. Subpart A is amended by adding, after § 4.1, new §§ 4.1a, 4.1b, and 4.1c to read as follows:

§ 4.1a The Act as amended.

(a) The provisions of the Act (see §§ 4.102–4.103) were amended, effective October 9, 1972, by Public Law 92–473, signed into law by the President on that date. By virtue of amendments made to paragraphs (1) and (2) of section 2(a) and the addition to section 4 of a new subsection (c), the compensation standards of the Act (see §§ 4.159–4.164) were revised to impose on successor contractors certain requirements (see § 4.1c) with respect to payment of wage rates and fringe benefits based on those agreed upon for substantially the same services for the same location in collective bargaining agreements entered into by their predecessor contractors (unless such agreed compensation is substantially at variance with that locally prevailing or the agreement was not negotiated at arm's length), and to require the Secretary of Labor to give effect to the provisions of such collective bargaining agreements in his wage determinations under section 2 of the Act. A new paragraph (5) added to section 2(a) of the Act requires a statement in the government service contract of the rates that would be paid by the contracting agency in the event of its direct employment of those classes of service employees to be employed on the contract work who, if directly employed by the agency, would receive wages determined as provided in 5 U.S.C. 5341. The Secretary of Labor is directed to give due consideration to such rates in determining minimum monetary wages and fringe benefits under the Act's provisions. Other provisions of the 1972 amendments include the addition of a new section 10 to the Act to insure extension of coverage by wage determinations of the Secretary to substantially all service contracts subject to section 2(a) of the Act at the earliest administratively feasible time; an amendment to section 4(b) of the Act to provide, in addition to the conditions previously specified for issuance of administrative limitations, variations, tolerances, and exemptions (see § 4.123), that administrative action in this regard shall be taken only in special circumstances where the Secretary determines that it is in accord with the remedial purpose of the Act to protect prevailing labor standards; and a new subsection (d) added to section 4 of the Act providing for the award of service contracts for terms not more than 5 years with provision for periodic adjustment of minimum wage rates and fringe benefits payable thereunder by the issuance of wage determinations by the Secretary of Labor during the term of the contract. A further amendment to section 5(a) of the Act requires the names of contractors found to have violated the Act to be submitted for the debarment list (see § 4.188) not later than 90 days after the hearing examiner's finding of violation unless the Secretary recommends relief, and provides that such recommendations shall be made only because of unusual circumstances.

(b) Included in this Subpart A and in Part 6 of this subtitle are provisions to give effect to the amendments mentioned in paragraph (a) of this section. Until editorial revisions of other provisions of this part can be made to conform to the Act as amended, such provisions should be read in conjunction with the statutory amendments referred to in paragraph (a) of this section.

§ 4.1b Definitions and use of terms.

(a) As used in this part, unless otherwise indicated by the context—

(1) "Secretary" includes the Secretary of Labor, the Assistant Secretary of Labor for Employment Standards, and their authorized representatives.

(2) "Administrator" means the Deputy Assistant Secretary for Employment Standards in the Employment Standards Administration of the Department of Labor who is also Administrator of the Wage and Hour Division, or his authorized representative as set forth in this part. In the absence of the Deputy Assistant Secretary/Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division/Director of Office of Wage and Compensation Programs is designated to act for him under this part. Except as otherwise provided in this part, the Assistant Administrator is the authorized representative of the Administrator for the performance of functions relating to the making and effectuation of wage determinations under the Service Contract Act of 1965, as amended, and this part.

(3) "Office of Special Wage Standards" or "OSWS" means the organizational unit in the Employment Standards Administration to which is assigned the performance of functions of the Secretary under the Service Contract Act of 1965 as amended.

(4) "Contract" includes any contract subject wholly or in part to provisions of the Service Contract Act of 1965 as amended, and any subcontract of any tier thereunder. (See §§ 4.107–4.134.)

(5) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act.

(6) "Wage determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of section 2(a) of the Act for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 which is subject to the provisions of the Service Contract Act of 1965.

(7) "Act," "Service Contract Act," or "Service Contract Act of 1965" shall mean the Service Contract Act of 1965 as amended by Public Law 92–473, 86 Stat. 789, enacted and effective October 9, 1972.

(b) Because of organizational changes in the Department of Labor (see Secretary of Labor's Order No. 13–71, 36 F.R. 8755), any references in provisions of this part to the Workplace Standards Administration should be read as referring to the Employment Standards Administration, and references to the Office of Government Contracts Wage Standards should be read as referring to the Office of Special Wage Standards, until such provisions are revised to reflect such organizational changes.

§ 4.1c Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.

Section 4(c) of the Service Contract Act of 1965 as amended provides special minimum wage and fringe benefit requirements applicable to every contractor and subcontractor under a contract which succeeds a contract subject to the Act and under which substantially the same services as under the predecessor contract are furnished for the same lo-

cation. Section 4(c) provides that no such contractor or subcontractor shall pay any employee employed on the contract work less than the wages and fringe benefits provided for in a collective bargaining agreement as a result of arms-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in such collective bargaining agreement. If, however, the Secretary finds after a hearing in accordance with the regulations set forth in § 4.10 of this subpart that in any of the foregoing circumstances such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality, the payment obligations of such contractor or subcontractor with respect thereto shall not apply in such circumstances.

2. Section 4.3 is revised to read as follows:

§ 4.3 Register of wage determinations.

(a) The minimum monetary wages and fringe benefits for service employees which the Act requires to be specified in contracts and bid specifications subject to section 2(a) thereof will be set forth in wage determinations issued by the Administrator as an orderly series constituting a register of such minimum wages and fringe benefits. The register shall include, as soon as administratively feasible, wage determinations applicable to all contracts subject to section 2(a) of the Act, and will include in any event, for the localities in which services under such contracts are to be furnished, wage determinations applicable to all contracts entered into during the following years under which more than the stated number of service employees are to be employed: (1) Fiscal year ending June 30, 1973—25; (2) ending June 30, 1974—20; (3) ending June 30, 1975—15; (4) ending June 30, 1976—10; (5) ending June 30, 1977, and for each fiscal year thereafter—5.

(b) Such wage determinations will set forth for the various classes of service employees to be employed in furnishing services under such contracts in the several localities, minimum monetary wage rates to be paid and minimum fringe benefits to be furnished them during the periods when they are engaged in the performance of such contracts, including, where appropriate under the Act, provisions for adjustments in such minimum rates and benefits to be placed in effect under such contracts at specified future times. The wage rates and fringe benefits set forth in such wage determinations shall be determined in accordance with the provisions of sections 2(a) (1), (2), and (5), 4(c) and 4(d) of the Act from those prevailing in the locality for such employees and from pertinent collective bargaining agreements, with due consideration of the rates that would be paid for direct Federal employment of any classes of such employees whose wages, if federally employed, would be determined as provided in 5 U.S.C. 5341. Unless otherwise specified in the wage determination, the wage rates and fringe benefits so determined for any class of service employees to be engaged in furnishing covered contract services in a locality shall be made applicable by contract to all service employees of such class employed to perform such services in the locality under any contract subject to section 2(a) of the Act which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, or supersedure.

(c) Wage determinations included in the register will be available for public inspection during business hours at the Office of Special Wage Standards in the Employment Standards Administration, U.S. Department of Labor, and copies will be made available on request at regional offices of the Administration.

3. Section 4.4 is revised to read as follows:

§ 4.4 Notice of intention to make a service contract.

(a) Not less than 30 days prior to any invitation for bids, request for proposals, or commencement of negotiations for any contract exceeding $2,500 which may be subject to the Act, the contracting agency shall file with the Office of Special Wage Standards, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. Such notice shall be submitted on Standard Form 98, Notice of Intention to Make a Service Contract, which shall be completed in accordance with the instructions provided and shall be supplemented by the information required under paragraphs (b) and (c) of this section. Supplies of Standard Form 98 are available in all GSA supply depots under stock number 7540-926-8972.

(b) The contracting agency shall file with its Notice of Intention to Make a Service Contract (SF-98) a statement in writing containing the following information concerning the service employees expected by the agency to be employed by the contractor and any subcontractors in performing the contract:

(1) The number of such employees of all classes, or a statement indicating whether such number will or will not exceed the number for which a wage determination is mandatory under the provisions of § 4.3(a); and

(2) A listing of those classes of service employees expected to be employed under the contract which, if employed by the agency, would be subject to the wage provisions of 5 U.S.C. 5341, together with a specification of the rates of wages and fringe benefits that would be paid by the Government to employees of each such class if such statute were applicable to them. (Under section 2(a)(5) of the Act and § 4.6 of this part the inclusion of such a statement in the service contract is also required.)

(c) If the services to be furnished under the proposed contract will be substantially the same as services being furnished for the same location by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency shall file with its Notice of Intention to Make a Service Contract (SF-98) a copy of each such collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement. If such services are being furnished for more than one location and the collectively bargained wage rates and fringe benefits are different for different locations or do not apply for one or more locations, the agency shall identify the locations to which such agreements have application. In the event that the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arms-length negotiations, a full statement of the facts so indicating shall be transmitted with the copy of such agreement. If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Office of Special Wage Standards and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10 of this part at the time of filing the Notice of Intention to Make a Service Contract (Form SF-98).

(d) Any Standard Form 98 submitted by a contracting agency without the information required under paragraphs (b) and (c) of this section will be returned to the agency for further action.

(e) If exceptional circumstances prevent the filing of the notice of intention and supplemental information required by this section on a date at least 30 days prior to any invitation for bids, request for proposals, or commencement of negotiations for a proposed contract subject to section 2(a) of the Act, the notice shall be submitted to the Office of Special Wage Standards as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission.

4. Section 4.5 is revised to read as follows:

§ 4.5 Contract specification of determined minimum wages and fringe benefits.

(a) Any contract agreed upon in excess of $2,500 shall contain an attachment specifying the minimum wages and fringe benefits for service employees to be employed thereunder, as determined in any applicable currently effective wage determination made and included in the register as provided in § 4.3, including any expressed in any document referred to in subparagraph (1) or (2) of this paragraph:

(1) Any communication from the Office of Special Wage Standards, Employment Standards Administration, Depart-

ment of Labor, responsive to the notice required by § 4.4; or

(2) Any revision of the register by a wage determination issued prior to the award of the contract or contracts which specifies minimum wage rates or fringe benefits for classes of service employees whose wages or fringe benefits were not previously covered by wage determinations in the register, or which changes previously determined minimum wage rates and fringe benefits for service employees employed on covered contracts in the locality. However, revisions received by the Federal agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective if the Federal agency finds that there is not a reasonable time still available to notify bidders of the revision.

(b) (1) The following exemptions from the compensation requirements of section 2(a) of the Act apply, subject to the limitations set forth in subparagraphs (2), (3), and (4) of this paragraph: To avoid serious impairment of the conduct of Government business it has been found necessary and proper to provide exemption (i) from the determined wage and fringe benefits section of the Act (section 2(a) (1), (2)) but not the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (section 2 (b) of this Act), of all contracts for which no such wage or fringe benefit has been determined for any class of service employees to be employed thereunder; and (ii) from the fringe benefits section (section 2(a)(2)) of all contracts and of all classes of service employees employed thereunder if no such benefits have been determined for any such class of service employees.

(2) The exemptions provided in subparagraph (1) of this paragraph, which were adopted pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, do not extend to undetermined wages or fringe benefits in contracts for which one or more, but not all, classes of service employees are the subject of an applicable wage determination. The procedure for determination of wage rates and fringe benefits for any classes of service employees engaged in performing such contracts whose wages and fringe benefits are not specified in a wage determination included in the register is set forth in § 4.6(b).

(3) The exemptions provided in subparagraph (1) of this paragraph do not apply to any contract for which section 10 of the Act as amended and § 4.3 of this part require an applicable wage determination.

(4) The exemptions provided in subparagraph (1) of this paragraph do not exempt any contract from the application of the provisions of section 4(c) of the Act as amended.

(c) If the notice of intention required by § 4.4 is not filed with the required supporting documents within the time provided in such section, the contracting agency shall exercise any and all of its power that may be needed (including, where necessary, its power to negotiate, its power to pay any necessary additional costs, and its power under any provision of the contract authorizing changes) to include in the contract any wage determinations communicated to it within 30 days of the filing of such notice or of the discovery by the Employment Standards Administration, U.S. Department of Labor, of such omission.

5. Section 4.6 is amended as follows: Paragraph (b) is revised and divided into two subparagraphs and a new subparagraph (3) is added; paragraph (c) is revised; paragraph (d) is revised and the revised text designated as subparagraph (1) and a new subparagraph (2) is added; paragraph (f) is amended by changing the number of the part of this title referred to therein; the first sentence of paragraph (g) is revised; the text of paragraph (j) is designated as subparagraph (1) and a new subparagraph (2) is added; the text of paragraph (k) is designated as subparagraph (1) and a new subparagraph (2) is added; in paragraph (m), subparagraph (9), the text preceding subdivision (i) is revised; and in paragraph (n) the text preceding subparagraph (1) is revised. As amended, § 4.6 reads as follows:

§ 4.6 Labor standards clauses for Federal service contracts exceeding $2,500.

The clauses set forth in the following paragraphs shall be included in every contract (and any bid specification therefor) entered into by the United States or the District of Columbia, in excess of $2,500, the principal purpose of which is to furnish services through the use of service employees:

(a) Service Contract Act of 1965: This contract, to the extent that it is of the character to which the Service Contract Act of 1965 (79 Stat. 1034, 41 U.S.C. 351) applies, is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor thereunder (this Part 4).

(b) (1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wage and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or his authorized representative, as specified in any attachment to this contract.

(2) If there is such an attachment, any class of service employees which is not listed therein, but which is to be employed under this contract, shall be classified by the contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment, and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties, who shall be deemed to be the contracting agency, the contractor, and the employees who will perform on the contract or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, the contracting officer shall submit the question, together with his recommendation, to the Office of Special Wage Standards, ESA, of the Department of Labor for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Administrator or his authorized representative shall be a violation of this contract. No employee engaged in performing work on this contract shall in any event be paid less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subparts B and C of this part, and not otherwise.

(d) (1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any of his employees performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then in the absence of a minimum wage attachment for this contract neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work less than the wages and fringe benefits, provided for in such collective bargaining agreements, to which such employee would be entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the Secretary of Labor or his au-

thorized representative determines that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arms-length negotiations, or finds, after a hearing as provided in Labor Department regulations, 29 CFR 4.10 that the wages and fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post a notice of such wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under Part 1925 of this title.

(g) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in subparagraphs (1) through (5) of this paragraph for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Employment Standards Administration of the U.S. Department of Labor.

(1) His name and address.

(2) His work classification or classifications, rate or rates of monetary wages and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation.

(3) His daily and weekly hours so worked.

(4) Any deductions, rebates, or refunds from his total daily or weekly compensation.

(5) A list of monetary wages and fringe benefits for those classes of service employees not included in the minimum wage attachment to this contract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or his authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (k)(1) of this section shall be deemed to be such a list.

(h) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as he, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(i) The contractor agrees to insert these clauses relating to the Service Contract Act of 1965 in all subcontracts. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(j)(1) As used in these clauses relating to the Service Contract Act of 1965, the term "service employee" means guards, watchmen, and any person engaged in a recognized trade or craft, or other skilled mechanical craft, or in unskilled, semiskilled, or skilled manual labor occupations; and any other employee including a foreman or supervisor in a position having trade, craft, or laboring experience as the paramount requirement; and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	*Monetary wage-fringe benefits*
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(k)(1) If there is a wage determination attachment to this contract and one or more classes of service employees which are not listed thereon are to be employed under the contract, the contractor shall report to the contracting officer the monetary wages to be paid and the fringe benefits to be provided each such class of service employee. Such report shall be made promptly as soon as such compensation has been determined as provided in the clause in paragraph (b) of this section.

(2) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(l) All interpretations of the Service Contract Act of 1965 expressed in Subpart C of this part, are hereby incorporated by reference in this contract.

(m) These clauses relating to the Service Contract Act of 1965 shall not apply to the following:

(1) Any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect, or where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(7) Any contract with the Post Office Department, the principal purpose of which is the operation of postal contract stations.

(8) Any services to be furnished outside the United States. For geographic purposes, the "United States" is defined in section 8(d) of the Service Contract Act to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island. It does not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

(9) Any of the following contracts exempted from all provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor, prior to amendment of such section by Public Law 92–473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel,

where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom;

(ii) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness or accident.

(n) Notwithstanding any of the clauses in paragraphs (b) through (l) of this section, relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) (i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (Parts 520, 521, 524, and 525 of this title).

(ii) The Administrator will issue certificates under the Service Contract Act of 1965 for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (Parts 520, 521, 524, and 525 of this title).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(2) An employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips may have the amount of his tips credited by his employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with the regulations in Part 531 of this title: *Provided, however,* That the amount of such credit may not exceed 80 cents per hour.

6. Section 4.7 is amended by deleting the parenthetical reference and the sentence following it in the contract clause. As amended, § 4.7 reads as follows:

§ 4.7 Labor standards clause for Federal service contracts not exceeding $2,500.

Every contract with the Federal Government which is not in excess of $2,500 but has as its principal purpose the furnishing of services through the use of service employees shall contain the following clause:

Service Contract Act of 1965. Except to the extent that an exemption, variation or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

7. Section 4.8 is revised to read as follows:

§ 4.8 Notice of awards.

Whenever an agency of the United States or the District of Columbia shall award a contract which may be in excess of $2,500 subject to the Act, it shall furnish the Office of Special Wage Standards, ESA, an original and one copy of Standard Form 99, Notice of Award of Contract. The form shall be completed as follows:

(a) Items 1 through 7 and 12 and 13: Self-explanatory;

(b) Item 8: Enter the notation "Service Contract Act of 1965;"

(c) Item 9: Leave blank;

(d) Item 10: (1) Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, grounds maintenance, computer services, installation or facility support services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and drycleaning services), and (2) enter the heading "Detailed Description," and following this entry set forth a detailed description of the services to be performed; and

(e) Item 11: Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite," or "not to exceed $_____." Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540-634-4049.

8. Subpart A is further amended by adding at the end thereof a new center heading and a new § 4.10 to read as follows:

Hearings Pursuant to Section 4(c) of the Act

§ 4.10 Provisions for hearing.

(a) *Statutory provision.* Under section 4(c) of the Act, and under wage determinations made as provided in section 2(a)(1) and (2) of the Act, contractors and subcontractors performing certain contracts subject to the Act may be obliged to pay to service employees employed on the contract work wages and fringe benefits not less than those to which they would be entitled if they were employed on like work under a predecessor contract for which the wages and fringe benefits of service employees were governed by a collective bargaining agreement. (See §§ 4.1a, 4.1c, 4.3(b), 4.6(b), 4.6(d)(2).) Section 4(c) provides, however, that "such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for service of a character similar in the locality."

(b) *Prerequisites for hearing.* (1) No hearing on the issue whether monetary wage rates and fringe benefits otherwise payable to service employees by virtue of the provisions of section 4(c) of the Act are substantially at variance with those which prevail for services of a character similar in the locality will be provided unless it appears from information available to the Administrator or submitted with a request for such a hearing that evidence showing, prima facie, that such a substantial variance exists will be presented.

(2) When it appears from the information available to him or submitted with such a request that such evidence sufficient to warrant an administrative determination of the issue will be presented, the Administrator on his own motion or on application of any person affected may by order refer the issue to a hearing officer for final determination in a proceeding held as provided in this section. As provided in section 4(a) of the Act, the provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding.

(3) The Administrator shall designate as hearing officer for a proceeding under this section an administrative law judge assigned for the purpose by the Chief Administrative Law Judge of the Department.

(4) A request for a hearing under this section may be made by the contracting agency or other person affected or interested including contractors or prospective contractors and associations of contractors, representatives of employees or their unions, and other interested governmental agencies. Such a request must be submitted in writing to the Office of Special Wage Standards, Employment Standards Administration, Department of Labor, Washington, D.C. 20210

for the attention of the Administrator, and must describe the evidence on which the applicant relies to show a substantial variance between the collectively bargained rates or fringe benefits in question and the wages and fringe benefits prevailing for services of a similar character in the locality. If the information prerequisite for hearing as described in subparagraph (1) of this paragraph is not submitted with the request, the Administrator may deny the request or request supplementary information, in his discretion. No particular form for submission of a request under this section is prescribed.

(c) *Opportunity to be heard.* (1) In any proceeding under this section opportunity to be heard will be afforded to persons who may be affected by determination of the issue, including the agency whose contract is involved, any contractor or subcontractor performing on such contract or known to be desirous of bidding thereon or performing services thereunder, any unions or other authorized representatives of service employees employed or who may be expected to be employed by such a contractor or subcontractor on the contract work, and any other known interested persons. Such opportunity will be afforded at the earliest possible time after referral to the hearing officer and the proceeding will be expedited to completion and a final determination made on the issue as soon as possible thereafter.

(2) Upon referral of the issue to the hearing officer by the Administrator, written notice shall be given to the persons who may be affected by the determination (see subparagraph (1) of this paragraph) specifying a place where and a period (not less than 5 and not more than 10 days) within which they may submit in writing any factual evidence, data, views, or arguments on the issue which they desire to have considered by the hearing officer. Such notice shall also make provision for furnishing copies of such documents to all parties and specify reasonable but expeditious time limits, not more than 10 days in the absence of exceptional circumstances, within which each of the interested persons may thereafter review and respond, if desired, in writing to any matter submitted by the others. Such notice shall, whenever practicable, be included in the Administrator's order referring the matter to the hearing officer, and if not so included shall be given by the hearing officer promptly upon his assignment to the case. The order and notice shall be served upon the persons interested by certified mail or in such other manner as will provide record proof or acknowledgment of receipt by such persons.

(3) Upon completion of the period for review and comment by interested persons on matter submitted by other interested persons the hearing officer shall forthwith review, with such assistance as may be made available by the Administrator, all material submitted and, after evaluating the same, shall make a tentative determination on the issue. Prompt notice in writing of his tentative determination shall be given to all parties who have submitted matter for consideration or have otherwise made known their interest. Such notice shall set an early date and a place at which such parties may appear before the hearing officer for resolution on an informal basis or through agreement, if possible, of any areas of conflict between them which may appear from the materials presented to the hearing officer, and for agreement, if possible, or for decision by the hearing officer as to the scope and nature of any further hearing that may be required for the presentation by any party of evidence and argument on issues that cannot be resolved by the hearing officer with agreement of the parties. Service of the notice on the parties shall be made as provided in subparagraph (2) of this paragraph. All procedure set forth in this subparagraph (3), including hearing of the parties informally pursuant to such notice, shall be completed not less than 10 days after the final date for submission of materials in writing by the parties as provided under subparagraph (2) of this paragraph.

(4) If as a result of the informal hearing provided as set forth in subparagraph (3) of this paragraph there is agreement among the parties that no further hearing is necessary to supplement the written evidence and the views and arguments that have been presented to the hearing officer the hearing officer shall forthwith render his final decision.

(5) If as a result of the informal hearing provided as set forth in subparagraph (3) of this paragraph a further hearing, limited to matters remaining in controversy among the parties or to the presentation of other evidence deemed necessary by parties to a fair hearing of their contentions, is ordered by the hearing officer, he shall set a place and an early time therefor, not later than 5 days after the date of such informal hearing, and, after consultation with the parties, set reasonable guidelines and limitations for the presentations to be made at the hearing which will serve to expedite the proceeding to the extent possible consistent with adequate opportunity for the parties to be heard. At any such hearing there shall be a minimum of formality in the proceeding consistent with orderly procedure. The hearing officer may, to the extent appropriate, conduct the hearing in accordance with procedures prescribed in Part 6 of this Subtitle A, and may exercise the powers of a hearing officer as set forth therein. If oral testimony is presented, it shall be stenographically reported and a transcript thereof filed, together with all written materials submitted and orders and notices issued in the proceeding (with evidence of service thereof), in a case file which shall constitute the hearing record. The hearing officer shall promptly and not more than 5 days after completion of the hearing under this paragraph, render his decision.

(d) *Decision of hearing officer.* The hearing officer shall render a decision as provided in paragraph (c) (4) or (5) of this section based on findings of fact set forth in the decision, which shall have the finality accorded to a decision of the Secretary under the provisions of 41 U.S.C. 39. Such decision shall be filed with the case record and copies shall be transmitted promptly to the parties and to the Administrator, who shall cause to be issued any necessary wage determinations in conformance thereto.

(Sec. 4, 79 Stat. 1035, as amended by 86 Stat. 789; 41 U.S.C. 353; Secretary of Labor's Order No. 13–71, 36 F.R. 8755)

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

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

[FR Doc.72–20569 Filed 11–29–72;8:49 am]

PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN FEDERAL SERVICE CONTRACTS

Miscellaneous Amendments

Pursuant to section 4 of the Service Contract Act of 1965 as amended (79 Stat. 1034, 86 Stat. 789; 41 U.S.C. 351 et seq.) and Secretary of Labor's Order No. 13–71 (36 F.R. 8755), the rules of practice for administrative enforcement proceedings under such Act are hereby revised by amending 29 CFR Part 6 as set forth below, in order to bring such rules into conformity with amendments made to section 5(a) of such Act by section 4 of Public Law 92–473, 86 Stat. 790 as enacted and effective October 9, 1972, and in order to conform the titles of officers and organizational units of the Department of Labor referred to in such rules with the titles presently applicable under the current organization of the Department.

The provisions of 5 U.S.C. 553 with respect to notice of proposed rule making and public procedure thereon are not applicable to the amendments of these rules because they relate solely to agency organization, procedure, and practice concerning which no statute requires notice and hearing. I find that delay in effective date of these amendments would be contrary to the public interest because they are urgently needed to prescribe changes in procedures required by a statute already in effect and are necessary to correct existing references in the rules to titles of officers and organizational units of the Department which have ceased to be accurate. These amendments shall accordingly be effective upon publication in the FEDERAL REGISTER.

Part 6 of Subtitle A of Title 29 of the Code of Federal Regulations is amended as follows:

1. Section 6.2 is revised to read as follows:

§ 6.2 Definitions.

As used in this part:

(a) "Hearing examiner" means an administrative law judge appointed as provided in 5 U.S.C. 3105 and Subpart B of

Part 930 of Title 5 of the Code of Federal Regulations (see 37 F.R. 16787) and qualified to preside at hearings under 5 U.S.C. 557.

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

(c) "Respondent" means the contractor, subcontractor, or affiliate (in which a contractor or subcontractor is alleged to have a substantial interest) against whom the proceedings are brought.

(d) "The Act" means the Service Contract Act of 1965 as amended (79 Stat. 1034, 86 Stat. 789; 31 U.S.C. 351 et seq.).

(e) "Administrator" means the Deputy Assistant Secretary for Employment Standards in the Employment Standards Administration of the Department of Labor who is also Administrator of the Wage and Hour Division, or his authorized representative as set forth in this part.

(f) "Associate Solicitor in charge of litigation" means the Associate Solicitor for General Legal Services, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

2. In § 6.10, paragraph (b) is amended by adding a new sentence at the end thereof reading as follows:

§ 6.10 Decision of the hearing examiner.

* * * * *

(b) * * * Any recommendation that the respondent be relieved by the Secretary of Labor from the ineligible list provision under section 5(a) of the Act as amended shall be supported by a finding of the unusual circumstances, within the meaning of such section, which are relied upon as a reason for the recommendation.

3. Section 6.12 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) at the end thereof. As amended, § 6.12 reads as follows:

§ 6.12 Relief from ineligible list.

* * * * *

(b) Any application filed by respondent for relief from the ineligible list provision shall state the unusual circumstances to be considered by the Secretary of Labor in determining whether to recommend such relief. The Secretary shall forward to the Comptroller General the name of any respondent found in violation of the Act within 90 days after the decision of the hearing examiner, finding such violation, becomes final unless the Secretary within such period decides that relief from the ineligible list provision will be recommended because of unusual circumstances.

(Sec. 4, 86 Stat. 790, 41 U.S.C. 354(a); sec. 4, 79 Stat. 1035, 41 U.S.C. 353(a); Secretary of Labor's Order No. 13–71, 36 F.R. 8755)

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

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

[FR Doc.72-20568 Filed 11-29-72;8:49 am]

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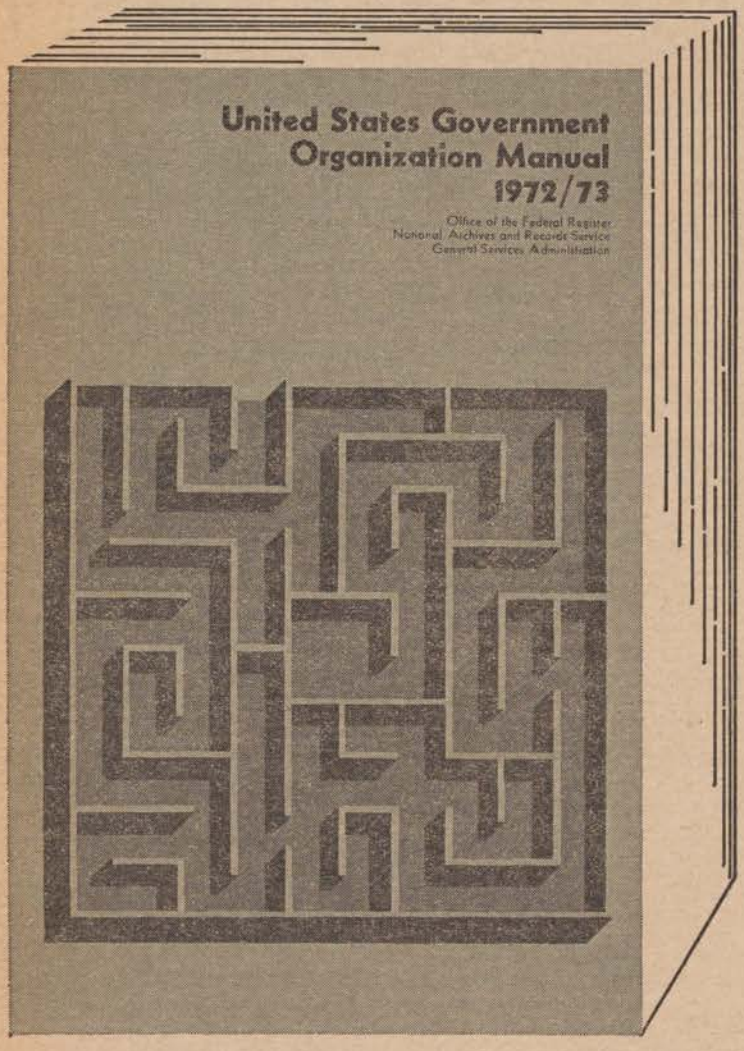

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