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## HIGHLIGHTS OF THIS ISSUE

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



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FEDERAL REGISTER

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## AGRICULTURAL MARKETING SERVICE

### Rules and Regulations



### Proposed Rule Making



## AGRICULTURE DEPARTMENT

*See* Agricultural Marketing Service; Animal and Plant Health Inspection Service; Soil Conservation Service.

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE

### Rules and Regulations



## ARMY DEPARTMENT

### Rules and Regulations



## ATOMIC ENERGY COMMISSION

### Rules and Regulations



### Notices



## CIVIL AERONAUTICS BOARD

### Proposed Rule Making



### Notices



## COAST GUARD

### Proposed Rule Making



## COMMERCE DEPARTMENT

*See* Import Programs Office.

## CONSUMER AFFAIRS OFFICE

### Notices



## CUSTOMS BUREAU

### Notices



## DEFENSE DEPARTMENT

*See* Army Department.

## FEDERAL AVIATION ADMINISTRATION

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## FEDERAL RESERVE SYSTEM

### Notices



## HEALTH, EDUCATION, AND WELFARE DEPARTMENT

*See* Health Services and Mental Health Administration; National Institutes of Health.

## HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

### Notices



## IMPORT PROGRAMS OFFICE

### Notices



## INTERIOR DEPARTMENT

*See* National Park Service.

## INTERNAL REVENUE SERVICE

### Rules and Regulations



*(Continued on next page)*

# List of CFR Parts Affected

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

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

# Rules and Regulations

## Title 6—ECONOMIC STABILIZATION

### Rulings—Internal Revenue Service, Department of the Treasury

[Cost of Living Council Ruling 1972–120]

### FOREIGN CORPORATION, RENT SUBSIDIES, AND MULTI-EMPLOYER ASSOCIATIONS

### Revocation of Cost of Living Council Rulings

This ruling revokes the following Cost of Living Council rulings which were previously published:

1972– 25
1972– 70
1972–109

Ruling 1972–25 is obsolete because of an April 18, 1972, amendment to Economic Stabilization Regulations, 6 CFR 201.3 (1972). Rulings 1972–70 and 1972–109 have been deemed no longer applicable because of the finalized recodification of the Pay Board Regulations.

This ruling has been approved by the General Counsel of the Cost of Living Council.

Dated: November 29, 1972.

LEE H. HENKEL, Jr.,
*Chief Counsel,*
*Internal Revenue Service.*

Approved: November 29, 1972.

SAMUEL R. PIERCE, Jr.,
*General Counsel,*
*Department of the Treasury.*

[FR Doc.72–20900 Filed 12–5–72;8:58 am]

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[Price Commission Ruling 1972–281]

### PUBLIC UTILITY—DEFINITION—MOVING COMPANY

### Price Commission Ruling

*Facts.* X Van and Storage Co. engages in intrastate and interstate moving of household and office goods and furniture as a common carrier. It cannot increase its intrastate moving rates without the approval of the State regulatory commission. X Van and Storage Co. must secure the approval of the ICC in order to increase its interstate moving rates. The relevant regulatory agency, State or Federal, also supervises and regulates other aspects of X's business beside rates charged for moving goods and furnishings.

*Issue.* Is X Van and Storage Co. a public utility within the meaning of Economic Stabilization Regulations, 6 CFR 300.302 (1972)?

*Ruling.* X is a public utility since it furnishes utility services to the public. According to Economic Stabilization Regulations, 6 CFR 300.302 (1972):

"Public utility" means a person that furnishes service to the public or a recognized segment of the public * * *. This includes * * * public transportation by vehicle * * *.

The fact that X company's business is thoroughly regulated by governmental bodies demonstrates that the service rendered is affected with a public interest. A common carrier which moves goods and furniture by vehicle is furnishing public transportation services. Thus, X company's services come within the Economic Stabilization Regulations' definition of "utility service".

This ruling has been approved by the General Counsel of the Price Commission.

LEE H. HENKEL, Jr.,
*Chief Counsel,*
*Internal Revenue Service.*

Approved: November 24, 1972.

SAMUEL R. PIERCE, Jr.,
*General Counsel,*
*Department of the Treasury.*

[FR Doc.72–20902 Filed 12–5–72;8:58 am]

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[Price Commission Ruling 1972–283]

### DETERMINING BASE PRICE; INTERMEDIATE SIZE ITEM NOT PREVIOUSLY SOLD

### Price Commission Ruling

*Facts.* X is a retailer who during the base period sold the 8-oz. size of brand mouthwash for 56 cents and the 32-oz. size for 96 cents. It now wishes to introduce the 16-oz. size of brand mouthwash.

*Issue.* How is the base price determined?

*Ruling.* The "base price" of the new quantity is the average price per relevant unit of measure common to the two existing sizes applied to the new quantity. If more than two sizes of the item were sold during the base period, the prices charged for the sizes next largest and smallest to the intermediate size being introduced should be used to determine the base price for the new quantity.

Applying the above rule to the facts given, the base price for the 16-oz. size of brand mouthwash would be 80 cents. That is, the average price paid per ounce of brand sold during the base period is 5 cents per ounce (56 cents ÷ 8 ounces=7 cents. 96 cents ÷ 32 ounces=3 cents. 7 cents + 3 cents ÷ 2=5 cents). Applying this factor to the new 16-oz. size results in 80 cents (16 ounces × 5 cents=80 cents).

This ruling modifies Price Commission Ruling 1972–174, 37 F.R. 9788 (1972), insofar as it states that the price charged for the largest size should be used to determine the base price for the new quantity being introduced for sale. That ruling remains valid when the new quantity will be the largest size offered for sale. However, the instant ruling sets forth the rule that will govern when an intermediate size is introduced.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: November 29, 1972.

LEE H. HENKEL, Jr.,
*Chief Counsel,*
*Internal Revenue Service.*

Approved: November 29, 1972.

SAMUEL R. PIERCE, Jr.,
*General Counsel,*
*Department of the Treasury.*

[FR Doc.72–20901 Filed 12–5–72;8:58 am]

## Title 7—AGRICULTURE

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

### PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

### Commuted Traveltime Allowances

Pursuant to the authority conferred upon the Deputy Administrator, Plant Protection and Quarantine Programs by 7 CFR 354.1 (37 F.R. 6327, 6505, 10554) the administrative instructions appearing at 7 CFR 354.2, as amended, January 14, 1972 and July 18, 1972 (37 F.R. 587, 14215) prescribing the commuted traveltime that shall be included in each period of overtime or holiday duty are further revised to read as follows:

**§ 354.2 Administrative instructions prescribing commuted traveltime.**

Each period of overtime and holiday duty, as defined in § 354.1 shall, in addition, include a commuted traveltime period for the respective areas in which employees are located, if such travel is performed solely on account of overtime or holiday service. The prescribed commuted traveltime periods are set forth below:

COMMUTED TRAVELTIME ALLOWANCES
(IN HOURS)

| Location covered | Served from | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Alabama: | | | |
| Chickasaw | Mobile | | 2 |
| Mobile | | 1 | |
| Undesignated ports | Mobile | | 3 |
| Alaska: | | | |
| Anchorage | | 1 | |
| Undesignated ports | Anchorage | | 3 |
| Arizona: | | | |
| Davis-Monthan AFB, Tucson. | Nogales | | 4 |
| Douglas | | 1 | |
| Do | Nogales | | 5 |
| Nogales | | 1 | |
| Phoenix | | 2 | |
| Do | Nogales | | 6 |
| Do | Tucson | | 5 |
| San Luis | | 2 | |
| Tucson | | 1 | |
| Do | Nogales | | 3 |
| Yuma International Airport. | | 1 | |
| Undesignated ports | Nogales | | 3 |
| Arkansas: | | | |
| Undesignated ports | Memphis, Tenn. | | 3 |
| Bahamas: | | | |
| Nassau | | 1 | |
| Bermuda: | | | |
| Ferry Reach | | 1 | |
| California: | | | |
| Andrade | Calexico | | 2 |
| Antioch | San Francisco | | 3 |
| Burbank | Los Angeles | | 3 |
| Calexico | | 1 | |
| Camp Pendleton, USMC, Oceanside. | San Diego | | 2 |
| Castle AFB | Merced | | 1 |
| Crockett | San Francisco | | 2 |
| El Segundo | Los Angeles | | 2 |
| El Toro MCAS | do | | 3 |
| George AFB | do | | 4 |
| Gillespie Field | San Diego | | 1 |
| Hamilton AFB, Novato. | San Francisco | | 2 |
| Do | Travis AFB | | 3 |
| Imperial Beach NAS | San Diego | | 1 |
| Los Angeles (including San Pedro, Los Angeles harbor, Los Angeles International Airport, Long Beach harbor and Long Beach Municipal Airport). | | 2 | |
| March AFB | Los Angeles | | 3 |
| Martinez | San Francisco | | 2 |
| Mather Field AFB | Travis AFB | | 3 |
| McClellan AFB | do | | 3 |
| Moffett Field NAS, Sunnyside. | San Francisco | | 2 |
| North Island | San Diego | | 1 |
| Norton AFB | Los Angeles | | 4 |
| Ontario | do | | 3 |
| Pittsburg | San Francisco | | 2 |
| Port Chicago | do | | 2 |
| Redwood City | do | | 2 |
| Richmond | do | | 2 |
| Rodeo | do | | 2 |
| San Diego | | 1 | |
| San Francisco (including Oakland and Alameda). | | 2 | |
| Seal Beach | Los Angeles | | 2 |
| Stockton | Travis AFB | | 3 |
| Tecate | San Diego | | 2 |
| Travis AFB | | 1 | |
| Vallejo | San Francisco | | 2 |
| Undesignated ports | San Diego, Los Angeles, or San Francisco. | | 3 |
| Connecticut: | | | |
| Bradley Field, Windsor Locks. | Boston, Mass | | 6 |
| Do | Milford | | 4 |
| Do | Warwick, R.I. | | 6 |
| New Haven | New York, N.Y. | | 4 |
| New London | Warwick, R.I. | | 4 |
| Undesignated ports | do | | 3 |
| Delaware: | | | |
| Claymont | Wilmington | | 1 |
| Delaware City | do | | 2 |
| Dover | do | 1 | |
| Wilmington (including marine terminal and airport). | do | 1 | |
| Wilmington | Philadelphia, Pa. | | 3 |
| Undesignated ports | Dover | | 3 |

COMMUTED TRAVELTIME ALLOWANCES
(IN HOURS)

| Location covered | Served from | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Florida: | | | |
| Apalachicola | Pensacola | | 6 |
| Boca Grande | Tampa | | 5 |
| Eglin AFB | Pensacola | | 3 |
| Fort Lauderdale | | 1 | |
| Fort Myers | Tampa | | 5 |
| Fort Pierce | West Palm Beach. | | 3 |
| Jacksonville | | 2 | |
| Key West | | 1 | |
| Marathon | Key West | | 2 |
| McCoy AFB | Tampa | | 5 |
| Melbourne | Port Canaveral. | | 2 |
| Miami | | 2 | |
| Panama City | Pensacola | | 5 |
| Patrick AFB | | 1 | |
| Pensacola | | 1 | |
| Do | Mobile, Ala | | 2 |
| Port Canaveral | | 1 | |
| Port Everglades | | 1 | |
| Port St. Joe | Pensacola | | 6 |
| St. Petersburg | | 2 | |
| Sanford NAS | Tampa | | 5 |
| Tampa | | 2 | |
| West Palm Beach | | 1 | |
| Undesignated ports | Jacksonville, Miami, or Tampa. | | 3 |
| Georgia: | | | |
| Atlanta | | 2 | |
| Brunswick | Savannah | | 4 |
| Columbus | Atlanta | | 4 |
| Macon | do | | 4 |
| Marietta | do | | 2 |
| St. Mary's | Jacksonville, Fla. | | 3 |
| Savannah | | 1 | |
| Undesignated ports | Atlanta or Savannah. | | 3 |
| Hawaii: | | | |
| Barbers Point NAS | Honolulu | | 2 |
| Hilo | | 1 | |
| Honolulu | | 2 | |
| Kahului, Maui | | 1 | |
| Do | Honolulu | | 4 |
| Kaneohe MCAS | do | | 2 |
| Lihue, Kauai | | 2 | |
| Do | Honolulu | | 5 |
| Schofield barracks, Wahiawa, Oahu. | do | | 2 |
| Undesignated ports | Hilo or Honolulu. | | 3 |
| Illinois: | | | |
| Chicago | | 3 | |
| Indiana: | | | |
| Indianapolis | Chicago, Ill | | 5 |
| Iowa: | | | |
| Des Moines | Chicago, Ill | | 6 |
| Kentucky: | | | |
| Louisville | Cleveland or Toledo, Ohio. | | 5 |
| Louisiana: | | | |
| Barksdale AFB, Shreveport. | Baton Rouge | | 6 |
| Baton Rouge | | 1 | |
| Buras | New Orleans | | 4 |
| Burnside | Baton Rouge | | 2 |
| Convent | do | | 2 |
| Donaldsonville | do | | 3 |
| England AFB, Alexandria. | do | | 4 |
| Geismar | do | | 2 |
| Lake Charles | Port Arthur, Tex. | | 3 |
| Morgan City | New Orleans | | 4 |
| New Orleans | | 2 | |
| Ostrica | New Orleans | | 4 |
| Plaquemine | Baton Rouge | | 2 |
| Port Allen | | 1 | |
| St. James | Baton Rouge | | 3 |
| Venice | New Orleans | | 4 |
| Points on the Mississippi River above the St. Charles-Jefferson Parish boundary to and including Gramercy, La.; any point below Chalmette, La., on the east bank; and Belle Chasse, La. and points to and including Port Sulphur on the west bank. | do | | 3 |
| Undesignated ports | Baton Rouge or New Orleans. | | 3 |

COMMUTED TRAVELTIME ALLOWANCES
(IN HOURS)

| Location covered | Served from | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Maine: | | | |
| Bangor | | 1 | |
| Bath | Portland | | 2 |
| Brunswick NAS | do | | 2 |
| Bucksport | Bangor | | 2 |
| Cousins Island | Portland | | 1 |
| Eastport | Bangor | | 6 |
| Kittery | Portland | | 3 |
| Portland | | 1 | |
| Searsport | Bangor | | 2 |
| Undesignated ports | Bangor or Portland. | | 3 |
| Maryland: | | | |
| Aberdeen Proving Ground. | Baltimore | | 3 |
| Andrews AFB | | 1 | |
| Do | Dulles International Airport, Va. | | 3 |
| Annapolis | Baltimore | | 3 |
| Baltimore | | 3 | |
| Cambridge | Baltimore | | 4 |
| Salisbury | do | | 4 |
| Undesignated ports | Andrews AFB, Dover, Del. or Dulles International Airport, Va. | | 3 |
| Massachusetts: | | | |
| Boston | | 3 | |
| Fall River | Warwick, R.I. | | 3 |
| New Bedford | do | | 4 |
| Otis AFB | do | | 5 |
| Plymouth | do | | 4 |
| Sandwich | do | | 5 |
| Woods Hole | do | | 6 |
| Undesignated ports | do | | 3 |
| Michigan: | | | |
| Bay City | Detroit | | 5 |
| Detroit (including Detroit Metropolitan Airport, Inkster). | | 3 | |
| Monroe | Detroit | | 3 |
| Muskegon | do | | 6 |
| Port Huron | do | | 4 |
| Saginaw | do | | 5 |
| South Haven | do | | 6 |
| Minnesota: | | | |
| Duluth | | 1 | |
| Minneapolis-St. Paul | | 2 | |
| Silver Bay | Duluth | | 3 |
| Mississippi: | | | |
| Greenville | Memphis, Tenn. | | 5 |
| Gulfport | Mobile, Ala | | 4 |
| Kessler AFB | do | | 4 |
| Natchez | Baton Rouge, La. | | 5 |
| Pascagoula | Mobile, Ala | | 3 |
| Vicksburg | Baton Rouge, La. | | 6 |
| Undesignated ports | Mobile, Ala | | 3 |
| Missouri: | | | |
| Kansas City | Chicago, Ill | | 6 |
| St. Louis | do | | 6 |
| Nebraska: Omaha | Chicago, Ill | | 6 |
| Nevada: | | | |
| Las Vegas | | 1 | |
| Reno | | 1 | |
| New Hampshire: | | | |
| Pease AFB | Portland, Maine. | | 3 |
| Portsmouth | do | | 3 |
| Undesignated ports | Rouses Point, N.Y. | | 3 |
| New Jersey: | | | |
| Atlantic City | Philadelphia, Pa. | | 3 |
| Burlington | do | | 3 |
| Lakehurst NAS | McGuire AFB. | | 2 |
| McGuire AFB, Wrightstown. | | | 3 |
| Paulsboro | Philadelphia, Pa. | | 3 |
| Trenton | McGuire AFB. | | 3 |
| New Mexico: | | | |
| Holloman AFB, Alamogordo. | El Paso, Tex | | 4 |
| Walker AFB, Roswell. | do | | 6 |
| Undesignated ports | do | | 3 |

COMMUTED TRAVELTIME ALLOWANCES
(IN HOURS)

| Location covered | Served from | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| New York: | | | |
| Buffalo | | 2 | |
| Chateaugay (including Churubusco and Cannon Corners). | Rouses Point | | 2 |
| Jamaica, Long Island. | | 3 | |
| Lewiston | Buffalo | | 2 |
| Massena | Rouses Point | | 4 |
| New York | | 3 | |
| Niagara Falls | Buffalo | | 2 |
| Ogdensburg | Rouses Point | | 5 |
| Oswego | Buffalo | | 6 |
| Plattsburgh | Rouses Point | | 2 |
| Rochester | Buffalo | | 4 |
| Roosevelt Town | Rouses Point | | 4 |
| Rouses Point (including Champlain). | | 1 | |
| Syracuse | Buffalo | | 6 |
| Undesignated ports | Buffalo or Rouses Point. | | 3 |
| North Carolina: | | | |
| Camp Lejeune | Wilmington | | 3 |
| Charlotte | do | | 6 |
| Cherry Point | Morehead City. | | 1 |
| Do | Wilmington | | 4 |
| Elizabeth City | Morehead City. | | 6 |
| Do | Norfolk, Va | | 3 |
| Morehead City | | 1 | |
| Do | Wilmington | | 4 |
| New River MCAS, Jacksonville. | do | | 2 |
| Pope AFB | do | | 4 |
| Seymour-Johnson AFB. | do | | 3 |
| Sunny Point Army Terminal, Southport. | do | | 2 |
| Wilmington | | 1 | |
| Undesignated ports | Wilmington | | 3 |
| Ohio: | | | |
| Akron | Cleveland | | 2 |
| Cincinnati | Toledo | | 6 |
| Cleveland | | 2 | |
| Columbus | Cleveland | | 6 |
| Fairport Harbor | do | | 2 |
| Lockbourne AFB | do | | 6 |
| Loraine | do | | 2 |
| Toledo | | 2 | |
| Do | Detroit, Mich | | 3 |
| Undesignated ports | Cleveland or Toledo. | | 3 |
| Oregon: | | | |
| Astoria | | 1 | |
| Do | Portland | | 5 |
| Coos Bay (including North Bend). | | 1 | |
| Newport | Coos Bay | | 4 |
| Port Westward | Astoria | | 2 |
| Portland | | 2 | |
| Westport | Astoria | | 2 |
| Undesignated ports | Astoria, Coos Bay, or Portland. | | 3 |
| Chester | Philadelphia | | 3 |
| Do | Wilmington, Del. | | 1 |
| Erie | Buffalo, N.Y. or Cleveland, Ohio. | | 4 |
| Greater Pittsburgh Airport. | Cleveland, Ohio | | 6 |
| Do | Meadville | | 4 |
| Do | Pittsburgh | 2 | |
| Marcus Hook | Philadelphia | | 3 |
| Do | Wilmington, Del. | | 1 |
| Olmstead AFB, Middletown. | Philadelphia | | 4 |
| Philadelphia | | 3 | |
| Do | Wilmington, Del. | | 3 |
| Tullytown | Philadelphia | | 3 |
| Puerto Rico: | | | |
| Aguadilla | | 1 | |
| Arecibo | San Juan | | 4 |
| Isabela | Ramey AFB | | 1 |
| Mayaguez | do | | 2 |
| Ramey AFB (including Borinquen Airport). | | 1 | |
| Roosevelt Roads NAS. | | 1 | |
| Do | San Juan | | 3 |
| San Juan | | 2 | |

COMMUTED TRAVELTIME ALLOWANCES
(IN HOURS)

| Location covered | Served from | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Rhode Island: | | | |
| Davisville NSD | Boston, Mass | | 4 |
| Do | Warwick | | 3 |
| Melville | do | | 3 |
| Newport | Boston, Mass | | 5 |
| Do | Warwick | | 4 |
| Portsmouth | do | | 3 |
| Providence | Boston, Mass | | 4 |
| Do | Warwick | | 2 |
| Quonset Point | Boston, Mass | | 4 |
| Do | Warwick | | 3 |
| Saunderstown | do | | 3 |
| Tiverton | do | | 4 |
| Warwick | | 1 | |
| Undesignated ports | Warwick | | 3 |
| South Carolina: | | | |
| Beaufort | Charleston | | 3 |
| Charleston | | 2 | |
| Columbia | Charleston | | 4 |
| Georgetown | do | | 3 |
| Greenville-Spartanburg Airport, Columbia. | do | | 6 |
| McEntire NG Air Base, Eastover. | do | | 4 |
| Myrtle Beach AFB | do | | 4 |
| Shaw AFB, Sumter | do | | 4 |
| Undesignated ports | do | | 3 |
| Tennessee: | | | |
| Knoxville | Atlanta, Ga | | 4 |
| Memphis | | 1 | |
| Nashville | Memphis | | 6 |
| Undesignated ports | Atlanta, Ga | | 5 |
| Do | Memphis | | 3 |
| Texas: | | | |
| Alamo | Hidalgo | | 1 |
| Aransas Pass | Corpus Christi. | | 2 |
| Baytown | Houston | | 2 |
| Beaumont | Port Arthur | | 2 |
| Brownsville | | 1 | |
| Carswell Field, Fort Worth. | Dallas | | 3 |
| Corpus Christi | | 1 | |
| Corpus Christi NAS | Corpus Christi. | | 1 |
| Dallas | | 1 | |
| Del Rio | | 1 | |
| Donna | Hidalgo | | 2 |
| Eagle Pass | | 1 | |
| Edinburg | Hidalgo | | 2 |
| El Paso | | 1 | |
| Falcon Heights | Roma | | 1 |
| Freeport | Galveston or Houston. | | 3 |
| Galveston | | 1 | |
| Greater Southwest International Airport. | Dallas | | 1 |
| Gregory | Corpus Christi. | | 1 |
| Harbor Island | do | | 2 |
| Harlingen | Brownsville | | 2 |
| Hidalgo | | 1 | |
| Houston (except Houston Intercontinental Airport). | | 2 | |
| Houston Intercontinental Airport. | | 3 | |
| Kelly AFB | San Antonio | | 2 |
| La Feria | Hidalgo | | 2 |
| Laredo | | 1 | |
| McAllen | Hidalgo | | 1 |
| Meacham Field | Dallas | | 2 |
| Mercedes | Hidalgo | | 2 |
| Mission | do | | 1 |
| Orange | Port Arthur | | 2 |
| Pharr | Hidalgo | | 1 |
| Point Comfort | Corpus Christi | | 4 |
| Port Arthur | | 1 | |
| Port Isabel | Brownsville | | 2 |
| Port Lavaca | Corpus Christi | | 4 |
| Presidio | | 1 | |
| Progreso | | 1 | |
| Do | Brownsville or Hidalgo. | | 2 |
| Randolph AFB | San Antonio | | 2 |
| Rio Grande City | Roma | | 1 |
| Rockport | Corpus Christi | | 2 |
| Roma | | 1 | |
| San Antonio | | 1 | |
| San Juan | Hidalgo | | 1 |
| Texas City | Galveston | | 1 |
| Weslaco | Hidalgo | | 2 |
| Vermont: | | | |
| Alburg | Rouses Point, N.Y. | 1 | |
| St. Albans (including Highgate Springs and Morses Line). | do | | 2 |
| Undesignated ports | do | | 3 |

COMMUTED TRAVELTIME ALLOWANCES
(IN HOURS)

| Location covered | Served from | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Virgin Islands: | | | |
| Alexander Hamilton Airport, St. Croix. | | 1 | |
| Charlotte Amalie, St. Thomas. | | 1 | |
| Christiansted, St. Croix. | | 1 | |
| Frederiksted, St. Croix. | | 1 | |
| Virginia: | | | |
| Alexandria | Andrews AFB, Md. or Dulles International Airport. | | 2 |
| Arlington | do | | 2 |
| Dulles International Airport. | Andrews AFB, Md. or Baltimore, Md. | 1 | 3 |
| Newport News | | 2 | |
| Norfolk | | 2 | |
| Quantico MCAS | Andrews AFB, Md. or Dulles International Airport. | | 3 |
| Undesignated ports | Andrews AFB, Md., Dulles International Airport, Newport News, or Norfolk. | | 3 |
| Washington: | | | |
| Anacortes | Blaine | | 3 |
| Do | Seattle | | 4 |
| Ault Field | Blaine | | 4 |
| Do | Seattle | | 5 |
| Bellingham | Blaine | | 2 |
| Do | Seattle | | 5 |
| Blaine | | 1 | |
| Cherry Point | Blaine | | 1 |
| Do | Seattle | | 5 |
| Edmonds | do | | 2 |
| Everett | do | | 3 |
| Ferndale | Blaine | | 2 |
| Do | Seattle | | 5 |
| Fort Lewis | McChord AFB. | | 1 |
| Grays Harbor | Astoria, Oreg. | | 3 |
| Do | McChord AFB. | | 4 |
| Do | Seattle | | 6 |
| Kalama | Portland, Oreg. | | 3 |
| Longview | Astoria or Portland, Oreg. | | 3 |
| Lynden | Blaine | | 2 |
| McChord AFB | | 1 | |
| Do | Seattle | | 3 |
| Olympia | McChord AFB, | | 2 |
| Do | Seattle | | 3 |
| Point Wells | | 2 | |
| Port Angeles | McChord AFB or Seattle. | | 6 |
| Port Townsend | Seattle | | 4 |
| Raymond | Astoria, Oreg. | | 2 |
| SEA-TAC Airport | | 2 | |
| Do | McChord AFB. | | 2 |
| Seattle (except SEA-TAC Airport and Point Wells). | | 1 | |
| Snohomish County Airport. | Seattle | | 2 |
| Sumas | Blaine | | 2 |
| Tacoma | McChord AFB. | | 1 |
| Do | Seattle | | 3 |
| Vancouver | | 2 | |
| Willapa Bay | Astoria, Oreg. | | 2 |
| Do | McChord AFB. | | 4 |
| Do | Seattle | | 6 |
| Undesignated ports | Astoria or Portland, Oreg., McChord AFB, or Seattle. | | 3 |

COMMUTED TRAVELTIME ALLOWANCES
(IN HOURS)

| Location covered | Served from | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Wisconsin: | | | |
| Green Bay | Milwaukee | | 6 |
| Kenosha | do | | 2 |
| Milwaukee | | 2 | |
| Racine | Milwaukee | | 2 |
| Superior | Duluth, Minn. | 1 | |
| Undesignated ports | Duluth, Minn. or Milwaukee. | | 3 |

(64 Stat. 561; 7 U.S.C. 2260)

The purposes of this revision are to delete the reference to inspectors "temporarily detailed" to Bangor, Maine; the addition of references to undesignated Maine ports served from Bangor and Portland, Maine; deletion of references to undesignated Maine ports served from Boston, Mass.; deletion of undesignated ports in Arkansas served from Atlanta, Ga.; the addition of undesignated Louisiana ports served from Baton Rouge and reducing from 4 to 3 hours the allowance for undesignated Louisiana ports served from New Orleans. The entry for undesignated Washington ports (outside the metropolitan area) served from Astoria or Portland, Oreg., or from McChord Air Force Base should also include a reference to Seattle, Wash. This has been inadvertently omitted from the 1972 edition of the Code of Federal Regulations. Port Westward served from Astoria, Oreg., has been added under Oregon; and, Greater Pittsburgh Airport has been added under Pennsylvania when served from Meadville and Pittsburgh. The allowance for Pope Air Force Base, served from Wilmington, N.C., has been increased from 3 to 4 hours. Further, a new format, alphabetically arranged by States, has been introduced which will facilitate the use of the commuted traveltime information contained in 7 CFR 354.2. This revision also consolidates into a single list all the existing amendments.

These commuted traveltime periods have been established as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which the employee performs such overtime or holiday duty when such travel is performed solely on account of such overtime or holiday duty. Such establishment depends upon facts within the knowledge of the Animal and Plant Health Inspection Service.

It is to the benefit of the public that these instructions be made effective at the earliest practicable date. Accordingly, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and public procedure on these instructions are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

*Effective date.* The foregoing amendments shall become effective upon publication in the FEDERAL REGISTER (12-6-72), when it shall supersede 7 CFR 354.2, as amended, January 14, 1972 and July 18, 1972 (37 F.R. 587, 14215).

Done at Washington, D.C., this 28th day of November 1972.

LEO G. K. IVERSON,
*Deputy Administrator, Plant Protection and Quarantine Programs.*

[FR Doc.72-20720 Filed 12-5-72;8:45 am]

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

[Tangerine Reg. 44, Amdt. 3]

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

### Limitation of Shipments

*Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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 of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the Act.

(2) The recommendation by the Growers Administrative Committee for less restrictive size limitations on fresh shipments of tangerines is consistent with the available supply of and current and prospective demand for such smaller sizes of tangerines by fresh market outlets. The amendment is necessary to provide a supply of tangerines to consumers and to improve overall returns to producers.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Act is insufficient; and this amendment relieves restrictions on the handling of tangerines grown in Florida.

*Order.* In § 905.547 (Tangerine Regulation 44; 37 F.R. 21799, 24432, 24189) paragraph (a)(2) is amended to read as follows:

**§ 905.547 Tangerine Regulation 44.**

(a) * * *

(2) Any tangerines, grown in the production area, which are of a size smaller than 2$^{6}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the United States Standards for Florida Tangerines: *Provided,* That during the period December 4, through December 10, 1972, any handler may ship a quantity of tangerines which are smaller than 2$^{6}/_{16}$ inches in diameter, including the aforesaid tolerance, if (i) the number of standard packed boxes of such smaller tangerines does not exceed 40 percent of the total shipments of tangerines by such handler during the last previous week within the current fiscal period, in which he shipped tangerines; and (ii) such smaller tangerines are of a size not smaller than 2$^{5}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Tangerines: *Provided further,* That during the period December 11, through September 30, 1973, any handler may ship tangerines which are smaller than 2$^{6}/_{16}$ inches in diameter, including the aforesaid tolerance, if such smaller tangerines are of a size not smaller than 2$^{5}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Tangerines.

* * * * *

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

Dated, December 1, 1972, to become effective December 4, 1972.

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

[FR Doc.72-20957 Filed 12-5-72;8:59 am]

# Title 28—JUDICIAL ADMINISTRATION

## Chapter I—Department of Justice

[Order 498-72]

## PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

### Subpart P—Federal Bureau of Investigation

EXCHANGES OF IDENTIFICATION RECORDS

Section 201 of the Department of Justice Appropriation Act, 1973 (Public Law

92-544, 86 Stat. 1115), permits the Federal Bureau of Investigation to exchange identification records with State and local governments for purposes of employment and licensing if authorized by State statute and approved by the Attorney General. This order delegates the Attorney General's approval authority to the Director, Federal Bureau of Investigation.

By virtue of the authority vested in me by sections 509 and 510 of title 28 and section 301 of title 5 of the United States Code, § 0.85(j) of Subpart P of Part O of Chapter I of title 28 of the Code of Federal Regulations is amended to read as follows:

§ 0.85 **General functions.**

* * * * *

(j) Exercise the power and authority vested in the Attorney General by section 201 of the Department of Justice Appropriation Act, 1973, Public Law 92-544, 86 Stat. 1115, to approve exchanges of identification records with State and local governments for purposes of employment and licensing.

This order supersedes Order No. 474-72 of January 17, 1972.

Dated: November 29, 1972.

RICHARD G. KLEINDIENST,
*Attorney General.*

[FR Doc.72-20923 Filed 12-5-72;8:47 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

[Docket No. 72-585]

## PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

### Release of Areas Quarantined

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

1. In § 76.2, in paragraph (e)(6) relating to the State of North Carolina, subdivision (i) relating to Halifax County is deleted, and subdivision (ii) relating to Johnston, Harnett, Cumberland, and Sampson Counties is amended to read:

(e) * * *

(6) *North Carolina.* (ii) The adjacent portions of Harnett, Cumberland, and Sampson Counties bounded by a line beginning at the junction of the Johnston-Sampson County line and State Highway 55 in Sampson County; thence, following the Johnston-Sampson County line in a southwesterly, then northwesterly direction to the junction of the Johnston-Sampson-Harnett County lines; thence, following the Harnett-Sampson County line in a southwesterly direction to Secondary Road 1799 in Harnett County; thence, following Secondary Road 1799 in a southwesterly direction to Secondary Road 1808 in Harnett County; thence, following Secondary Road 1808 in a southwesterly direction to U.S. Highway 421, State Highway 55; thence, following U.S. Highway 421, State Highway 55 in a westerly direction to the Seaboard Coast Line Railroad; thence, following the Seaboard Coast Line Railroad in a southeasterly direction to Secondary Road 1802 in Cumberland County; thence, following Secondary Road 1802 in a southeasterly direction to U.S. Highway 301; thence, following U.S. Highway 301 in a northeasterly direction to Secondary Road 1813; thence, following Secondary Road 1813 in a southeasterly direction to Secondary Road 1819; thence, following Secondary Road 1819 in a southeasterly direction to U.S. Highway 13; thence, following U.S. Highway 13 in a southwesterly direction to Secondary Road 1820; thence, following Secondary Road 1820 in a southeasterly direction to Secondary Road 1825; thence, following Secondary Road 1825 in a southeasterly direction to Secondary Road 1818; thence, following Secondary Road 1818 in a southeasterly direction to Secondary Road 1006; thence, following Secondary Road 1006 in a northeasterly direction to Secondary Road 1338 in Sampson County; thence, following Secondary Road 1338 in a northerly direction to State Highway 242; thence, following State Highway 242 in a northwesterly direction to U.S. Highway 421; thence, following U.S. Highway 421 in a southwesterly direction to Secondary Road 1477; thence, following Secondary Road 1477 in a northwesterly direction to Secondary Road 1636; thence, following Secondary Road 1636 in a northwesterly direction to State Highway 55; thence, following State Highway 55 in a southwesterly direction to its junction with the Johnston-Sampson County line.

2. In § 76.2, in paragraph (f) the name of the State of New Jeresey is deleted.

3. In § 76.2, in paragraph (e)(8) relating to the State of Tennessee, subdivision (iv) relating to Roane County is deleted.

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

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

The amendments exclude portions of Halifax, Johnston, Harnett, and Cumberland Counties in North Carolina, and a portion of Roane County in Tennessee from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas contained in 9 CFR Part 76, as amended, do not apply to the excluded areas, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 apply to the excluded areas.

The amendments remove New Jersey from the list of hog cholera Eradication States in § 76.2(f), and the special provisions pertaining to the interstate movement of swine and swine products from Eradication and Free States are no longer applicable to New Jersey.

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

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

Done at Washington, D.C., this 1st day of December 1972.

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

[FR Doc.72-20958 Filed 12-5-72;8:59 am]

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[Docket No. 72-586]

## PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

### Areas Quarantined

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

swine diseases, is hereby amended in the following respects:

In § 76.2, paragraph (e)(4) relating to the State of New Jersey is amended to read:

(e) * * *

(4) *New Jersey.* (i) That portion of the State of New Jersey comprised of all of Camden and Gloucester Counties.

(ii) That portion of Hunterdon County comprised of Delaware, East Amwell, West Amwell, and Raritan Townships.

(iii) That portion of Middlesex County comprised of Cranbury, Monroe, Plainsboro, and South Brunswick Townships.

(iv) That portion of Mercer County comprised of East Windsor and West Windsor Townships.

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

*Effective date.* The foregoing amendment shall become effective upon issuance.

The amendment quarantines all of Camden and portions of Hunterdon, Middlesex, and Mercer Counties in New Jersey because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined areas.

The amendment imposes certain further restrictions necessary to prevent the interstate spread of hog cholera, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rule-making proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 30th day of November 1972.

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

[FR Doc.72-20908 Filed 12-5-72;8:58 am]

# Title 10—ATOMIC ENERGY

## Chapter I—Atomic Energy Commission

## PART 12—GRAND JUNCTION REMEDIAL ACTION CRITERIA

Notice is hereby given that the General Manager of the U.S. Atomic Energy Commission (AEC) has established criteria for determination by the AEC of the need for, priority of and selection of appropriate remedial action to limit the exposure of individuals in the area of Grand Junction, Colo., to radiation emanating from uranium mill tailings which have been used as a construction-related material. AEC participation in a State of Colorado program to assess and undertake such remedial action was authorized by Public Law 92–314, enacted on June 16, 1972.

Written comments on proposed criteria were solicited by AEC in 37 F.R. 22391, dated October 19, 1972. All comments received were taken into consideration in the establishment of the criteria.

Sec.
12.1 Purpose.
12.2 Scope.
12.3 Definitions.
12.4 Interpretations.
12.5 Communications.
12.6 General radiation exposure level criteria for remedial action.
12.7 Criteria for determination of possible need for remedial action.
12.8 Determination of possible need for remedial action where criteria have not been met.
12.9 Factors to be considered in determination of order of priority for remedial action.
12.10 Selection of appropriate remedial action.

AUTHORITY: The provisions of this Part 12 issued under section 203, 86 Stat. 226.

### § 12.1 Purpose.

(a) The regulations in this part establish the criteria for determination by the Commission of the need for, priority of and selection of appropriate remedial action to limit the exposure of individuals in the area of Grand Junction, Colo., to radiation emanating from uranium mill tailings which have been used as a construction-related material.

(b) The regulations in this part are issued pursuant to Public Law 92–314 (86 Stat. 222) of June 16, 1972.

### § 12.2 Scope.

The regulations in this part apply to all structures in the area of Grand Junction, Colo., under or adjacent to which uranium mill tailings have been used as a construction-related material between January 1, 1951, and June 16, 1972, inclusive.

### § 12.3 Definitions.

As used in this part:

(a) "Area of Grand Junction, Colo.," means Mesa County, Colo.

(b) "Background" means radiation arising from cosmic rays and radioactive material other than uranium mill tailings.

(c) "Commission" means the U.S. Atomic Energy Commission or any duly authorized representative thereof.

(d) "Construction-related material" means any material used in the construction of a structure.

(e) "External gamma radiation level" means the average gamma radiation exposure rate for the habitable area of a structure as measured near floor level.

(f) "Indoor radon daughter concentration level" means that concentration of radon daughters determined by: (1) Averaging the results of 6 air samples each of at least 100 hours duration, and taken at a minimum of 4-week intervals throughout the year in a habitable area of a structure, or (2) utilizing some other procedure approved by the Commission.

(g) "Milliroentgen (mR) means a unit equal to one-thousandth (1/1000) of a roentgen which roentgen is defined as an exposure dose of X or gamma radiation such that the associated corpuscular emission per 0.001293 grams of air produces, in air, ions carrying one electrostatic unit of quantity of electricity of either sign.

(h) "Radiation" means the electromagnetic energy (gamma) and the particulate radiation (alpha and beta) which emanate from the radioactive decay of radium and its daughter products.

(i) "Radon daughters" means the consecutive decay products of radon-222. Generally, these include Radium A (polonium-218), Radium B (lead-218), Radium C (bismuth-214), and Radium C′ (polonium-214).

(j) "Remedial action" means any action taken with a reasonable expectation of reducing the radiation exposure resulting from uranium mill tailings which have been used as construction-related material in and around structures in the area of Grand Junction, Colo.

(k) "Surgeon General's guidelines" means radiation guidelines related to uranium mill tailings prepared and released by the Office of the U.S. Surgeon General, Department of Health, Education and Welfare on July 27, 1970.

(l) "Uranium mill tailings" means tailings from a uranium milling operation involved in the Federal uranium procurement program.

(m) "Working Level" (WL) means any combination of short-lived radon daughter products in 1 liter of air that will result in the ultimate emission of $1.3 \times 10^5$ MeV of potential alpha energy.

### § 12.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

### § 12.5 Communications.

Except where otherwise specified in this part, all communications concerning the regulations in this part should be addressed to the Director, Division of Operational Safety, U.S. Atomic Energy Commission, Washington, D.C., 20545.

### § 12.6 General radiation exposure level criteria for remedial action.

The basis for undertaking remedial action shall be the applicable guidelines published by the Surgeon General of the United States. These guidelines recommend the following graded action levels for remedial action in terms of external

gamma radiation level (EGR) and indoor radon daughter concentration level (RDC) above background found within dwellings constructed on or with uranium mill tailings:

| EGR | RDC | Recommendation |
|---|---|---|
| Greater than 0.1 mR/hr. | Greater than 0.05 WL. | Remedial action indicated. |
| From 0.05 to 0.1 mR/hr. | From 0.01 to 0.05 WL. | Remedial action may be suggested. |
| Less than 0.05 mR/hr. | Less than 0.01 WL. | No remedial action indicated. |

**§ 12.7 Criteria for determination of possible need for remedial action.**

Once it is determined that a possible need for remedial action exists the record owner of a structure shall be notified of that structure's eligibility for an engineering assessment to confirm the need for remedial action and to ascertain the most appropriate remedial measure, if any. A determination of possible need will be made if as a result of the presence of uranium mill tailings under or adjacent to the structure, one of the following criteria is met:

(a) Where Commission approved data on indoor radon daughter concentration levels are available:

(1) For dwellings and schoolrooms: An indoor radon daughter concentration level of 0.01 WL or greater above background.

(2) For other structures: An indoor radon daughter concentration level of 0.03 WL or greater above background.

(b) Where Commission approved data on indoor radon daughter concentration levels are not available:

(1) For dwellings and schoolrooms:

(i) An external gamma radiation level of 0.05 mR/hr. or greater above background.

(ii) An indoor radon daughter concentration level of 0.01 WL or greater above background (presumed).

(*a*) It may be presumed that if the external gamma radiation level is equal to or exceeds 0.02 mR/hr. above background, the indoor radon daughter concentration level equals or exceeds 0.01 WL above background.

(*b*) It should be presumed that if the external gamma radiation level is less than 0.001 mR/hr. above background, the indoor radon daughter concentration level is less than 0.01 WL above background, and no possible need for remedial action exists.

(c) If the external gamma radiation level is equal to or greater than 0.001 mR/hr. above background but is less than 0.02 mR/hr. above background, measurements will be required to ascertain the indoor radon daughter concentration level.

(2) For other structures:

(i) An external gamma radiation level of 0.15 mR/hr. above background averaged on a room-by-room basis.

(ii) No presumptions shall be made on the external gamma radiation level/indoor radon daughter concentration level relationship. Decisions will be made in individual cases based upon the results of actual measurements.

**§ 12.8 Determination of possible need for remedial action where criteria have not been met.**

The possible need for remedial action may be determined where the criteria in § 12.7 have not been met if various other factors are present. Such factors include, but are not necessarily limited to, size of the affected area, distribution of radiation levels in the affected area, amount of tailings, age of individuals occupying affected area, occupancy time, and use of the affected area.

**§ 12.9 Factors to be considered in determination of order of priority for remedial action.**

In determining the order of priority for execution of remedial action, consideration shall be given, but necessarily limited to, the following factors:

(a) *Classification of structure.* Dwellings and schools shall be considered first.

(b) *Availability of data.* Those structures for which data on indoor radon daughter concentration levels and/or external gamma radiation levels are available when the program starts and which meet the criteria in § 12.7 will be considered first.

(c) *Order of application.* Insofar as feasible remedial action will be taken in the order in which the application is received.

(d) *Magnitude of radiation level.* In general, those structures with the highest radiation levels will be given primary consideration.

(e) *Geographical location of structures.* A group of structures located in the same immediate geographical vicinity may be given priority consideration particularly where they involve similar remedial efforts.

(f) *Availability of structures.* An attempt will be made to schedule remedial action during those periods when remedial action can be taken with minimum interference.

(g) *Climatic conditions.* Climatic conditions or other seasonal considerations may affect the scheduling of certain remedial measures.

**§ 12.10 Selection of appropriate remedial action.**

(a) Tailings will be removed from those structures where the appropriately averaged external gamma radiation level is equal to or greater than 0.05 mR/hr. above background in the case of dwellings and schools and 0.15 mH/hr. above background in the case of other structures.

(b) Where the criterion in paragraph (a) of this section is not met, other remedial action techniques, including but not limited to sealants, ventilation, and shielding may be considered in addition to that of tailings removal. The Commission shall select the remedial action technique, or combination of techniques, which it determines to be the most appropriate under the circumstances.

Dated this 27th day of November, 1972.

JOHN A. ERLEWINE,
*Acting General Manager.*

[FR Doc.72-20896 Filed 12-5-72;8:47 am]

# Title 49—TRANSPORTATION

## Chapter X—Interstate Commerce Commission

### SUBCHAPTER C—ACCOUNTS, RECORDS, AND REPORTS

[No. 34178 (Sub-No. 1)]

### PART 1201—RAILROAD COMPANIES
### PART 1202—ELECTRIC RAILWAYS
### PART 1204—PIPELINE COMPANIES
### PART 1205—REFRIGERATOR CAR LINES
### PART 1206—COMMON AND CONTRACT MOTOR CARRIERS OF PASSENGERS
### PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY
### PART 1208—MARITIME CARRIERS
### PART 1209—INLAND AND COASTAL WATERS
### PART 1210—FREIGHT FORWARDERS

### Accounting for Federal Income Taxes and Investment Tax Credit; Correction

*It is ordered,* That the order served September 12, 1972, and appearing in the FEDERAL REGISTER, Tuesday, October 3, 1972 (37 F.R. 20695) is corrected as indicated.

The following paragraph is deleted in its entirety:

Under the provisions of the Act the carriers' freedom to use the method of their choice is limited to the areas of accounting and reporting. The Commission reaffirms its findings that the actual Federal income taxes payable for each year, based on the effective tax regulations for the year and including reductions in tax because of the investment credit, shall be used as the proper expense to be considered in ratemaking proceedings.

Dated at Washington, D.C., this 3d day of November 1972.

By the Commission, Commissioner Brown.

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

[FR Doc.72-20942 Filed 12-5-72;8:59 am]

# Title 32—NATIONAL DEFENSE

## Chapter V—Department of the Army

### SUBCHAPTER G—PROCUREMENT

### MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

Title 32, Chapter V, Subchapter G, is amended as follows:

### PART 591—GENERAL PROVISIONS

1. Section 591.108 is revised; § 591.109 title is amended and the text is revoked; § 591.109–2 (a) and (b) are amended; § 591.150(f) is revised; § 591.402–5 is added; in § 591.405 (a)(9) is added and (b) is revised; in § 591.450–1 the last sentence is amended; § 591.450–2 is revoked; § 591.450–11(a) is revised; §§ 591.451 (b)(2) and 591.452–1 (a) and (c) are amended; in § 591.452–2(a) in the appointment order contained therein paragraphs 1 and 2 d and e are amended; § 591.908 is revoked; §§ 591.5101 and 591.5102(b) (1), (4), (9), (10), (11), and (12) are revised, and (13) is revoked; in the appendix to § 591.5102 the Delegations of Authority, Ref. No. SAOAS–67–16, dated October 28, 1966, is revoked and SAOAS–69–19, dated June 27, 1969, inserted in place thereof, SAOAS–67–17, dated October 28, 1966, is revoked and SAOAS–68–20, dated September 26, 1969, inserted in place thereof, SAOAS–67–18, dated October 28, 1966, is revoked and SAOSA–27–26, dated January 14, 1972, inserted in place thereof, SAOSA–69–19, dated June 27, 1969, is revoked and SAOSA–72–27, dated May 31, 1972, inserted in place thereof, and SAOAS–68–20, dated September 11, 1968, is revoked, as follows:

**§ 591.108 Departmental Procurement Instructions and ASPR and APP Implementations.**

(a) Heads of Procuring Activities may publish implementations of ASPR and APP provided subject matter has been reviewed and approved for publication by the addressee in § 591.150(b)(6). (See § 591.150(d).) HPA implementations shall be published in a single directive identified as Procurement Instructions. Changes (except deletions) to or additional subject matter to be included in HPA Procurement Instructions likewise shall be forwarded the addressee in § 591.150(b)(6) for review and approval prior to being published.

(b) Coverage in HPA Procurement Instructions shall be limited to procedural instructions; shall meet the criteria in § 1.108 (a) and (b) of this title; shall contain no policy statements; and shall not repeat, paraphrase, amplify, clarify, restrict, nor interpret coverage in ASPR and APP. Section, part, and paragraph numbers shall be keyed to the ASPR and APP section, part, or paragraph being implemented. Sections, parts, and paragraphs of ASPR and APP shall not be cited when there is no implementation thereof.

(c) Heads of Procuring Activities may publish procedural procurement instructions of a temporary nature in Circulars numbered in the 715 series, provided the instructions meet the criteria in paragraph (b) of this section. Subject matter which is later to be published in the HPA Procurement Instructions shall not be published in Circulars until approved for publication by the addressee in § 591.150 (b)(6) in accordance with paragraph (a) of this section. Each Circular shall indicate the date upon which it shall expire.

(d) Chiefs of purchasing offices may issue procedural procurement instructions for use within the installations/activities served by the purchasing office and may also issue SOP's for use within the purchasing office.

(e) Procurement instructions described in paragraphs (a) through (d) of this section except for internal purchasing office SOP's, are official publications of Department of the Army activities and shall be authenticated in accordance with AR 310–1. No procurement instructions shall be issued in any media other than those prescribed in paragraphs (a) through (d) of this section.

(f) One copy of each HPA Procurement Instruction and changes thereto, and one copy of each Circular issued by a Head of Procuring Activity, shall be forwarded to the addressee in § 591.150 (b)(6) at time of issuance.

**§ 591.109 Deviation from ASPR, APP, and Other Department of Defense and Department of the Army Publications Governing Procurement.**

Request for approval * * * supported by a complete justification. [Revoked]

**§ 591.109–2 Deviations affecting one contract or transaction.**

(a) The Director of Requirements and Procurement, Headquarters U.S. Army Materiel Command, and the Commander, U.S. Army Memorial Affairs Agency, are authorized, without power of redelegation, to approve deviations from ASPR which affect only one contract or transaction except that the authority granted does not extend to—

(1) ASPR section IX,

(2) Other ASPR provisions as to which the Department of Defense has suspended Departmental deviation authority, or

(3) Other ASPR provisions as to which action or deviation authority is limited by ASPR or APP to a level higher than the above-named commands.

Unless exigency of the situation requires immediate action, a written notice of each proposed deviation shall be forwarded the addressee in § 591.150 (b)(6) prior to the effective date of the deviation. Six copies of each deviation shall be furnished the addressee in § 591.150(b)(6) at the time the deviation is granted.

(b) A Head of Procuring Activity, his deputy, or a principal assistant responsible for procurement, and the Commander, U.S. Army Memorial Affairs Agency, are authorized, without power of redelegation, to approve deviations from APP which affect only one contract or transaction; except that the authority granted does not extend to—

(1) APP section IX,

(2) Other APP provisions as to which action or deviation authority is limited by APP to a level higher than a Head of Procuring Activity, e.g., secretarial preaward review and notation [§ 591.-405–54], or

(3) A deviation which would conflict with ASPR or with a statutory requirement.

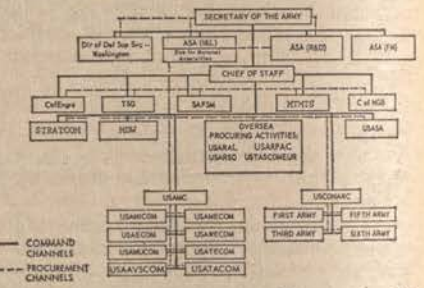
One copy of each deviation shall be furnished the addressee in § 591.160(b)(6) at the time the deviation is granted (see § 591.150(d)).

* * * * *

**§ 591.150 Procurement channels and mailing addresses.**

* * * * *

(f) *Flow of Procurement Authority.*




**§ 591.402–51 Successor Contracting Officers.**

(a) Only one contracting officer may exercise authority over a contract or modification thereto during any given period. Chiefs of purchasing offices may, however, designate a successor contracting officer in case of a predecessor contracting officer's demise, transfer, revocation of authority, or prolonged absence from duty. A successor contracting officer may also be designated during short periods of absence from duty of a predecessor when it is anticipated that contractual actions will be required during that time.

(b) Designations of successor contracting officers shall be in writing and shall state the effective date thereof; shall identify the contract or contracts involved; and, where appropriate and feasible, shall indicate the termination date thereof.

(c) Contractors affected by designations of successor contracting officers shall be notified promptly in writing of such designations; except that, in cases of designations for short periods of absence of predecessors, contractors need be notified only if contractual actions are taken by successor contracting officers.

(d) Only properly appointed contracting officers (see § 591.405) shall be designated as successor contracting officers.

(e) Sucessor contracting officers may not execute contractual documents nor bind the Government in amounts in excess of the monetary authority stated in their Certificates of Appointment, DD Forms 1539.

**§ 591.403–51 Boards of Awards.**

(a) Heads of Procuring Activities shall establish, or authorize installation/activity commanders to establish, Boards of Awards for the purpose of reviewing proposed awards of contracts and modifications in amounts of $10,000 or more, whether formally advertised or negotiated.

(b) Boards of Awards shall be composed of qualified procurement, legal, production, technical, and contract pricing representatives to the extent required and available. The appointing authority shall appoint the members of the board and shall designate a chairman and an alternate chairman.

(c) A contracting officer who is a member of a Board of Awards may participate in its proceedings on proposed contracts and modifications for which he is the contracting officer but may not participate in its findings and recommendations.

(d) The purpose of reviews by Boards of Awards shall be to insure that—

(1) Applicable provisions of ASPR, APP, and other procedural requirements are satisfied, e.g. § 3.102(c) of this title;

(2) The proposed action represents a sound business judgment from the Government's viewpoint; and

(3) The proposed contract or modification is legally and technically sufficient.

(e) As a minimum, reviews by Boards of Awards shall cover the following aspects—

(1) The procurement documents themselves, e.g. clarity; consistency; completeness; use of prescribed forms, clauses, and specifications;

(2) The procurement method used, e.g. formal advertising; negotiation; competition; sole source; suitability for small business or labor surplus area set aside; suitability for contracting with the Small Business Administration pursuant to § 7.105–5 of this title; adherence to advance procurement (AP) plan or specific guidance from higher authority;

(3) Support for actions to be taken, e.g. existence of proper authority for use of negotiation and type of contract, if applicable; existence of Government estimate of price; preaward survey; adequacy of any justifications or determinations required of the contracting officer; need for technical data; adequacy of pricing data; inputs from members of the contracting officer's team; necessity for deviations from ASPR or APP; and

(4) Comparison with alternatives, e.g. how else could the procurement objectives be accomplished; what are the relative advantages and disadvantages of each.

(f) The depth of review of a proposed contract or modification, the number of board members required to participate in the review, and the need for a formal meeting of the board may vary to the extent determined by the board chairman.

(g) Summaries of board reviews shall be prepared and a copy placed in appropriate contract files. Summaries shall indicate salient issues considered, personnel present when formal board meetings are held, deficiencies found in documents reviewed, and findings and recommendations to the contracting officer.

(h) If approval of award of a proposed contract or modification by a higher authority is required, the review by the Board of Awards shall be made before seeking approval from the higher authority. A copy of the summary of the board review shall be included in the documents forwarded to the higher authority from which approval of award is required.

(i) The following need not be reviewed by Boards of Awards—

(1) Contracts for utilities services (see § 591.450–6); contracts for contract surgeons; off-duty academic instruction contracts; general educational development contracts; contracts for training of military personnel and ROTC Scholarship Cadets at civilian institutions; dependent school teachers contracts; and modifications to any of the foregoing;

(2) Contracts subject to the provisions of AR 715–6 (such contracts shall be reviewed in accordance therewith); and

(3) Modifications for funding purposes which do not increase the total price of a contract beyond the amount contemplated in the contract previously reviewed by the board.

**§ 591.405 Selection, appointment, and termination of appointment of contracting officers.**

(a) * * *

(9) The Commander, U.S. Army Memorial Affairs Agency.

(b) The individuals named in paragraph (a) (4) through (9) of this section shall exercise this authority without power of redelegation, except that they may redelegate to chiefs of purchasing offices under their jurisdiction the authority to appoint ordering officers (see § 591.452). Where chiefs of purchasing offices are contracting officers, such redelegation shall be made by entry on their Certificates of Appointment, DD Form 1539.

* * * * *

**§ 591.450–1 By contracting officers.**

* * * Contracting officers shall insure that contracts and modifications have been reviewed by Boards of Awards in accordance with § 591.403–52 prior to making awards.

**§ 591.450–2 [Revoked]**

**§ 591.450–11 Automatic data processing equipment [ADPE].**

(a) In connection with the award of contracts for acquisition for use of ADPE, see §§ 3.1100 and 13.301 of this title, and §§ 593.1100 and 603.301 of this chapter, and AR 18–1. Also see delegations of authority in § 591.5102.

* * * * *

**§ 591.451 Participation of legal counsel in the procurement process.**

* * * * *

(b) * * *

(2) Serve as a member of Boards of Awards (see § 591.403–52); and

* * * * *

**§ 591.452–1 Policy.**

(a) It is Department of the Army policy that—

(1) The chief of a central purchasing office be responsible for the efficient performance of the procurement mission assigned the installation/activity concerned,

(2) The procurement function not be decentralized by the indiscriminate appointment of ordering officers (see § 591.405(d)), and

(3) Ordering officers not be appointed within a purchasing office (but see § 593.605 of this chapter).

* * * * *

(c) Purposes for which ordering officers may be appointed and references as to limitations of their authority are—

(1) To make purchases using imprest funds (see § 593.607–4 of this chapter);

(2) To make over-the-counter purchases using Standard Forms 44 or DD Forms 1155 (see § 593.608–9 of this chapter);

(3) To place delivery orders or oral calls against Brand Name Contracts published in Defense Supply Agency Supply Bulletins in the 10–500 or 10–600 series (see § 594.5102 of this chapter);

(4) To place calls against indefinite delivery type contracts awarded by contracting officers of the Military Departments for the preparation of personal property for shipment, government storage, and performing intracity or intraarea movement, provided contract terms so permit (see § 612.650 of this chapter);

(5) To place Service Orders for Household Goods Against Commercial Warehousing and Related Services for Household Goods contracts (see § 612.651 of this chapter); or

(6) To place delivery orders against indefinite delivery type contracts awarded by contracting officers of the Military Departments, provided the contract terms so permit and provided all orders placed are within monetary limitations set forth therein.

**§ 591.452–2 Appointment.**

(a) * * *

Subject: Appointment of Ordering Officer (Alternate Ordering Officer).

To: (Address to individual by name, indicating rank or grade, section or location, and activity or installation.)

1. *Appointment.* Under Army Procurement Procedure 1–452, you are appointed an Ordering Officer (Alternate Ordering Officer) for the purposes set forth in paragraph 2 herein. Your appointment shall become effective (enter date) and shall remain effective unless sooner revoked (until expiration of the contract(s) enumerated in paragraph 2

herein, or) until you are reassigned or your employment is terminated. You are responsible to and under the technical supervision of the chief of the (enter name of installation or activity) purchasing office for your actions as an Ordering Officer.

2. * * *

d. * * *

(2) The following indefinite delivery type contracts, copies of which are attached (list contracts by number and name of Contractor):

e. Subject to your insuring that funds are available and that local purchase authority exists for the transaction, you may place Service Orders for Household Goods (DD Forms 1164) against Commercial Warehousing and Related Services for Household Goods contracts for military and civilian personnel, subject to the criteria and procedures prescribed in Chapter 10, DOD Regulation 4500.34–R and provided that no Service Order shall be in an amount in excess of $2,500.

* * * * *

§ 591.908 [Revoked]

§ 591.5101 Scope of subpart.

This subpart contains reproductions of delegations of authority relating to procurement matters, other than annual delegations which are published in Department of the Army circulars in the 715–2 series.

§ 591.5102 Delegations of authority.

* * * * *

(b) * * *

(1) SAOSA–71–1—Delegation of Authority to Approve the Publication of Advertisements, Notices of Proposals.

* * * * *

(4) SAOSA–71–6—Delegation of Authority to Lease Personal Property.

* * * * *

(9) SAOAS–69–19—Delegation of Authority on Labor Relations Matters, Military Functions.

(10) SAOAS–68–20—Delegation of Authority to Certify as Just and Reasonable Indemnification Claims Not Exceeding $50,000.

(11) SAOSA–72–26—Delegation of Priorities and Allocations Authorities.

(12) SAOSA–27–27—Delegation of Authority to Approve Acquisition of Automatic Data Processing Equipment (ADPE).

(13) [Revoked]

APPENDIX TO § 591.5102 DELEGATIONS OF AUTHORITY

Ref. No.: SAOAS–67–16, dated October 28, 1966 [Revoked].

SAOSA–69–19 JUNE 27, 1969.

DELEGATION OF AUTHORITY ON LABOR RELATIONS MATTERS, MILITARY FUNCTIONS

1. Under Part 5, Subtitle A, Title 29, Code of Federal Regulations, and paragraphs 18–704.2(a)(5) and 18–704.16, Armed Services Procurement Regulation, I hereby delegate to the Chief of Engineers:

a. Authority to submit a written request to the Solicitor of Labor for an extension of the expiration date of a wage determination when, due to unavoidable circumstances, a wage determination expires after bid opening but before award and upon the delegee finding that an extension is in the public interest to prevent injustice, undue hardship, or serious impairment of the conduct of Government business.

b. Authority to recommend to the Solicitor of Labor that liquidated damages in excess of $100 be waived or adjusted upon the delegee finding that such liquidated damages administratively determined to be due the Government under section 104(a) of the Contract Work Hours Standards Act are incorrect or that the violation by the contractor or subcontractor of the Contract Work Hours Standards Act was nonwillful or inadvertent and occurred notwithstanding the exercise of due care by the contractor or subcontractor.

c. Authority to waive or adjust liquidated damages of $100 or less upon the delegee finding that such liquidated damages administratively determined to be due the Government under section 104(a) of the Contract Work Hours Standards Act are incorrect or that the violation by the contractor or subcontractor of the Contract Work Hours Standards Act was nonwillful or inadvertent and occurred notwithstanding the exercise of due care by the contractor or subcontractor.

2. The Chief of Engineers may redelegate the authority in a and b above to a designee at a level no lower than the Head of Procuring Activity and may redelegate the authority in c above to a designee at a level no lower than a District Engineer.

3. The foregoing delegation of authority becomes effective on August 1, 1969 and, as of that date, Delegation of Authority on Labor Relations Matters, Military Functions, SAOAS–67–19, August 16, 1967, is superseded without prejudice to any action taken pursuant thereto.

J. RONALD FOX,
*Assistant Secretary of the Army, Installations and Logistics.*

Ref. No.: SAOAS–67–17, dated October 28, 1966 [Revoked].

Ref. No.: SAOAS–68–20 SEPTEMBER 26, 1968.

DELEGATION OF AUTHORITY TO CERTIFY AS JUST AND REASONABLE INDEMNIFICATION CLAIMS NOT EXCEEDING $50,000

Pursuant to the authority contained in the Act of August 28, 1958 (Public Law 85–804, 50 U.S.C. 1431), and Executive Order No. 10789, dated November 14, 1958, and under section XVII of the Armed Services Procurement Regulation, I hereby delegate to the Commander in Chief, U.S. Army, Pacific, without authority to redelegate further, the authority to certify as just and reasonable payments of amounts not to exceed $50,000 for claims received from contractors in the Republic of Vietnam which have been submitted pursuant to the indemnification clause of their contracts.

ROBERT A. BROOKS,
*Assistant Secretary of the Army, Installations and Logistics.*

Ref. No.: SAOAS–67–18, dated October 28, 1966 [Revoked].

Ref. No.: SAOSA–72–26 JANUARY 14, 1972.

DELEGATION OF PRIORITIES AND ALLOCATIONS AUTHORITIES

1. Under Department of Defense Instruction 4400.1, November 16, 1971, subject: Priorities and Allocations—Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals, and in accordance with the Defense Production Act of 1950, as amended; and Bureau of Domestic Commerce (BDC) Delegation 1, authority is hereby delegated to the Deputy Chief of Staff for Logistics with authority to redelegate further, the authority:

a. To apply or assign to others the right to apply DO and DX ratings and allotment numbers to contracts or delivery orders to meet the requirements of Department of Defense (DOD) programs authorized for priorities support by the Office of Emergency Preparedness (OEP) or designated by OEP as eligible for priorities and allocations support through DOD.

b. To assign the right to apply DO and DX ratings to prime or subcontractors on orders for delivery of privately owned production equipment specifically required to support authorized programs of the DOD or other specially designated programs.

c. To assign the right to apply DO and DX ratings to contractors on orders for delivery of construction equipment for use on construction in Alaska, Hawaii, or other areas outside of the continental United States.

d. To make allotments of controlled materials, and to apply or assign to others the right to apply allotment numbers to ratable contracts and delivery orders within the allotment jurisdiction of the Department of the Army.

e. To reschedule delivery of materials which are required to support the Tank-Automotive (A4) Claimant Program and the Army portion of the Aircraft (A1) Claimant Program.

2. The conditions and responsibilities for the use of these delegations are as follows:

a. The use of DX rating and allotment authorities are limited to:

(1) Contracts and orders for programs approved by the President and as designated by the OEP as of the highest national priority and specifically identifiable as such and as limited in the BRICK–BAT Category on the DOD Master Urgency List.

(2) Contracts and orders to which ratings and allotment numbers may be applied or assigned as specified herein.

b. DX rating and allotment authorities will not be used for administrative type items (i.e., typewriters and furniture), liaison vehicles (i.e., passenger aircraft and cars), clothing and equipage items (i.e., T-shirts, insignia, and hand weapons), etc. This applies equally to prime and subcontractors, suppliers and vendors throughout the industrial chain with respect to any DX approved programs.

c. DO and DX ratings and allotment authorities will be exercised as follows:

(1) Authorities delegated in paragraph 1a through 1d above may be redelegated only within the Department of the Army. Any other redelegation shall require the prior written approval of the Assistant Secretary of Defense (Installations and Logistics) (ASD(I&L)).

(2) Authorities shall be exercised within the limits of such allocation determinations or other quantitative restrictions and in accordance with such instructions, conditions, recordkeeping and reporting requirements, as may be issued from time to time by the ASD(I&L) and published in the DOD Priorities and Allocations Manual.

(3) Allotment authority in support of the Aircraft (A1) Program shall be exercised jointly by procuring departments through the Joint Aeronautical Materials Activity Command (JAMAC), Wright-Patterson Air Force Base, Ohio.

(4) In making allotments of controlled materials and in applying ratings and allotment numbers, the certification prescribed by the appropriate BDC regulation or order shall be used.

(5) Specifically excluded from all ratings and allotments are:

(a) Civilian type items for resale in Military Exchanges or packaging for such items other than packaging for export of such items.

(b) Materiel purchased from exclusively retail establishments except in emergency situations.

(c) List "A" to BDC Defense Priorities System Regulation No. 1.

d. Authority to reschedule deliveries as described in 1e, above, will be:

(1) Limited to rescheduling deliveries on rated orders or authorized controlled materials orders:

(a) Bearing the A-1 or the A-4 program identification, and

(b) Issued by or pursuant to the authority of the Department of the Army, or, if not, that the rescheduling is requested or concurred in by the Department or associated agency under whose authority they were issued.

(2) Directed only if it requires no change in the production schedule of the person making the delivery.

(3) Redelegated only within the Department of the Army and only to that activity within the Department of the Army which is to act as its central delivery rescheduling unit for a claimant program.

(4) Exercised so as to support decisions on relative urgencies reflected in the DOD Master Urgency List, based on realistic needs to meet approved schedules.

(5) Exercised jointly by procuring departments through the JAMAC for deliveries in support of the aircraft (A-1) program.

e. DO and DX Ratings and Allotment Authorities and Rescheduling of Delivery Authority described in 1, above, are subject to the following requirements:

(1) The exercise of these authorities shall conform to the terms of the regulations and orders of the BDC and to such priorities and allocations policy memorandums, quantitative program determinations, and procedures as may be issued by the ASD(I&L) in the DOD Priorities and Allocations Manual.

(2) The Office of the Deputy Chief of Staff for Logistics is designated as the office responsible for administering the priorities and allocations functions within the Department of the Army and shall be responsible for ensuring compliance by all Department of the Army components in the use of such rating, allotment and rescheduling authority delegated to them.

(3) The foregoing delegation of authority becomes effective on January 17, 1972, and, as of that date, Delegations of Authority Ref. No. SAOAS-67-16, October 28, 1966, subject: Delegation of Priorities and Allocations Authority: DO Ratings and Allotments; SAOAS-67-17, October 28, 1966, subject: Delegation of Priorities and Allocations Authority: DX Ratings and Allotments; and SAOAS-67-18, October 28, 1966, subject: Delegation of Priorities and Allocations Authority: Rescheduling Deliveries, are superseded without prejudice to any action taken pursuant thereto.

DUDLEY C. MECUM,
*Assistant Secretary of the Army, Installations and Logistics.*

Ref. No.: SAOSA-69-19, dated June 27, 1969 [Revoked].

Ref. No.: SAOSA-72-27 MAY 31, 1972.

DELEGATION OF AUTHORITY TO APPROVE ACQUISITION OF AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE)

1. Pursuant to Department of Defense Directive 4105.55, January 21, 1971, and Section III of the Armed Services Procurement Regulation, I hereby delegate to the Heads of Procuring Activities, with the authority to redelegate to Chiefs of Purchasing Offices, the approval of:

a. Leasing arrangements by contractors, in connection with the execution of cost reimbursement type contracts with the Government, for ADPE when the annual lease cost does not exceed $100,000 per contract (ASPR 3-1100.2(a)(v)); and,

b. Acquisition of ADPE, through provision of Government production and research property to contractors in connection with the execution of Government contracts, when the acquisition cost per contract does not exceed $100,000 annual lease or $400,000 purchase (ASPR 13-301(h)(ii)).

2. The foregoing delegation of authority does not apply to:

a. Noncompetitive procurement actions which include a central processing unit; or,

b. Procurement actions which include more than one central processing unit.

3. Requirements which exceed this delegation will be forwarded to the Assistant Secretary of the Army (Financial Management) through the Assistant Vice Chief of Staff, Army, address: HQDA(DACS-CM).

EUGENE M. BECKER,
*Assistant Secretary of the Army, Financial Management.*

Ref. No.: SAOAS-68-20, dated September 11, 1969 [Revoked].

## PART 592—PROCUREMENT BY FORMAL ADVERTISING

2. Section 592.406-3(b) is revised, as follows:

**§ 592.406-3 Other mistakes.**

* * * * *

(b) Authority is delegated to the individuals named in § 2.406-3(b)(1) of this title to make determinations described in § 2.406-3(a) (2), (3), and (4) of this title. Contracting officers shall submit cases for determination by the Deputy or Assistant Deputy for Material Acquisition, OASA (I&L), directly to the addressee in § 591.150(b)(6) of this chapter, concurrently furnishing the cognizant Head of Procuring Activity an information copy. When submitting the documents prescribed in § 2.406-3(e)(3) of this title, the original of the bid of the bidder alleging a mistake, the originals of all correspondence from the bidder regarding the alleged mistake, and the original of the worksheets and other evidence furnished by the bidder in the matter shall be forwarded. The file shall also include a statement of legal counsel concerning the merits of the allegation and the relief sought by the bidder. The originals of the documents will be returned to the purchasing office with the determination.

* * * * *

## PART 593—PROCUREMENT BY NEGOTIATION

3. Section 593.605-3(c)(2) is amended and § 593.1100-2 is revised, as follows:

**§ 593.605-3 Establishment of blanket purchase agreements.**

* * * * *

(c) * * *

(2) Authorize individuals in requiring activities such as commissaries, hospitals, research laboratories, or isolated off-post locations to place calls whose aggregate dollar amount does not exceed $250 under BPA's established by him; except that individuals in commissaries may be authorized to place calls for subsistence items without monetary limitation when the BPA contains the Examination of Records by Comptroller General clause (§ 7.104-15 of this title).

* * * * *

**§ 593.1100-2 Review of decision to lease.**

(a) The Senior ADPE policy official of the Department of the Army referred to in § 3.1100-2(a)(5) of this title is the Assistant Secretary of the Army (Financial Management).

(b) The Assistant Secretary of the Army (Financial Management) has delegated to Heads of Procuring Activities with power of redelegation to chiefs of purchasing offices certain authority to approve leasing arrangements of ADPE (see § 591.5102 of this chapter).

(c) Requests for approval of leasing arrangements of ADPE which require approval at Secretarial level shall be forwarded to the Assistant Secretary of Defense (Comptroller) through the Office, Assistant Vice Chief of Staff, Department of the Army, address: HQDA (DACS-CM), and shall include the justification specified in § 15.205-48(d) of this title.

(d) (Requests for technical ADP assistance pursuant to § 3.1100-2(c) of this title shall be directed to the Office, Assistant Vice Chief of Staff, Department of the Army, address: HQDA (DACS-CM).

## PART 594—SPECIAL TYPES AND METHODS OF PROCUREMENT

4. Sections 594.5004-2, 594.5004-5, 594.5004-6, 594.5004-11, and 594.5004-12 are amended; §§ 594.5004-13, 594.5004-14, 594.5004-17, 594.5004-18, 594.5004-19, 594.5004-20, 594.5004-21, 594.5004-22, 594.5004-23, 594.5004-24, 594.5004-25, and 594.5004-26 are revised; §§ 594.5004-27 through 594.5004-34 are added, as follows:

**§ 594.5004-2 Changes.**

Insert the clause in § 7.1902-2 of this title.

**§ 594.5004-5 Disputes.**

Insert the appropriate clause in § 7.103-12 of this title.

**§ 594.5004-6 Renegotiation.**

Insert the appropriate clause in § 7.103-13 of this title.

**§ 594.5004-11 Utilization of labor surplus area concerns.**

Insert the clause in § 7.104-20 of this title if the contract amount will exceed $5,000.

**§ 594.5004-12 Examination of records by Comptroller General.**

Insert the clause in § 7.104-15 of this title in accordance with instructions therein.

**§ 594.5004–13 Termination for convenience of the Government.**

Insert the appropriate clause in § 7.103–21 or § 7.1902–16(b) of this title.

**§ 594.5004–14 Reporting of refund of royalties.**

Insert the appropriate clause in § 7.-104–8 of this title if the contract is negotiated and the contract amount will exceed $10,000.

**§ 594.5004–17 Extras.**

Insert the clause in § 7.103–3 of this title.

**§ 594.5004–18 Contract Work Hours and Safety Standards Act—Overtime compensation.**

In accordance with § 12.301 of this title and § 602–302 of this chapter, insert the clause in § 7.103–16 of this title.

**§ 594.5004–19 Notice and assistance regarding patent and copyright infringement.**

In accordance with § 9.104 of this title, insert the clause in § 7.103–23 of this title.

**§ 594.5004–20 Listing of employment openings for veterans.**

In accordance with § 12.1102–2 of this title, insert the clause in § 7.103–27 of this title.

**§ 594.5004–21 Utilization of minority business enterprises.**

In accordance with § 1.332 of this title, insert the clause in § 7.104–36(a) of this title.

**§ 594.5004–22 Payment of interest on contractor's claims.**

In accordance with § 1.333 of this title, insert the clause in § 7.104–82 of this title.

**§ 594.5004–23 Inspection of services.**

Insert the clause in § 7.1902–4 of this title.

**§ 594.5004–24 Discounts.**

Insert the clause in § 7.1902–11 of this title.

**§ 594.5004–25 Flight insurance.**

Insert the following clause:

FLIGHT INSURANCE (MARCH 1966)

(a) In connection with the operation of aircraft in performance of this contract, or the flight checking of students hereunder by employees of the Contractor or any subcontractor or by representatives of the Government, the Contractor or any subcontractor engaged to provide the flight training shall procure and maintain at all times during the performance of services under this contract Aircraft Public Liability Insurance, including coverage of liability to passengers, against death, bodily injury, and property damage. This insurance shall be procured and maintained in limits of not less than $100,000 with respect to any one person injured or killed and, subject to that limit per person, an aggregate limit of $500,000 with respect to any number of persons injured or killed as the result of any one accident, and $100,000 per accident with respect to property damage. The liability limit with respect to passenger liability shall be not less than $100,000 per aircraft seat. This required insurance coverage shall be carried under terms and conditions which will protect the Contractor, the subcontractor, if any, and the student.

(b) Each insurance policy evidencing this required insurance shall bear appropriate endorsements whereby the insurance carrier waives any right of subrogation acquired against the United States of America by reason of any payment under the policy, and the policy shall further provide that the Contracting Officer shall receive thirty (30) calendar days prior written notice before cancellation or reduction of the coverage thereunder can become effective.

(c) Prior to start of flight instruction under this contract, the Contractor shall furnish the Contracting Officer either with a certified copy of the insurance policy actually procured and maintained, or with an insurance certificate issued by the insurance carrier evidencing the existence of the required insurance coverage in conformity with this clause.

**§ 594.5004–26 Subcontracting for services.**

Insert the following clause:

SUBCONTRACTING FOR SERVICES (MARCH 1966)

The Contractor shall not contract with any other party for furnishing any of the services herein contracted for without the prior written approval of the proposed contract by the Contracting Officer. This clause shall not apply to contracts between the Contractor and personnel assigned for services hereunder.

**§ 594.5004–27 Services to be performed.**

Insert the following clause:

SERVICES TO BE PERFORMED (MARCH 1966)

(a) The Contractor shall provide a Flight Instruction Program to students designated by the PMS of the Army ROTC unit at (insert name and address of the host institution). This instruction program shall include all items for which an estimated quantity is shown in the Schedule of the contract and shall be in accordance with the Specifications attached hereto and made a part hereof.

(b) The Contractor shall maintain technical, operational, and administrative records as the Contracting Officer or the PMS may require, including but not limited to a current record of all:

(i) Flying time as it accrues for each student, certified to at the time by both the instructor and the student, and itemized to show the number of hours and nature of instruction (solo, dual, or authorized flight check);

(ii) Contractor-furnished transportation, to show date provided and name of each student transported; and

(iii) Student-furnished transportation, to include name of each student, date of each student-furnished transportation, date and amount of payment to each student, and a signed receipt for each payment.

(c) The Contractor shall not receive payment for any flight instruction in excess of the total hours per student prescribed by the Specifications unless the Contracting Officer specifically orders the additional instruction in writing.

(d) The Army shall provide ground instruction separate from the flight instruction portion of the Flight Instruction Program. The Contractor shall not be responsible for any required ground instruction and shall receive no payment for any services related to ground instruction.

NOTE: Use this subparagraph (d) when the Army elects to conduct ground instruction in lieu of contracting therefor.

(d) The Contractor shall furnish a course of ground instruction, as prescribed by the Specifications, at (insert location of ground instruction). The Contractor shall furnish this course for any number of students up to a maximum of ____ for the unit price set forth in the Schedule of the contract.

NOTE: Use this subparagraph (d) when the Army elects to contract for ground instruction in addition to the other elements of the FIP.

(e) In consideration of the requirements for the Contractor to comply with various contract requirements herein by subcontracting for all or part of the Flight Instruction Program, the Government shall pay the Contractor the lump sum administration charge set forth in the Schedule of the contract.

NOTE: If the contract is with a host institution which plans to subcontract for all or part of the FIP and the institution imposes an administration charge, insert this subparagraph (e): otherwise omit it.

**§ 594.5004–28 Contractor's Qualifications, Equipment, and Personnel.**

Insert the following clause:

CONTRACTOR'S QUALIFICATIONS, EQUIPMENT, AND PERSONNEL (MARCH 1966)

(a) The Contractor shall provide and maintain at all times during the period of this contract at least one aircraft for each fifteen (15) students, or fraction thereof, receiving instruction under this contract. Each aircraft shall meet the requirements of the Specifications hereto, shall have a separate and independent three-control system (rudder, elevator, and aileron controls), and shall be subject to approval by the Federal Aviation Agency and the Contracting Officer. These aircraft need not be used exclusively for services under this contract.

(b) The Contractor shall provide at least one flight instructor for each fifteen (15) students, or fraction thereof, receiving instructions under this contract. Each instructor shall hold a currently valid Commerical Pilot Certificate and appropriate instructor's rating issued by the Federal Aviation Agency and shall meet all other applicable Federal Aviation Agency requirements. Instructors need not be used exclusively for services under this contract. The Contractor shall not be required to furnish the estimated hours of flight instruction for more than ------ students.

(c) The Contractor or subcontractor shall keep currently in effect at all times during the performance of this contract a flying school certificate with an appropriate flying school rating issued under the provisions of Part 141 of the Federal Aviation Regulations.

(d) All operations under this contract shall be in accordance with all applicable provisions of the Federal Aviation Regulations, unless otherwise provided by the specifications, the Federal Aviation Agency, and the Contracting Officer under the terms of this contract.

(e) The Contractor shall furnish all equipment necessary to perform this contract except computers, plotters, and flying clothing. The Contractor shall pay each student's fee for the required Restricted Radio Telephone Operator's permit. The Government shall reimburse the amount of the fees to the Contractor after payment of the fees have actually been made.

§ 594.5004–29 Period of Contract.

Insert the following clause:

PERIOD OF CONTRACT (MARCH 1966)

The period for issuing delivery orders for Flight Instruction Program services shall be from ----------, or from the date of this contract, whichever is later, through ----------.

§ 594.5004–30 Ordering.

Insert the clause in § 7.1101 of this title.

§ 594.5004–31 Requirements.

Insert the clause in § 7.1102–2(b) of this title in accordance with instructions therein.

§ 594.5004–32 Scheduling Instruction.

Insert the following clause:

SCHEDULING INSTRUCTION (MARCH 1966)

The PMS shall schedule training instruction based upon the students' available time, considering such elements as the student's academic schedule and workload, climate, and distance to the place(s) of instruction. The Contractor shall provide instruction services in accordance with the established training instruction schedule. Any disagreement over the training instruction schedule shall be considered a dispute within the meaning of the clause entitled "Disputes."

§ 594.5004–33 Elimination Procedures.

Insert the following clause:

ELIMINATION PROCEDURES (MARCH 1966)

(a) If at any time the Contractor decides that any student should be eliminated from further instruction pursuant to this contract, he shall promptly notify the PMS in writing, giving the reasons therefor. Thereafter, the Contractor shall not furnish further services to that student, except as provided in (b) below, until after receipt of instructions from the PMS to resume the services.

(b) Upon receipt of notification provided for in (a) above, the PMS shall conduct evaluation proceedings, which may include a special evaluation flight check not otherwise provided for in the Specifications. All special evaluation flight checks shall be performed by a Federal Aviation Agency employee, if available, or by a Contractor-provided FAA-rated flight instructor other than the student's regular flight instructor(s). Special evaluation flight checks shall not extend the total hours of instruction in excess of the total stated in the Specifications.

(c) The PMS shall notify the Contractor of the results of his evaluation. The PMS may direct the Contractor to resume instructing that student. In that event the Contractor shall resume all services, *Provided, however*, That this shall be done only with the Contractor's concurrence or without his concurrence if the person conducting the special evaluation flight check so recommends.

(d) If the PMS directs elimination of any student from the Flight Instruction Program for any reason, the Contractor shall eliminate him immediately from further instructions. The PMS shall promptly confirm in writing to the Contractor any oral notice of elimination.

§ 594.5004–34 Payment.

Insert the following clause:

PAYMENT (MARCH 1966)

(a) The Contractor may request payment for services rendered under this contract as of the end of any calendar month or for any other period which the Contracting Officer may approve.

(b) The Contractor shall submit invoices for payment in accordance with instructions from the PMS. Each invoice shall show the contract and delivery order number, the quantities, unit prices, and total amounts for all items of services provided during the period covered by the invoice for which the Contractor claims payment.

(c) If a student is eliminated for any reason prior to completing the Flight Instruction Program, the Government shall pay only for services which the Contractor furnished to that student prior to elimination; *Provided, however*, That elimination of individual students shall not be considered a termination within the meaning of the clause entitled "Termination for Convenience of the Government."

(d) The Government shall pay the Contractor for each full hour of solo or dual instruction provided at the unit prices set forth in the Schedule of the contract:

(i) Instruction for fractions of an hour shall be paid for on a pro-rata basis; *Provided, however*, That the Contractor shall bill in units of either tenths or twelfths of an hour. The Contractor shall use the same method to bill for fractions of an hour on all invoices.

(ii) Payment for flight checks performed by Federal Aviation Agency employees shall be at the unit price set forth in the Schedule of the contract for solo instruction.

(e) If the PMS requires a special evaluation flight check in accordance with subparagraph (b) of the clause entitled "Elimination Procedures," payment shall be in accordance with (d) above. If no Federal Aviation Agency employee is available to conduct a special evaluation flight check, payment shall be at the unit price set forth in the Schedule of the contract for dual instruction.

(f) The Government shall pay the Contractor for all other services at the unit prices set forth in the Schedule of the contract.

(g) The Government shall pay the Contractor the amount specified in the Schedule of the contract for conducting a ground instruction course in accordance with the Specifications for a maximum of ------ students. The sum shall be paid in the following manner:

NOTE: A payment plan may be based upon a percentage of completion. If the Contracting Officer elects to make no payment until completion of the course, he shall delete the words "in the following manner" and substitute therefor the words "in a lump sum on the final invoice under this contract or upon completion of all ground instruction, whichever occurs first." This subparagraph (g) shall be included in the Payment clause only when the contract includes ground instruction to be provided by the Contractor.

5. Section 594.5404–8 is revised; § 594.5404–11 is amended; § 594.5404–14 is revised; § 594.5404–17 is amended; § 594.5404–19 is revised; §§ 594.5404–20 and 594.5404–21 are added; § 594.5405–9 is revised; § 594.5405–12 is amended; § 594.5405–15 is revised; § 594.5405–18 is amended; § 594.5405–20 is revised; §§ 594.5405–21 and 594.5405–22 are added; § 594.5406–8 is revised; § 594.5406–11 is amended; § 594.5406–14 is revised; § 594.5406–17 is amended; § 594.5406–19 is revised; §§ 594.5406–20 and 594.5406–21 are added; and § 594.5503(h) is revised, as follows:

§ 594.5404–8 Changes.

Insert the clause in § 7.1902–2 of this title.

§ 594.5404–11 Disputes.

Insert the appropriate clause in § 7.103–12 of this title or § 597.103–12 of this chapter.

§ 594.5404–14 Equal opportunity.

Insert the clause in § 7.103–18 of this title unless exempt under § 12.805 of this title.

§ 594.5404–17 Examination records by Comptroller General.

Insert the clause in § 7.104–15 of this title in accordance with instructions therein.

§ 594.5404–19 Government - furnished property.

Insert the clause in § 7.104–24(f) of this title. If, in accordance with § 13.803 of this title, property records will be maintained by the Government, also insert the clause in § 7.104–24(g) of this title.

§ 594.5404–20 Extras.

Insert the clause in § 7.103–3 of this title.

§ 594.5404–21 Payment of interest on contractors' claims.

In accordance with § 1.333 of this title, insert the clause in § 7.104–82 of this title.

§ 594.5405–9 Changes.

Insert the clause in § 7.1902–2 of this title.

§ 594.5405–12 Disputes.

Insert the appropriate clause in § 7.103–12 of this title or § 597.103–12 of this chapter.

§ 594.5405–15 Equal opportunity.

Insert the clause in § 7.103–18 of this title unless exempt under § 12.805 of this title.

§ 594.5405–18 Examination of records by Comptroller General.

Insert the clause in § 7.104–15 of this title in accordance with instructions therein.

§ 594.5405–20 Government - furnished property.

Insert the clause in § 7.104–24(f) of this title. If, in accordance with § 13.803 of this title, property records will be maintained by the Government, also insert the clause in § 7.104–24(g) of this title.

§ 594.5405–21 Extras.

Insert the clause in § 7.103–3 of this title.

§ 594.5405–22 Payment of interest on contractors' claims.

In accordance with § 1.333 of this title, insert the clause in § 7.104–82 of this title.

**§ 594.5406–8 Changes.**

Insert the clause in § 7.1902–2 of this title.

**§ 594.5406–11 Disputes.**

Insert appropriate clause in § 7.103–12 of this title or § 597.103–12 of this chapter.

**§ 594.5406–14 Equal opportunity.**

Insert the clause in § 7.103–18 of this title unless exempt under § 12.805 of this title.

**§ 594.5406–17 Examination of records by Comptroller General.**

Insert the clause in § 7.104–15 of this title in accordance with instructions therein.

**§ 594.5406–19 Government - furnished property.**

Insert the clause in § 7.104–24(f) of this title. If, in accordance with § 13.803 of this title, property records will be maintained by the Government, also insert the clause in § 7.104–24(g) of this title.

**§ 594.5406–20 Extras.**

Insert the clause in § 7.103–3 of this title.

**§ 594.5406–21 Payment of interest on contractors' claims.**

In accordance with § 1.333 of this title, insert the clause in § 7.104–82 of this title.

**§ 594.5503 Order forms under educational services agreements.**

* * * * *

(h) One copy of each order form, and modifications thereto, shall be forwarded by the contracting officer to—

(1) The Surgeon General, address: HQDA (DASG–PTT–O), for Army Medical Department personnel;

(2) The appropriate PMS for ROTC scholarship cadets; and

(3) The Chief of Personnel Operations, address: HQDA (DAPO–EPO–RS), for other Army enlisted personnel; and HQDA (DAPO–OPD–CP–CS) for other Army officer personnel.

## PART 595—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

6. Sections 595.101 and 595.108 are revoked, as follows:

**§ 595.101 [Revoked]**

**§ 595.108 [Revoked]**

## PART 596—FOREIGN PURCHASES

7. Section 596.103–2(b) is revised, as follows:

**§ 596.103–2 Nonavailability in the United States.**

* * * * *

(b) Chiefs of purchasing offices, provided, they are not acting as the contracting officer for the procurement involved, may approve procurements pursuant to § 6.103–2(d)(1) of this title. Approvals of officials in § 6.103.2(d) (1), (2), and (3) of this title (approval for procurement of items listed in § 6.105 of this title other than as components of domestic source end products or construction materials is required in accordance with § 6.105 of this title) shall be prepared in the following format and shall be signed by the approving authority—

* * * * *

## PART 597—CONTRACT CLAUSES

8. Sections 597.205, 597.304, and 597.404 are revised; § 597.607 is amended; § 597.607–4 is revoked; §§ 597.607–5 and 597.607–6 are added; § 597.607–10 is revoked; Subpart J is revoked; §§ 597.1201–16, 597.1201–18, and 597.1201–19 are revoked; and Subpart S is added, as follows:

**§ 597.205 Additional clauses.**

The clauses set forth in § 7.205 of this title may be used in accordance with instructions therein when it is desired to cover the subject matter thereof in contracts.

**§ 597.304 Additional clauses.**

The clauses set forth in § 7.304 of this title may be used in accordance with instructions therein when it is desired to cover the subject matter thereof in contracts.

**§ 597.404 Additional clauses.**

The clauses set forth in § 7.404 of this title may be used in accordance with instructions therein when it is desired to cover the subject matter thereof in contracts.

**§ 597.607 Required clauses for fixed-price architect-engineer contracts.**

**§ 597.607–4 [Revoked]**

**§ 597.607–5 Disputes.**

Instructions in § 597.103–12 apply.

**§ 597.607–6 Assignment of claims.**

Instruction in § 597.103–8 except for paragraph (a) apply.

**§ 597.607–10 [Revoked]**

### Subpart J [Revoked]

**§ 597.1201–16 [Revoked]**

**§ 597.1201–18 [Revoked]**

**§ 597.1201–19 [Revoked]**

### Subpart S—Clauses for Service Contracts

Sec.



AUTHORITY: The provisions of this Subpart S issued under secs. 2301–2314, 3012, 70A Stat. 127–133, 157; 10 U.S.C. 2301–2314, 3012.

### Subpart S—Clauses for Service Contracts

**§ 597.1902 Required clauses for fixed price service contracts.**

**§ 597.1902–1 Definitions.**

Instructions in § 597.103–1 apply.

**§ 597.1902–2 Changes.**

Instructions in § 597.103–2 apply.

**§ 597.1902–6 Assignment of claims.**

Instructions in § 597.103–8 apply.

**§ 597.1902–9 Disputes.**

Instructions in § 597.103–12 apply.

**§ 597.1904 Additional clauses for use in fixed price service contracts.**

The clauses set forth in § 7.1904 of this title may be used in accordance with instructions therein when it is desired to cover the subject matter thereof in contracts.

**§ 597.1909 Required clauses for cost reimbursement type service contracts.**

**§ 597.1909–1 Definitions.**

Instructions in § 597.103–1 apply.

**§ 597.1909–2 Changes.**

Instructions in § 597.103–2 apply.

**§ 597.1909–6 Assignment of claims.**

Instructions in § 597.103–8 apply.

**§ 597.1909–11 Disputes.**

Instructions in § 597.103–12 apply.

**§ 597.1911 Additional clauses for use in cost reimbursement service contracts.**

The clauses set forth in § 7.1911 of this title may be used in accordance with instructions therein when it is desired to cover the subject matter thereof in contracts.

## PART 600—BONDS, INSURANCE, AND INDEMNIFICATION

9. Subpart D is added, as follows:

### Subpart D—Insurance Under Fixed-Price Contracts

Sec.



AUTHORITY: The provisions of this Subpart D issued under secs. 2301–2314, 3012, 70A Stat. 127–133, 157; 10 U.S.C. 2301–2314, 3012.

### Subpart D—Insurance Under Fixed-Price Contracts

**§ 600.405 Work on a Government installation.**

The term "work on a Government installation" includes construction work being performed by a contractor within an area which is used by the Government for purposes other than construction. The term does not include construction work at an installation being used solely for construction purposes.

## PART 601—TAXES

10. Section 601.502–1 is revised and § 601.502–50(d) is added, as follows:

**§ 601.502–1 Types of evidence of exemption.**

Heads of procuring activities and contracting officers and their representatives are authorized to furnish evidence of exemption from State and local taxes.

**§ 601.502–50 Tax inclusive purchases.**

* * * * *

(d) Other forms of evidence of exemption from State and local taxes may be used in lieu of Standard Form 1094 when appropriate.

## PART 602—LABOR

11. In § 602.051 the last sentence is amended; § 602–101–3 is revised; and the subject of § 602.750 is amended as follows:

**§ 602.051 Implementation.**

* * * If approval is obtained for implementing this part, the requirements in § 591.108 of this chapter shall apply.

**§ 602.101–3 Reporting of labor disputes.**

(a) In cases of extreme urgency contracting officers shall make initial and supplemental reports of labor disputes by telephone or other informal means to the Labor Adviser. Information informally submitted shall be confirmed by DD Form 1507 as soon thereafter as possible.

(b) In situations where possible serious impact may ensue, direct communication is authorized between purchasing office, procuring activity representatives, and the Labor Adviser.

**§ 602.750 Regulations of the Administrator of the Employment Standards Administration in the Department of Labor.**

* * * * *

## PART 603—GOVERNMENT PROPERTY

12. In § 603.301 paragraphs (c) and (d) are revised and a new paragraph (e) is added, as follows:

**§ 603.301 Providing facilities.**

* * * * *

(c) The Senior ADPE policy official of the Department of the Army referred to in § 13.301(h)(2) of this title is the Assistant Secretary of the Army (Financial Management).

(d) The Assistant Secretary of the Army (Financial Management) has delegated to heads of procuring activities with power of redelegation to chiefs of purchasing offices certain authority to approve the acquisition of ADPE (see § 591.5102 of this chapter).

(e) Requests for approval for acquisition of ADPE which require approval at secretarial level shall be forwarded to the Assistant Secretary of Defense (Comptroller) through the Office, Assistant Vice Chief of Staff, Department of the Army, address: HQDA (DACS–CM), and shall include the justification specified in § 15.205–48(d) of this title.

[Rev. 8, July 3, 1972] (Secs. 2301–2314, 3012, 70A Stat. 127–133, 157; 10 U.S.C. 2301–2314, 3012).

For The Adjutant General:

E. W. GANNON,
*Lieutenant Colonel, U.S. Army,*
*Chief, Plans Office, TAGO.*

[FR Doc.72–20897 Filed 12–5–72;8:47 am]

# Title 26—INTERNAL REVENUE

## Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7224]

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

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

## PART 301—PROCEDURE AND ADMINISTRATION

### Election To Deduct Certain Disaster Losses for Taxable Year Immediately Preceding Taxable Year in Which Disaster Occurred

On September 29, 1972, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 165 of the Internal Revenue Code of 1954, and the regulations on procedure and administration (26 CFR Part 301) under section 6405 of such Code was published in the FEDERAL REGISTER (37 F.R. 20330). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as proposed are hereby adopted as set forth below.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

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

Approved: November 30, 1972.

FREDERICK W. HICKMAN,
*Assistant Secretary of the Treasury.*

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 165 (g), (h), and (i) of the Internal Revenue Code of 1954, and the Regulations on Procedure and Administration (26 CFR Part 301) under section 6405 of such Code, to section 301(h) of the Disaster Relief Act of 1970 (84 Stat. 1759), to section 1(a) of the Act of January 12, 1971 (Public Law 91–677, 84 Stat. 2061), to the Act of January 12, 1971 (Public Law 91–687, 84 Stat. 2071), to section 2 of the Act of July 1, 1972 (Public Law 92–336, 86 Stat. 406), and to section 2 of the Act of August 29, 1972 (Public Law 92–418, 86 Stat. 656), such regulations are amended as follows:

PARAGRAPH 1. Section 1.165 is amended by revising section 165 (g)(3), (h), and (i) and by revising the historical note to read as follows:

**§ 1.165 Statutory provisions; losses.**

* * * * *

(g) *Worthless securities.* * * *

(3) *Securities in affiliated corporation.* For purposes of paragraph (1), any security in a corporation affiliated with a taxpayer which is a domestic corporation shall not be treated as a capital asset. For purposes of the preceding sentence, a corporation shall be treated as affiliated with the taxpayer only if—

(A) Stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock is owned directly by the taxpayer, and

(B) More than 90 percent of the aggregate of its gross receipts for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the corporation in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, and gains from sales or exchanges of stocks and securities.

In computing gross receipts for purposes of the preceding sentence, gross receipts from sales or exchanges of stocks and securities shall be taken into account only to the extent of gains therefrom. As used in subparagraph (A), the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(h) *Disaster losses.* Notwithstanding the provisions of subsection (a), any loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief Act of 1970, may, at the election of the taxpayer, be deducted for the taxable year immediately preceding the taxable year in which the disaster occurred. Such deduction shall not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred, based on facts existing at the date the taxpayer claims the loss. If an election is made under this subsection, the casualty resulting in the loss will be deemed to have occurred in the taxable year for which the deduction is claimed.

(i) *Certain property confiscated by the Government of Cuba*—(1) *Treatment as subsection (c)(3) loss.* For purposes of this chapter, in the case of an individual who was a citizen of the United States, or a resident alien, on December 31, 1958, any loss of property which—

(A) Was sustained by reason of the expropriation, intervention, seizure, or similar taking of the property, before January 1, 1964, by the Government of Cuba, any political subdivision thereof, or any agency or instrumentality of the foregoing, and

(B) Was not a loss described in paragraph (1) of subsection (c),

shall be treated as a loss to which paragraph (3) of subsection (c) applies. In the case of tangible property, the preceding sentence shall not apply unless the property was held by the taxpayer, and was located in Cuba, on one or more days in the period beginning on December 31, 1958, and ending on May 16, 1959.

(2) *Special rules.* (A) For purposes of subsection (a), any loss described in paragraph (1) shall be treated as having been sustained on October 14, 1960, unless it is established that the loss was sustained on some other day.

(B) For purposes of subsection (a), the fair market value of property held by the taxpayer on one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959, to which paragraph (1) applies, on the day on which the loss of such property was sustained, shall be its fair

market value on the first day in such period on which the property was held by the taxpayer.

(C) For purposes of section 172, a loss described in paragraph (1) shall not be treated as an expropriation loss within the meaning of section 172(k).

(D) For purposes of section 6601, the amount of any tax imposed by this title shall not be reduced by virtue of this subsection for any period prior to February 26, 1964.

* * * * *

[Sec. 165 as amended by secs. 7 and 57(c)(1), Technical Amendments Act 1958 (72 Stat. 1608, 1646); sec. 202(a), Small Business Tax Revision Act 1958 (72 Stat. 1676); sec. 2, Act of March 31, 1962 (Public Law 87-426, 76 Stat. 51); secs. 208 and 238, Rev. Act 1964 (78 Stat. 43, 128); sec. 3, Excise-Tax Rate Extension Act 1964 (78 Stat. 237); sec. 301(h), Disaster Relief Act 1970 (84 Stat. 1759); sec. 1(a), Act of January 12, 1971 (Public Law 91-677, 84 Stat. 2061); Act of January 12, 1971 (Public Law 91-687, 84 Stat. 2071); sec. 2, Act of July 1, 1972 (Public Law 92-336, 86 Stat. 406); sec. 2(a), Act of August 29, 1972 (Public Law 92-418, 86 Stat. 656)]

PAR. 2. Section 1.165-5 is amended by revising so much of paragraph (d)(2) as precedes subdivision (ii) and by revising paragraph (i) to read as follows:

**§ 1.165-5 Worthless securities.**

* * * * *

(d) *Loss on worthless securities of an affiliated corporation.* * * *

(2) *Affiliated corporation defined.* For purposes of this paragraph, a corporation shall be treated as affiliated with the taxpayer owning the security if—

(i) (*a*) In the case of a taxable year beginning on or after January 1, 1970, the taxpayer owns directly—

(*1*) Stock possessing at least 80 percent of the voting power of all classes of such corporation's stock, and

(2) At least 80 percent of each class of such corporation's nonvoting stock excluding for purposes of this subdivision (i)(*a*) nonvoting stock which is limited and preferred as to dividends (see section 1504(a)), or

(*b*) In the case of a taxable year beginning before January 1, 1970, the taxpayer owns directly at least 95 percent of each class of the stock of such corporation;

* * * * *

(i) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* (i) X Corporation, a domestic manufacturing corporation which makes its return on the basis of the calendar year, owns 100 percent of each class of the stock of Y Corporation; and, in addition, 19 percent of the common stock (the only class of stock) of Z Corporation, which it acquired in 1948. Y Corporation, a domestic manufacturing corporation which makes its return on the basis of the calendar year, owns 81 percent of the common stock of Z Corporation, which it acquired in 1946. It is established that the stock of Z Corporation, which has from its inception derived all of its gross receipts from manufacturing operations, became worthless during 1971.

(ii) Since the stock of Z Corporation which is owned by X Corporation is a capital asset and since X Corporation does not directly own at least 80 percent of the stock of Z Corporation, any loss sustained by X Corporation upon the worthlessness of such stock shall be deducted under section 165(g)(1) and paragraph (c) of this section as a loss from a sale or exchange on December 31, 1971, of a capital asset. The loss so sustained by X Corporation shall be considered a long-term capital loss under the provisions of section 1222(4), since the stock was held by that corporation for more than 6 months.

(iii) Since Z Corporation is considered to be affiliated with Y Corporation under the provisions of paragraph (d)(2) of this section, any loss sustained by Y Corporation upon the worthlessness of the stock of Z Corporation shall be deducted in 1971 under section 165(g)(3) and paragraph (d)(1) of this section as an ordinary loss.

*Example (2).* (i) On January 1, 1971, X Corporation, a domestic manufacturing corporation which makes its return on the basis of the calendar year, owns 60 percent of each class of the stock of Y Corporation, a foreign corporation, which it acquired in 1950. Y Corporation has, from the date of its incorporation, derived all of its gross receipts from manufacturing operations. It is established that the stock of Y Corporation became worthless on June 30, 1971. On August 1, 1971, X Corporation acquires the balance of the stock of Y Corporation for the purpose of obtaining the benefit of section 165(g)(3) with respect to the loss it has sustained on the worthlessness of the stock of Y Corporation.

(ii) Since the stock of Y Corporation which is owned by X Corporation is a capital asset and since Y Corporation is not to be treated as affiliated with X Corporation under the provisions of paragraph (d)(2) of this section, notwithstanding the fact that, at the close of 1971, X Corporation owns 100 percent of each class of stock of Y Corporation, any loss sustained by X Corporation upon the worthlessness of such stock shall be deducted under the provisions of section 165(g)(1) and paragraph (c) of this section as a loss from a sale or exchange on December 31, 1971, of a capital asset.

*Example (3).* (i) X Corporation, a domestic manufacturing corporation which makes its return on the basis of the calendar year, owns 80 percent of each class of the stock of Y Corporation, which from its inception has derived all of its gross receipts from manufacturing operations. As one of its capital assets, X Corporation owns $100,000 in registered bonds issued by Y Corporation payable at maturity on December 31, 1974. It is established that these bonds became worthless during 1971.

(ii) Since Y Corporation is considered to be affiliated with X Corporation under the provisions of paragraph (d)(2) of this section, any loss sustained by X Corporation upon the worthlessness of these bonds may be deducted in 1971 under section 165(g)(3) and paragraph (d)(1) of this section as an ordinary loss. The loss may not be deducted under section 166 as a bad debt. See section 166(e).

PAR. 3. Section 1.165-11 is amended by revising paragraphs (b)(1) and (2) and (e) to read as follows:

**§ 1.165-11 Election in respect of losses attributable to a disaster.**

* * * * *

(b) *Loss subject to election.* The election provided by section 165(h) and paragraph (a) of this section applies only to a loss:

(1) Arising from a disaster resulting in a determination referred to in subparagraph (2) of this paragraph and occurring—

(i) After December 31, 1971, or

(ii) After December 31, 1961, and before January 1, 1972, and during the period following the close of a particular taxable year of the taxpayer and on or before the due date for filing the income tax return for that taxable year (determined without regard to any extension of time granted the taxpayer for filing such return);

(2) Occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief Act of 1970, or, in the case of a casualty occurring before December 31, 1970, under sections 1855 through 1855(g) of title 42 of the United States Code; and

* * * * *

(e) *Time and manner of making election.* An election to claim a deduction with respect to a disaster loss described in paragraph (b) of this section for the taxable year immediately preceding the taxable year in which the disaster actually occurred must be made by filing a return, an amended return, or a claim for refund clearly showing that the election provided by section 165(h) has been made. In general, the return or claim should specify the date or dates of the disaster which gave rise to the loss, and the city, town, county, and State in which the property which was damaged or destroyed was located at the time of the disaster. An election in respect of a loss arising from a particular disaster occurring after December 31, 1971, must be made on or before the later of (1) the due date for filing the income tax return (determined without regard to any extension of time granted the taxpayer for filing such return) for the taxable year in which the disaster actually occurred, or (2) the due date of filing the income tax return (determined with regard to any extension of time granted the taxpayer for filing such return) for the taxable year immediately preceding the taxable year in which the disaster actually occurred. Such election shall be irrevocable after the later of (1) 90 days after the date on which the election was made, or (2) March 6, 1973. No revocation of such election shall be effective unless the amount of any credit or refund which resulted from such election is paid to the Internal Revenue Service within the revocation period described in the preceding sentence. However, in the case of a revocation made before receipt by the taxpayer of a refund claimed pursuant to such election, the revocation shall be effective if the refund is repaid within 30 calendar days after such receipt. An election in respect of a loss arising from a particular disaster occurring after December 31, 1961, and before January 1, 1972, must be made on or before the later of (1) the 15th day of the third month following the month in which falls the date prescribed for the filing of the income tax return (determined without regard to any extension of time granted the taxpayer for filing such return) for the taxable year immediately preceding the

taxable year in which the disaster actually occurred, or (2) the due date for filing the income tax return (determined with regard to any extension of time granted the taxpayer for filing such return) for the taxable year immediately preceding the taxable year in which the disaster actually occurred. Such election shall be irrevocable after the date by which it must be made.

PAR. 4. Section 301.6405 is amended by adding at the end of section 6405 a new subsection (d) and by adding a historical note to read as follows:

§ 301.6405 Statutory provisions; reports of refunds and credits.

SEC. 6405. *Reports of refunds and credits.* * * *

(d) *Refunds attributable to certain disaster losses.* If any refund or credit of income taxes is attributable to the taxpayer's election under section 165(h) to deduct a disaster loss for the taxable year immediately preceding the taxable year in which the disaster occurred, the Secretary or his delegate is authorized in his discretion to make the refund or credit, to the extent attributable to such election, without regard to the provisions of subsection (a) of this section. If such a refund or credit is made without regard to subsection (a), there shall thereafter be submitted to such Joint Committee a report containing the matter specified in subsection (a) as soon as the Secretary or his delegate shall determine the correct amount of the tax for the taxable year for which the refund or credit is made. [Sec. 6405 as amended by sec. 2(b), Act of August 29, 1972 (Public Law 92-418, 86 Stat. 656)]

PAR. 5. Section 301.6405-1 is amended to read as follows:

§ 301.6405-1 Reports of refunds and credits.

Section 6405 requires that a report be made to the Joint Committee on Internal Revenue Taxation of proposed refunds or credits of any income, war profits, excess profits, estate, or gift tax in excess of $100,000. An exception is provided under which refunds and credits made after July 1, 1972, and attributable to an election under section 165(h) to deduct a disaster loss for the taxable year immediately preceding the taxable year in which the disaster occurred, may be made prior to the submission of such report to the Joint Committee on Internal Revenue Taxation.

[FR Doc.72-20914 Filed 12-5-72;8:53 am]

# Title 29—LABOR

## Subtitle A—Office of the Secretary of Labor

## PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

### Change in Required Use of Modifications of General Wage Determinations

A revision of Part 1 of Title 29, Code of Federal Regulations, was published in the October 5, 1972, FEDERAL REGISTER (37 F.R. 21138). Section 1.7(b)(2) provided that modifications published in the FEDERAL REGISTER later than 15 days before the opening of bids shall not be effective, with certain exceptions.

Prior to October 5, 1972, the regulations then applicable (29 CFR 5.4(b)) provided that modifications received by the Federal agency later than 10 days before the opening of bids were not effective. When publication of general wage determinations in the FEDERAL REGISTER was begun in August 1971, the Department of Labor took the position that date of publication in the FEDERAL REGISTER constituted date of receipt by a Federal agency. With publication in the FEDERAL REGISTER of general wage determinations, there is an inherent delay of several days in effecting modifications. The current practice of publishing all modifications in the Friday issue only of the FEDERAL REGISTER in some cases may lead to an additional few days delay. In view of this, it is concluded that the time period should be returned to 10 days to allow more timely application of modifications of wage determinations.

As this change relates to such Act or Acts having application to Government procurement procedures for public contracts, I find that notice and public procedure on this amendment and delay in effective date as provided in 5 U.S.C. 553 would be contrary to the public interest. This amendment shall, therefore, be effective immediately.

Subparagraph (2) of § 1.7(b) of Title 29 is revised as follows:

§ 1.7 Use and effectiveness of wage determinations.

* * * * *

(b) * * *

(2) All actions modifying a general wage determination shall be applicable thereto, but modifications published in the FEDERAL REGISTER later than 10 days before the opening of bids shall not be effective, except when * * *,

* * * * *

Signed at Washington, D.C., this 1st day of December 1972.

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

[FR Doc.72-20952 Filed 12-5-72;8:58 am]

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## Chapter XVII—Occupational Safety and Health Administration, Department of Labor

## PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

### Approval of Montana Plan

1. *Background.* Part 1902 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) whereby the several States may submit for approval, under the requirements of that section, plans for the development and enforcement of State occupational safety and health standards.

The State of Montana submitted on June 30, 1972, a plan pursuant to Part 1902 requesting approval of the plan by the Assistant Secretary of Labor for Occupational Safety and Health.

On August 11, 1972, a notice was published in the FEDERAL REGISTER (36 F.R. 16240) concerning the submission of the plan and the fact that the question of approval was in issue before the Assistant Secretary.

The plan identifies the Workmen's Compensation Division of the Department of Labor and Industry as the State agency designated by the Governor of the State to administer the plan throughout the State. It defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). The plan states that the Workmen's Compensation Division currently is exercising statewide inspection authority to enforce many State standards. It describes procedures for the development and promulgation of additional safety standards; rule-making power for enforcement of standards, laws, and orders in all places of employment in the State; the procedures for prompt restraint or elimination of imminent danger conditions; and procedures for inspection in response to complaints.

The plan includes proposed draft legislation to be considered by the Montana Legislature during its 1973 session amending title 29, chapter 17 of the Montana State Code and related provisions, to bring them into conformity with the requirements of Part 1902.

Under this legislation all occupational safety and health standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking, and longshoring) will, after public hearing by the Montana agency be adopted and enforced by that agency. The plan sets forth a timetable for the proposed adoption of standards.

The legislation will give the Workmen's Compensation Division full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State. It also proposes to bring the plan into conformity in procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances and the protection of employees from hazards.

The proposed legislation will ensure employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during, and after inspections; protection of employees against discharge or discrimination in terms and conditions of employment; notice to employees of their protections and obligations; adequate safeguards to protect trade secrets;

prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective remedies against employers; and employer's right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings.

Included in the plan is a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the constitution and laws of Montana. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislation by the State legislature.

Interested persons were afforded thirty (30) days from the date of publication to submit written comments concerning the plan. Further, interested persons were afforded an opportunity to request an informal hearing with respect to the plan, or any part thereof, upon the basis of substantial objections to the contents of the plan.

Written comments concerning the plan were submitted on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO). No other written comments were received, and no requests for an informal hearing were received.

2. *Issues.* Comments raise the question of the validity of developmental plans; i.e., the validity of a plan not meeting the criteria set forth in § 1902.3 of the applicable rules when the plan is submitted for approval. Section 1902.2(b) permits the filing of a developmental plan if the plan includes satisfactory assurances by the State that it will include the specific actions it proposes to take and a time schedule for their accomplishment not exceeding 3 years from the time of approval. A developmental plan must include the date or dates within which intermediate and final action will be accomplished.

Section 18(c)(2) clearly contemplates the submission and approval of developmental plans. It provides that a plan must be approved if it is "for the development and enforcement of safety and health standards * * * which * * * are or will be at least as effective in providing safe and healthful employment * * * as the standards promulgated under section 6" of the Act relating to the same issues. Similarly, section 18(c)(4) provides that the plan must contain assurances that the State agency "have or will have the legal authority and qualified personnel necessary for the enforcement of such standards". It is not always possible for new State programs to provide fully effective job safety and health protection in all areas at their inception. The emphasized portions of section 18(c)(2) and (4) indicate congressional recognition of a need for time for growth in the development of State programs. A different reading of the section would hardly be consistent with the general congressional purpose which is expressed in section 2(11) of encouraging the States to administer and enforce their own job safety and health laws.

In addition, section 18(e) provides for concurrent Federal jurisdiction to assure worker protection while the State plan is becoming operational. In deciding the Secretary's intention as to continued Federal enforcement, the regulations expressly require the Secretary to take into consideration whether the plan is developmental and the schedule for coming up to Federal standards (§ 1902.20(b)(iii)). Section 1902.2(b) of the regulations further provides that developmental plans are subject to this concurrent Federal jurisdiction for at least a year after all the criteria for approval are fully applied. Consequently, there is no possible prejudice to the safety and health of employees in a State having a developmental plan during the process of development. There would be Federal jurisdiction in any event.

Regulations Part 1902 set forth the criteria and indices which must be met for plan approval, or for which satisfactory assurances must be given by the State that they will be met within 3 years after plan approval.

Except for the questions discussed below, the Montana Developmental Plan as submitted met these requirements.

Public comments also raise a question as to the provision in the draft legislation included in the Montana plan as submitted. This provision, adopted from its existing legislation (section 41–1730, R.C.M.) is to the effect that any employer, workman, or other person, who repeatedly violates any safety provision of this Act, or who, directly, or indirectly, knowingly, induces another to do so, is guilty of a misdemeanor. The State by letter dated October 16, 1972, indicated that it will propose repeal of the provision in question.

Under section 5(b) of the Act, employees are required to comply with occupational safety and health standards and all rules and regulations and orders which are applicable to their own actions and conduct. Employee compliance with this obligation is plainly an essential ingredient in an effective occupational safety and health program.

While the Act provides for no sanctions against employees who violate the requirements of section 5(b), a State plan containing sanctions against employees may in some circumstances be deemed to be at least as effective as the Federal program. Indeed, it could be shown that a properly framed and limited employee sanction provision would contribute to increased effectiveness of the State plan. At the same time, an unduly broad scheme of employee sanctions has the potentiality of undermining the effectiveness of the State program. This would be true where employee sanctions would derogate from the basic responsibility of the employer to maintain a safe and healthful workplace. Our decision respecting a particular employee sanction will be made on a case-by-case basis and will depend on the nature of the provisions in question and its relationship to other aspects of the State program.

In view of the foregoing, we find it unnecessary to determine if the State's provision is permissible under this policy.

A second matter which warrants attention is clarification of the treatment of State public employees under the plan. Section 16 of the proposed legislation is essentially similar to section 19 of the Federal Act. Public comments expressed concern that the possible protection of public employees thereunder, may be something less than that provided under standards applicable to private employers, and makes some suggestions for providing for application of the same protection to private and public employees.

Under section 18(c)(6) and Part 1902, States are required to establish and maintain public employee programs as effective as the standards applicable to their private employee sector. To be an effective safety and health program, such public employee programs must provide for: (1) Regular inspections of workplaces, including inspections in response to complaints; (2) a means for employees to bring possible violations to the attention of inspectors; (3) notification to employees when no violations are found in a complaint-response inspection; (4) information for employees about their protection and responsibilities under the program; (5) protection for employees against employer retaliation for exercising their rights under the program; (6) information for employees about their exposure to toxic materials, especially when exposures are above levels specified by standards; (7) procedures for prompt restraint or elimination of imminent danger situations; (8) a means of notifying employers and employees when an alleged violation has been found; and (9) a means of establishing timetables for correction of violations, and for notifying employers and employees about them. The method of assuring compliance does not have to be the same as the system of penalties and enforcement applicable to private employers.

The public employee section of the plan is developmental and the date for implementing it is March 1974. A committee has been formed to make further studies and the State has requested a section 23(a) grant to plan a comprehensive program. Additionally, by letter dated September 26, 1972, the State has given assurances that it will develop its public employee program to meet these requirements and on this basis the requirements of section 18(c)(6) will be met.

3. *Decision.* After careful consideration of the Montana plan and comments submitted regarding the plan, the plan is hereby approved under section 18 of the Act and Part 1902.

This decision incorporates requirements of the Act and implementing

regulations applicable to State plans generally. It also incorporates our intentions as to continued Federal enforcement of Federal standards in areas covered by the plan and the State's Developmental Schedule as set out below.

Pursuant to § 1902.20(b)(iii) of Title 29, Code of Federal Regulations, the present level of Federal enforcement in Montana will not be diminished. Among other things, the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigative valid complaints under section 8(f), continue its Target Safety and Target Health programs, and inspect a cross-section of all industries on a random basis.

About 6 months following this approval, an evaluation of the State plan, as implemented, will be made to assess the appropriate level of Federal enforcement activity. Federal enforcement authority will continue to be exercised to the degree necessary to assure occupational safety and health protection to employees in the State of Montana.

The Montana plan is developmental. The following is the schedule of the developmental steps provided by the plan:

(a) Introduction of enabling legislation in the 43d Legislative Assembly on January 5, 1973.

(b) Expected enactment of the enabling legislation by March 1973.

(c) Public hearings on the adoption of Federal standards to be commenced by April 1973.

(d) Addition of Missoula Branch Compliance Office, Workmen's Compensation Division, by July 1973.

(e) Formation of MOSHA Review Commission by July 15, 1973.

(f) Formal adoption of Federal standards and revocation of existing Montana State standards by August 1, 1973.

(g) Formal adoption of 29 CFR Parts 1903, 1904, and 1905 as rules and regulations of Montana by August 1, 1973.

(h) Effective date of new standards, commencement of State enforcement by November 1973.

(i) Addition of Billings Branch Compliance Office, Workmen's Compensation Division, in January through March 1974.

The approval is reflected in the addition of a new Part 1952 to Chapter XVII of Title 29, Code of Federal Regulations. The new part also sets forth some general policies applying 29 CFR Part 1902, which apply to all State plans. The new Part 1952 reads as follows:

**Subpart A—General Provisions and Conditions**

Sec.
1952.1 Purpose and scope.
1952.2 Definitions.
1952.3 Developmental plans.
1952.4 Changes. [Reserved]
1952.5 Availability of the plans.
1952.6 Partial approval of State plans.
1952.7 Product standards.
1952.8 Variations, tolerances, and exemptions affecting the national defense.

**Subpart B—Montana**

1952.50 Description of the plan.
1952.51 Where the plan may be inspected.
1952.52 Level of Federal enforcement.
1952.53 Developmental schedule.

AUTHORITY: The provisions of this Part 1952 issued under sec. 18, 84 Stat. 1608; 29 U.S.C. 667.

## Subpart A—General Provisions and Conditions

### § 1952.1 Purpose and scope.

(a) This part sets forth the Assistant Secretary's approval of State plans submitted under section 18 of the Act and Part 1902 of this chapter. Each approval of a State plan is based on a determination by the Assistant Secretary that the plan meets the requirements of section 18(c) of the Act and the criteria and indices of effectiveness specified in Part 1902.

(b) This subpart contains general provisions and conditions which are applicable to all State plans, regardless of the time of their approval. Separate subparts are used for the identification of specific State plans, indication of locations where the full plan may be inspected and copied, and setting forth any special conditions and special policies which may be applicable to a particular plan.

### § 1952.2 Definitions.

(a) "Act" means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(b) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

### § 1952.3 Developmental plans.

Any developmental plan; that is, a plan not fully meeting the criteria set forth in § 1902.3 of this chapter at the time of approval, must meet the requirements of § 1902.2(b) of this chapter.

### § 1952.4 Changes. [Reserved]

### § 1952.5 Availability of the plans.

(a) A complete copy of each State plan including any supplements thereto, shall be kept at (1) Office of Federal and State Operations, OSHA, Room 305, Railway Labor Building, 400 First Street, NW., U.S. Department of Labor, Washington, DC 20210; and (2) the office of the nearest Regional Administrator, Occupational Safety and Health Administration. The addresses of the Regional Administrators are listed in the "United States Government Organization Manual," 1972/73, p. 310. The copy shall be available for public inspection and copying.

(b) A complete copy of the State plan of a particular State, including any supplements thereto, shall be kept at the office of the State office listed in the appropriate subpart of this Part 1952.

### § 1952.6 Partial approval of State plans.

(a) The Assistant Secretary may partially approve a plan under Part 1902 of this chapter whenever: (1) The portion to be approved meets the requirements of Part 1902; (2) the plan covers more than one occupational safety and health issue; and (3) portions of the plan to be approved are reasonably separable from the remainder of the plan.

(b) Whenever the Assistant Secretary approves only a portion of a State plan, he may give notice to the State of an opportunity to show cause why a proceeding should not be commenced for disapproval of the remainder of the plan under Subpart C of Part 1902 before commencing such a proceeding.

### § 1952.7 Product standards.

(a) Under section 18(c)(2) of the Act, a State plan must not include standards for products which are distributed or used in interstate commerce which are different from Federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. In § 1902.3(c)(2) of this chapter this is interpreted as not being applicable to customized products, or parts not normally available on the open market, or to the optional parts, or additions to products which are ordinarily available with such optional parts, or additions.

(b) In situations where section 18(c)(2) is considered applicable, and provision is made for the adoption of product standards, the requirements of section 18(c)(2), as they relate to undue burden on interstate commerce, shall be treated as a condition subsequent in light of the facts and circumstances which may be involved.

### § 1952.8 Variations, tolerances, and exemptions affecting the national defense.

(a) The power of the Secretary of Labor under section 16 of the Act to provide reasonable limitations and variations, tolerances, and exemptions to and from any or all provisions of the Act as he may find necessary and proper to avoid serious impairment of the national defense is reserved.

(b) No action by a State under a plan shall be inconsistent with action by the Secretary under this section of the Act.

## Subpart B—Montana

### § 1952.50 Description of the plan.

(a) The plan identifies the Workmen's Compensation Division of the Department of Labor and Industry as the State agency designated by the Governor of the State to administer the plan throughout the State. It defines the covered occupational safety and health issues as defined by the Secretary of Labor in § 1902.2(c)(1) of this chapter. The plan states that the Workmen's Compensation Division currently is exercising statewide inspection authority to enforce many State standards. It describes procedures for the development and promulgation of additional safety standards; rulemaking power for enforcement of standards, laws, and orders in all places of employment in the State; the procedures for prompt restraint or elimination of imminent danger conditions; and procedures for inspection in response to complaints.

(b) The plan includes proposed draft legislation to be considered by the Montana Legislature during its 1973 session amending title 41, chapter 17 of the Montana State Code of related provisions, to bring them into conformity with the requirements of Part 1902 of this chapter.

(c) Under this legislation all occupational safety and health standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in Parts 1915, 1916, 1917, and 1918 of this chapter (ship repairing, shipbuilding, shipbreaking, and longshoring) will, after public hearing by the Montana agency be adopted and enforced by that agency. The plan sets forth a timetable for the proposed adoption of standards.

(d) The legislation will give the Workmen's Compensation Division full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State. It also proposes to bring the plan into conformity in procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances and the protection of employees from hazards.

(e) The proposed legislation will ensure employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during, and after inspections; protection of employees against discharge or discrimination in terms and conditions of employment; notice to employees or their representatives when no compliance action is taken upon complaints, including informal review; notice to employees of their protections and obligations; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective remedies against employers; and employer right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings.

(f) The plan includes a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the constitution and laws of Montana. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislation by the State legislature.

### § 1952.51 Where the plan may be inspected.

A copy of the complete Montana plan may be inspected and copied during normal business hours at the Workmen's Compensation Division, Department of Labor and Industry, State of Montana, Room 3, 815 Front Street, Helena, MT 59601. A copy of the complete Montana plan may also be inspected and copied during normal business hours at (a) the office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Federal Building, Room 15010, Post Office Box 3588, 1961 Stout Street, Denver, CO 80202; and (b) Office of Federal and State Operations, OSHA, U.S. Department of Labor, Room 305, Railway Labor Building, 400 First Street NW., Washington, DC 20210.

### § 1952.52 Level of Federal enforcement.

Pursuant to § 1902.20(b)(iii) of this chapter, the present level of Federal enforcement in Montana will not be diminished. Among other things, the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(f), continue its largest safety and target health programs, and inspect a cross-section of all industries on a random basis.

### § 1952.53 Developmental schedule.

The Montana plan is developmental. The following is the schedule of the developmental steps provided by the plan:

(a) Introduction of enabling legislation in the 43d Legislative Assembly on January 5, 1973.

(b) Expected enactment of the enabling legislation by March 1973.

(c) Public hearings on the adoption of Federal standards to be commenced by April 1973.

(d) Addition of Missoula Branch Compliance Office, Workmen's Compensation Division, by July 1973.

(e) Formation of MOSHA Review Commission by July 15, 1973.

(f) Formal adoption of Federal standards and revocation of existing Montana State standards by August 1, 1973.

(g) Formal adoption of 29 CFR Parts 1903, 1904, and 1905 as rules and regulations of Montana by August 1, 1973.

(h) Effective date of new standards; commencement of State enforcement by November 1973.

(i) Addition of Billings Branch Compliance Office, Workmen's Compensation Division, in January through March 1974.

(Sec. 18, Public Law 91-596, 84 Stat. 1608. (29 U.S.C. 667))

Signed at Washington, D.C., this 30th day of November 1972.

JAMES D. HODGSON,
*Secretary of Labor.*

[FR Doc.72-20856 Filed 12-5-72;8:45 am]

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## PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

### South Carolina Plan

1. *Background.* The South Carolina State plan was submitted to the Assistant Secretary on May 8, 1972. Notice of receipt of the plan was published in the FEDERAL REGISTER on May 24, 1972 (37 F.R. 10535). A public hearing on the plan was held on July 10 and 11, 1972, in Columbia, S.C.

South Carolina submitted amendments to the plan on September 13, 1972. Notice of receipt of the amendments and an invitation for public comments thereon was published in the FEDERAL REGISTER on September 28, 1972 (37 F.R. 20289). Comments on the amended plan were received from the American Federation of Labor–Congress of Industrial Organizations (AFL–CIO).

The plan identifies the South Carolina Department of Labor as the State agency designated to administer the plan. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. The plan states that the Department of Labor has been promulgating safety and health standards. The South Carolina Commissioner of Labor is promulgating all standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in 29 CFR 1910.13; 1910.14; 1910.15; and 1910.16 (ship repairing, shipbuilding, shipbreaking, and longshoring). The plan describes procedures for the development and promulgation of additional standards, enforcement of such standards, and the prompt restraint or elimination of imminent danger situations.

The South Carolina Legislature passed enabling legislation in 1971, a copy of which was submitted with the original plan. Sections 40–261 through 40–274 South Carolina Code of Laws, 1962. The amendments to the plan include proposed amendments to this legislation to bring the plan more fully into conformity with the requirements of Part 1902. The amendments deal with the following subjects: penalty levels; remedies for employee discrimination; variances; the prompt restraint or elimination of imminent danger; administrative and judicial review; interagency agreements; job specifications; merit system; voluntary compliance; exposure to toxic materials; recordkeeping; compliance manual; employee compliance; management information system; advisory council; public employee program; posting; and the definition of "person".

Under the amended legislation, the South Carolina Department of Labor will have full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State.

The plan includes a statement of the Governor's support for the legislative amendments and a legal opinion that the amended act will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the constitution and laws of South Carolina. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislative amendments.

2. *Issues.* The public comments and the national office review of the plan raise four significant issues. The first is whether South Carolina has an adequate sanction against unauthorized advance

notice of inspections. Section 1902.3(f) of Chapter XVII of the Code of Federal Regulations states that it shall be a criterion for State plan approval that the plan contain a prohibition against unauthorized advance notice of inspections. The South Carolina plan has such a prohibition.

The requirement of a prohibition has been interpreted to mean a prohibition backed up by a reasonable sanction. The South Carolina plan does have sanctions. The Commissioner of Labor may discipline any State employee who gives unauthorized advance notice. A $1,000 civil penalty may also be assessed against any employer who violates the prohibition.

These sanctions differ from the Federal criminal sanction of $1,000 or 6 months imprisonment or both for any person who violates the advance notice prohibition. However, South Carolina does have a prohibition against advance notice which is backed up by a reasonable sanction applicable to the classes of persons who would most likely be in a position to give unauthorized advance notice, State employees and employers. Hence, the plan meets the requirement of § 1902.3(f).

The public comments also raise the question of whether South Carolina has an adequate sanction against persons who knowingly make false statements. Section 17(g) of OSHA authorizes a criminal penalty of $10,000 or 6 months imprisonment or both to be assessed against any person who knowingly makes a false statement, representation, or certification. The South Carolina record-keeping and reporting regulations authorize a $500 penalty for such false statements. Additionally, the general law of South Carolina defines perjury so as to include false swearing. Section 16.203 Code of Laws of South Carolina, 1962. The penalty for prejury is a $100 fine and 6 months in jail. Ibid § 16.201.

This penalty level disparity is not fatal to approval of the South Carolina plan. The South Carolina system of sanctions will mirror Federal sanctions with regard to serious violations, nonserious violations, violations for failure to abate, willful repeated violations, and posting violations. The mere fact that there is a difference in the penalty level for making false statements does not render South Carolina's overall system of sanctions less effective than the Federal system.

Another significant issue is whether South Carolina provides adequate remedies to employees who suffer discrimination because they exercise rights afforded them under the State occupational safety and health program. Under the Federal program, an employee who believes he has suffered such discrimination may file a complaint with the Secretary, who shall make an appropriate investigation. If the investigation reveals a violation, the Secretary shall bring an appropriate action in a U.S. district court. The district courts shall have jurisdiction to restrain violations and order all appropriate relief including reinstatement with back pay.

In South Carolina, employees who suffer discrimination will have the same remedies available. They will also be entitled to the additional remedy of punitive damages where appropriate. However, employees will have to press their own claims either in a Court of Common Pleas or in an administrative hearing before the Commissioner. This may require employees to make an expenditure for attorneys fees. The South Carolina amendment will authorize recovery of attorneys fees by a successful litigant. However, the public comments express concern that the initial expenditure of pressing a claim and the uncertainty of recovery will discourage employees who suffer discrimination from seeking redress.

Upon full consideration, we do not agree with this argument. Arguably, a private right of redress is less effective than a public right. However, authorizing recovery of attorneys fees and punitive damages, and the presumption of unlawful discrimination of an employee who is adversely treated within 90 days of the exercise of any rights afforded to him under the plan are all factors which make the South Carolina discrimination remedies as effective as Federal remedies. Hence, the South Carolina system for sanctioning employees and providing relief to employees who suffer discrimination is effective and meets the requirement of § 1902.4(c)(2)(v) of this chapter. Furthermore, the authority of the Secretary to bring action, under section 11 of the Act, to remedy discrimination against employees for exercising rights under State law included within the scope of the plan would not terminate, even upon determination by the Secretary under section 18(e) that a State plan, upon the basis of actual operations, is applying the criteria set forth in section 18(c). Such rights are related to the Occupational Safety and Health Act within the meaning of section 11. Appropriate rules will be issued in the near future dealing with the relationship between the Federal and State remedies.

Another significant issue is whether the South Carolina procedure for judicial review of administratively reviewed contested citations will comply with due process and afford affected employees an adequate right of participation. Under the South Carolina system, only parties to the administrative review will be afforded the right to initiate or participate in a subsequent judicial review. However, the plan amendments provide that "Any employer, employee or their representative shall have the right to appear as a party in any review proceedings * * *"

Hence employees and their representatives will always have the right to participate in judicial review if they have exercised their right to participate in the administrative review. This procedure neither violates due process nor constitutes an unreasonable requirement on employees.

3. *Decision.* After careful consideration of the South Carolina plan and comments submitted regarding the plan, the plan is hereby approved under section 18 of the Act and Part 1902.

This decision incorporates requirements of the Act and implementing regulations applicable to State plans generally. It also incorporates our intentions as to continued Federal enforcement of Federal standards in areas covered by the plan and the State's Developmental Schedule as set out below.

Pursuant to § 1902.20(b)(iii) of Title 29, Code of Federal Regulations, the present level of Federal enforcement in South Carolina will not be diminished. Among other things, the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(f), continue its target safety and target health programs, and inspect a cross-section of all industries on a random basis.

Within 9 months following this approval, an evaluation of the State plan, as implemented, will be made to assess the appropriate level of Federal enforcement activity. Federal enforcement authority will continue to be exercised to the degree necessary to assure occupational safety and health protection to employees in the State of South Carolina.

The South Carolina plan is developmental. The following is the schedule of the developmental steps provided by the plan:

(a) Introduction of the above-mentioned legislative amendments in the legislative session following approval of the plan.

(b) Public hearings and adoption of Federal standards to be completed by December 1972.

(c) A management information system to be completed by no later than June 30, 1974.

(d) A voluntary compliance program to be completed by no later than June 30, 1974.

(e) An occupational safety and health program for public employees to be completed by no later than June 30, 1974.

(f) A program for the coverage of agriculture workers to be completed no later than June 30, 1973.

(g) An approved merit system covering employees implementing the plan to be effective 90 days following approval of the plan.

(h) A revised compliance manual to be completed within 6 months following approval of the plan.

Pursuant to section 18 of the Occupational Safety and Health Act (29 U.S.C. 667), Part 1952 is hereby amended by adding thereto a new Subpart C reading as follows:

**Subpart C—South Carolina**

Sec.
1952.100 Description of the Plan.
1952.101 Where the Plan may be inspected.
1952.102 Level of Federal enforcement.
1952.103 Developmental schedule.

AUTHORITY: The provisions of this Subpart C issued under section 18, 84 Stat. 1608; 29 U.S.C. 667.

## Subpart C—South Carolina

### § 1952.100 Description of the plan.

(a) The plan identifies the South Carolina Department of Labor as the State agency designated to administer the plan. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. The plan states that the Department of Labor has been promulgating safety and health standards. The South Carolina Commissioner of Labor is promulgating all standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in §§ 1910.13; 1910.14; 1910.15; and 1910.16 of this chapter (ship repairing, shipbuilding, shipbreaking, and longshoring). The plan describes procedures for the development and promulgation of additional standards, enforcement of such standards, and the prompt restraint or elimination of imminent danger situations. The South Carolina Legislature passed enabling legislation in 1971, a copy of which was submitted with the original plan. Section 40–261 through 40–274 South Carolina Code of Laws, 1962. The amendments to the plan include proposed amendments to this legislation to more fully bring the plan into conformity with the requirements of Part 1902. Under the amended legislation, the South Carolina Department of Labor will have full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State.

(b) The plan includes a statement of the Governor's support for the legislative amendments and a legal opinion that the amended act will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the constitution and laws of South Carolina. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislative amendments.

### § 1952.101 Where the plan may be inspected.

A copy of the complete plan may be inspected and copied during normal business hours at the following locations: Office of Federal and State Operations, Occupational Safety and Health Administration Room 305, 400 First Street NW., Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, Suite 587, 1375 Peachtree Street NE, Atlanta, GA 30309; Commissioner of Labor, 1710 Gervais Street, Columbia, SC.

### § 1952.102 Level of Federal enforcement.

Pursuant to § 1950.20(b)(iii) of this title, the present level of Federal enforcement in South Carolina will not be diminished. Among other things, the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(f), continue its target safety and target health programs, and inspect a cross-section of all industries on a random basis.

### § 1952.103 Developmental schedule.

The South Carolina plan is developmental. The following is the schedule of the developmental steps provided by the plan:

(a) Introduction of the above-mentioned legislative amendments in the legislative session following approval of the plan.

(b) Public hearings and adoption of Federal standards to be completed by December 1972.

(c) A management information system to be completed by no later than June 30, 1974.

(d) A voluntary compliance program to be completed by no later than June 30, 1974.

(e) An occupational safety and health program for public employees to be completed by no later than June 30, 1974.

(f) A program for the coverage of agriculture workers to be completed no later than June 30, 1973.

(g) An approved merit system covering employees implementing the plan to be effective 90 days following approval of the plan.

(h) A revised compliance manual to be completed within 6 months following approval of the plan.

(Sec. 18, Public Law 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C., this 30th day of November 1972.

JAMES D. HODGSON,
*Secretary of Labor.*

[FR Doc.72-20857 Filed 10-5-72;8:45 am]

# Title 14—AERONAUTICS AND SPACE

## Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 12423, Amdt. 107–1]

## PART 107—AIRPORT SECURITY

### Law Enforcement Officers

The purpose of these amendments to Part 107 of the Federal Aviation Regulations is to require that operators of airports covered by Part 107 provide for the presence of armed law enforcement personnel prior to and throughout the screening of passengers prior to boarding.

The two bizarre acts of air piracy over the past few weeks highlight the need for immediate action to reduce the vulnerability of U.S. civil air commerce to criminal and terrorist actions. In those two incidents, the lives of 66 persons were placed in severe jeopardy over many terror-filled hours at the hands of berserk or desperate criminals. One life was lost, and five persons were injured. Fortunately, tragedies of catastrophic proportions were averted.

In the first, an airline jetliner at Houston, Tex., was commandeered on October 29 by four alleged murderers and bank robbers who shot two airline employees, one fatally. Thirty-six innocent passengers and crewmembers faced death and endured extreme personal hardships and indignities. Twelve days later, on November 10, three wanted criminals took over a jet out of Birmingham, Ala., and for more than 28 hours the lives of 30 passengers and flight crew and hundreds of people on the ground were in severe jeopardy. One crewmember was wounded and three passengers required hospitalization.

The President has directed that the present Civil Aviation Security Program be strengthened to meet the escalating threats of hijacking, extortion, sabotage, and terrorism against U.S. civil air commerce. The strengthened security measures ordered by the President recognize the proper delineation of responsibilities between the Federal Government, airlines, airports, and local law enforcement. Within this framework of shared responsibility, law enforcement personnel must be in place to support airline and airport security measures and to provide immediate response to actual or suspected violations of law. Accordingly, to meet these threats this amendment will require the airport operators to insure that effective law enforcement support is provided during passenger screening prior to boarding aircraft.

Because of the emergency nature of the threat to the safety of persons and property due to hijacking, I find that notice and public procedure on these amendments are impracticable and contrary to the public interest and that good cause exists for making these amendments effective in less than 30 days.

In consideration of the foregoing, Part 107 of the Federal Aviation Regulations (14 CFR Part 107) is amended, effective December 6, 1972, as follows:

1. By amending § 107.1 by adding a new paragraph (e), to read as follows:

### § 107.1 General.

* * * * *

(e) For purposes of this part "law enforcement officer" means an armed person—

(1) Authorized to carry and use firearms;

(2) Vested with a police power of arrest under Federal, State, or other political subdivision authority;

(3) Identifiable by uniform, badge, or other indicia of authority; and

(4) Assigned the duty of providing law enforcement support for the preboard screening aspects of the security programs filed by Part 121 certificate holders, foreign air carriers requesting such support, and for airport security programs.

2. By adding a new § 107.4 to read as follows:

### § 107.4 Law enforcement officers.

Notwithstanding § 107.3(a)(2)(i)(d) each airport operator shall, not later than January 6, 1973, submit for approval by the Administrator an amendment to the master security plan included in its security program that sets

forth facilities and procedures which insure that as soon as possible, but in no event later than February 6, 1973—

(a) At least one law enforcement officer is present at the point of, and prior to and throughout, the final passenger screening process prior to boarding, for each flight conducted by a certificate holder required to have a security program under § 121.538 of this chapter, and by each foreign air carrier that requests such law enforcement support;

(b) The law enforcement officer is present continuously until all doors on the aircraft being boarded are closed and the aircraft has taxied away from the boarding area; and

(c) The requirements of paragraphs (a) and (b) of this section are complied with in the event that the aircraft returns to the boarding area before takeoff.

(Secs. 313(a), 601, 606, 901, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1426, 1471; sec. 6(c) Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on December 5, 1972.

JOHN H. SHAFFER,
*Administrator.*

[FR Doc.72-21092 Filed 12-5-72;10:53 am]

# Proposed Rule Making

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[ 26 CFR Part 1 ]

### INCOME TAX

### Deductibility of Fines and Penalties and Illegal Bribes, Kickbacks, and Other Payments

On May 27, 1971, notice of proposed rulemaking was published in the FEDERAL REGISTER (36 F.R. 9637) to conform the Income Tax Regulations under sections 162, 212, and 471 of the Internal Revenue Code of 1954 to section 902 of the Tax Reform Act of 1969 (83 Stat. 710), relating to deductibility of treble damage payments, fines and penalties, and illegal bribes and kickbacks. The proposed regulations set forth in paragraphs (1) and (4) of such notice were adopted with certain revisions in Treasury Decision 7217 published in the FEDERAL REGISTER for November 10, 1972 (37 F.R. 23916). Notice is hereby given that the proposed regulations contained in paragraphs 2, 3, 5, and 6 of such notice are withdrawn.

Further, notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by January 5, 1973. In preparing and submitting such comments, it will not be necessary to repeat previous comments that have been submitted on the same or similar provisions that were contained in the notice of proposed rulemaking published on May 27, 1971, because all previous comments that have been made will be considered in the formulation of the final form of these provisions. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by January 5, 1973. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

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

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 61, 162, 212, and 471 of the Internal Revenue Code of 1954 to section 902 of the Tax Reform Act of 1969 (83 Stat. 710), and to section 310 of the Revenue Act of 1971 (85 Stat. 525), such regulations are amended as follows:

PARAGRAPH 1. Paragraph (a) of § 1.61–3 is revised to read as follows:

**§ 1.61–3 Gross income derived from business.**

(a) *In general.* In a manufacturing, merchandising, or mining business, "gross income" means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. Gross income is determined without subtraction of depletion allowances based on a percentage of income, and without subtraction of selling expenses, losses, other items not ordinarily used in computing cost of goods sold, or amounts which are of a type for which a deduction would be disallowed under section 162 (c), (f), or (g) in the case of a business expense. The cost of goods sold should be determined in accordance with the method of accounting consistently used by the taxpayer.

* * * * *

PAR. 2. Section 1.162 is amended by revising section 162(c) (2) and (3) and by revising the historical note to read as follows:

**§ 1.162 Statutory provisions; trade or business expenses.**

Sec. 162. *Trade or business expenses.* * * *

(c) *Illegal bribes, kickbacks, and other payments.* * * *

(2) *Other illegal payments.* No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary or his delegate to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(3) *Kickbacks, rebates, and bribes under medicare and medicaid.* No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

* * * * *

[Sec. 162 as amended by sec. 5, Technical Amendments Act 1958 (72 Stat. 1608); secs. 7(b) and 8, Act of Sept. 14, 1960 (Public Law 86–779, 74 Stat. 1002, 1003); sec. 3(a), Revenue Act 1962 (76 Stat. 973); sec. 902, Tax Reform Act 1969 (83 Stat. 710); sec. 310, Revenue Act 1971 (85 Stat. 525)]

PAR. 3. Paragraph (a) of § 1.162–1 is amended to read as follows:

**§ 1.162–1 Business expenses.**

(a) *In general.* Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, except items which are used as the basis for a deduction or a credit under provisions of law other than section 162. The cost of goods purchased for resale, with proper adjustment for opening and closing inventories, is deducted from gross sales in computing gross income. See paragraph (a) of § 1.61–3. Among the items included in business expenses are management expenses, commissions (but see section 263 and the regulations thereunder), labor, supplies, incidental repairs, operating expenses of automobiles used in the trade or business, traveling expenses while away from home solely in the pursuit of a trade or business (see § 1.162–2), advertising and other selling expenses, together with insurance premiums against fire, storm, theft, accident, or other similar losses in the case of a business, and rental for the use of business property. No such item shall be included in business expenses, however, to the extent that it is used by the taxpayer in computing the cost of property included in its inventory or used in determining the gain or loss basis of its plant, equipment, or other property. See section 1054 and the regulations thereunder. A deduction for an expense paid or incurred after December 30, 1969, which would otherwise be allowable under section 162 shall not be denied on the grounds that allowance of such deduction would frustrate a sharply defined

public policy. See section 162 (c), (f), and (g) and the regulations thereunder. The full amount of the allowable deduction for ordinary and necessary expenses in carrying on a business is deductible, even though such expenses exceed the gross income derived during the taxable year from such business. In the case of any sports program to which section 114 (relating to sports programs conducted for the American National Red Cross) applies, expenses described in section 114(a)(2) shall be allowable as deductions under section 162(a) only to the extent that such expenses exceed the amount excluded from gross income under section 114(a).

* * * * *

PAR. 4. Section 1.162–18 is amended to read as follows:

**§ 1.162–18 Illegal bribes and kickbacks.**

(a) *Illegal payments to Government Officials or employees*—(1) *In general.* No deduction shall be allowed under section 162(a) for any amount paid or incurred, directly or indirectly, to an official or employee of any government, or of any agency or other instrumentality of any government, if—

(i) In the case of a payment made to an official or employee of a government other than a foreign government described in subparagraph (3) (ii) or (iii) of this paragraph, the making of the payment constitutes an illegal bribe or kickback, or

(ii) In the case of a payment made to an official or employee of a foreign government described in subparagraph (3) (ii) or (iii) of this paragraph, the making of the payment would be unlawful under the laws of the United States (if such laws were applicable to the payment and to the official or employee at the time the expenses were paid or incurred).

No deduction shall be allowed for an accrued expense if the eventual payment thereof would fall within the prohibition of this section. The place where the expenses are paid or incurred is immaterial. For purposes of subdivision (ii) of this subparagraph, lawfulness or unlawfulness of the payment under the laws of the foreign country is immaterial.

(2) *Indirect payment.* For purposes of this paragraph, an indirect payment to an individual shall include any payment which inures to his benefit or promotes his interests, regardless of the medium in which the payment is made and regardless of the identity of the immediate recipient or payor. Thus, for example, payment made to an agent, relative, or independent contractor of an official or employee, or even directly into the general treasury of a foreign country of which the beneficiary is an official or employee, may be treated as an indirect payment to the official or employee, if in fact such payment inures or will inure to his benefit or promotes or will promote his financial or other interests. A payment made by an agent or independent contractor of the taxpayer which benefits the taxpayer shall be treated as an indirect payment to the official or employee.

(3) *Official or employee of a government.* Any individual officially connected with—

(i) The Government of the United States, a State, a territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico,

(ii) The government of a foreign country, or

(iii) A political subdivision of, or a corporation or other entity serving as an instrumentality of, any of the above,

in whatever capacity, whether on a permanent or temporary basis, and whether or not serving for compensation, shall be included within the term "official or employee of a government", regardless of the place of residence or post of duty of such individual. An independent contractor would not ordinarily be considered to be an official or employee. For purposes of section 162(c) and this paragraph, the term "foreign country" shall include any foreign nation, whether or not such nation has been accorded diplomatic recognition by the United States. Individuals who purport to act on behalf of or as the government of a foreign nation shall be treated under this section as officials or employees of a foreign government, whether or not such individuals in fact control such foreign nation, and whether or not such individuals are accorded diplomatic recognition. Accordingly, a group in rebellion against an established government shall be treated as officials or employees of a foreign government, as shall officials or employees of the government against which the group is in rebellion.

(4) *Laws of the United States.* The term "laws of the United States," to which reference is made in subparagraph (1)(ii) of this paragraph, shall be deemed to include only Federal statutes, including State laws which are assimilated into Federal law by Federal statute, and legislative and interpretative regulations thereunder. The term shall also be limited to statutes which prohibit some act or acts, for the violation of which there is a civil or criminal penalty.

(5) *Burden of proof.* In any proceeding involving the issue of whether, for purposes of section 162(c)(1), a payment made to a Government official or employee constitutes an illegal bribe or kickback (or would be unlawful under the laws of the United States) the burden of proof in respect of such issue shall be upon the Commissioner to the same extent as he bears the burden of proof in civil fraud cases under section 7454 (i.e., he must prove the illegality of the payment by clear and convincing evidence).

(6) *Example.* The application of this paragraph may be illustrated by the following example:

*Example.* X Corp. is in the business of selling hospital equipment in State Y. During 1970, X Corp. employed A who at the time was employed full time by State Y as Superintendent of Hospitals. The purpose of A's employment by X Corp. was to procure for it an improper advantage over other concerns in the making of sales to hospitals in respect of which A, as Superintendent, had authority. X Corp. paid A $5,000 during 1970. The making of this payment was illegal under the laws of State Y. Under section 162(c)(1), X Corp. is precluded from deducting as a trade or business expense the $5,000 paid to A.

(b) *Other illegal payments*—(1) *In general.* No deduction shall be allowed under section 162(a) for any payment (other than a payment described in paragraph (a) of this section) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under the laws of the United States (as defined in paragraph (a)(4) of this section), or under any State law (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss (including a suspension) of license or privilege to engage in a trade or business (whether or not such penalty or loss is actually imposed upon the taxpayer). For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. This paragraph applies only to payments made after December 30, 1969.

(2) *State law.* For purposes of this paragraph, State law means a statute of a State or the District of Columbia.

(3) *Generally enforced.* For purposes of this paragraph, a State law shall be considered to be generally enforced unless it is never enforced or the only persons normally charged with violations thereof in the State (or the District of Columbia) enacting the law are infamous or those whose violations are extraordinarily flagrant. For example, a criminal statute of a State shall be considered to be generally enforced unless violations of the statute which are brought to the attention of appropriate enforcement authorities do not result in any enforcement action in the absence of unusual circumstances.

(4) *Burden of proof.* In any proceeding involving the issue of whether, for purposes of section 162(c)(2), a payment constitutes an illegal bribe, illegal kickback, or other illegal payment the burden of proof in respect of such issue shall be upon the Commissioner to the same extent as he bears the burden of proof in civil fraud cases under section 7454 (i.e., he must prove the illegality of the payment by clear and convincing evidence).

(5) *Example.* The application of this paragraph may be illustrated by the following example:

*Example.* X Corp., a calendar-year taxpayer, is engaged in the ship repair business in State Y. During 1970, repairs on foreign ships accounted for a substantial part of its total business. It was X Corp.'s practice to kick back approximately 10 percent of the repair bill to the captain and chief engineer of all foreign-owned vessels, which kickbacks are illegal under a law of State Y (which is generally enforced) and potentially subject X Corp. to fines. During 1970, X Corp. paid $50,000 in such kickbacks. On X Corp.'s return for 1970, a deduction under section 162 was taken for the $50,000. The deduction of

the $50,000 of illegal kickbacks during 1970 is disallowed under section 162(c)(2) whether or not X Corp. is prosecuted with respect to the kickbacks.

(c) *Kickbacks, rebates, and bribes under medicare and medicaid.* No deduction shall be allowed under section 162(a) for any kickback, rebate, or bribe (whether or not illegal) made on or after December 10, 1971, by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, as amended, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

PAR. 5. Section 1.162–21 is revised to read as follows:

**§ 1.162–21 Fines and penalties.**

(a) *In general.* No deduction shall be allowed under section 162(a) for any fine or similar penalty paid to—

(1) The Government of the United States, a State, a territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(2) The government of a foreign country; or

(3) A political subdivision of, or corporation or other entity serving as an instrumentality of, any of the above.

(b) *Definition.* For purposes of this section a fine or similar penalty includes an amount—

(1) Paid pursuant to conviction or a plea of guilty or nolo contendere for a crime (felony or misdemeanor) in a criminal proceeding;

(2) Paid as a civil penalty imposed by Federal, State, or local law, including additions to tax and additional amounts and assessable penalties imposed by chapter 68 of the Internal Revenue Code of 1954;

(3) Paid in settlement of the taxpayer's actual or potential liability for a fine or penalty (civil or criminal); or

(4) Forfeited as collateral posted in connection with a proceeding which could result in imposition of such a fine or penalty.

Such amount does not include legal fees and related expenses paid or incurred in the defense of a prosecution or civil action arising from a violation of the law imposing the fine or civil penalty, nor court costs assessed against the taxpayer, or stenographic and printing charges. Such amount also does not include a sanction imposed to encourage prompt compliance with filing or other requirements if such sanction is really more in the nature of a late charge or interest charge than a fine, as, for example, in the case of a so-called penalty which is imposed with respect to the late payment of a State tax without regard to whether the delay in payment was for reasonable cause. Compensatory damages (including damages under section 4A of the Clayton Act (15 U.S.C. 15a), as amended) paid to a government do not constitute a fine or penalty.

(c) *Examples.* The application of this section may be illustrated by the following examples:

*Example (1).* In 1970, X Corp. was indicted under section 1 of the Sherman Anti-Trust Act (15 U.S.C. 1) for fixing and maintaining prices of certain electrical products. X Corp. was convicted and was fined $50,000. The United States sued X Corp. under section 4A of the Clayton Act (15 U.S.C. 15a) for $300,000, consisting of $100,000 in actual damages resulting from the price fixing of which X Corp. was convicted, and $200,000 in punitive damages. Pursuant to a final judgment entered in the civil action, X Corp. paid the United States $300,000 in damages. Section 162(f) precludes X Corp. from deducting the fine of $50,000 as a trade or business expense. Section 162(f) does not preclude it from deducting the $100,000 paid to the United States as actual damages. See section 162(g) and § 1.162–22 with respect to the $200,000 paid as punitive damages.

*Example (2).* In July 1971, oil was knowingly discharged in harmful quantities from a vessel of Y Corp. into the navigable waters of the United States in violation of 33 U.S.C. 1161(b)(2). In August 1971, the District Commander of the Coast Guard assessed a civil penalty under 33 U.S.C. 1161(b)(5) and 33 CFR 153.03(b)(1) of $10,000 against Y Corp. with respect to such discharge. In November 1971, Y Corp. paid $10,000 to the Coast Guard in payment of the civil penalty assessed by the District Commander. Section 162(f) precludes Y Corp. from deducting the $10,000 penalty.

PAR. 6. Section 1.212–1 is amended by adding a new paragraph (p) at the end thereof to read as follows:

**§ 1.212–1 Nontrade or nonbusiness expenses.**

* * * * *

(p) *Frustration of public policy.* The deduction of a payment will be disallowed under section 212 if the payment is of a type for which a deduction would be disallowed under section 162 (c), (f), or (g) and the regulations thereunder in the case of a business expense.

PAR. 7. Section 1.471–3 is revised to read as follows:

**§ 1.471–3 Inventories at cost.**

Cost means:

(a) In the case of merchandise on hand at the beginning of the taxable year, the inventory price of such goods.

(b) In the case of merchandise purchased since the beginning of the taxable year, the invoice price less trade or other discounts, except strictly cash discounts approximating a fair interest rate, which may be deducted or not at the option of the taxpayer, provided a consistent course is followed. To this net invoice price should be added transportation or other necessary charges incurred in acquiring possession of the goods.

(c) In the case of merchandise produced by the taxpayer since the beginning of the taxable year, (1) the cost of raw materials and supplies entering into or consumed in connection with the product, (2) expenditures for direct labor, (3) indirect expenses incident to and necessary for the production of the particular article, including in such indirect expenses a reasonable proportion of management expenses, but not including any cost of selling or return on capital, whether by way of interest or profit.

(d) In any industry in which the usual rules for computation of cost of production are inapplicable, costs may be approximated upon such basis as may be reasonable and in conformity with established trade practice in the particular industry. Among such cases are: (1) Farmers and raisers of livestock (see § 1.471–6); (2) miners and manufacturers who by a single process or uniform series of processes derive a product of two or more kinds, sizes, or grades, the unit cost of which is substantially alike (see § 1.471–7); and (3) retail merchants who use what is known as the "retail method" in ascertaining approximate cost (see § 1.471–8).

Notwithstanding the other rules of this section, cost shall not include an amount which is of a type for which a deduction would be disallowed under section 162 (c), (f) or (g) and the regulations thereunder in the case of a business expense.

[FR Doc.72–20912 Filed 12–5–72;8:58 am]

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## [ 26 CFR Part 1 ]

## INCOME TAX

### Salary Reduction Agreements

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by February 5, 1973. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601 (b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by February 5, 1973. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the

Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

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

In order to clarify the tax treatment of contributions to a trust described in section 401(a) of the Internal Revenue Code of 1954, amounts paid to purchase an annuity contract for an employee, and funds contributed to qualified bond purchase plans as the result of a "salary reduction" agreement, the Income Tax Regulations (26 CFR Part 1) under section 402 (relating to the taxability of beneficiary of employees' trust), section 403 (relating to the taxation of employee annuities), and section 405 (relating to qualified bond purchase plans) of the Code are amended to read as follows:

PARAGRAPH 1. Paragraph (a)(1)(i) of § 1.402(a)–1 is amended to read as follows:

**§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).**

(a) *In general.* (1)(i) Section 402 relates to the taxation of the beneficiary of an employees' trust. If an employer makes a contribution for the benefit of an employee to a trust described in section 401(a) for the taxable year of the employer which ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), the employee is not required to include such contribution in his income except for the year or years in which such contribution is distributed or made available to him. However, see section 1379(b) of the Code and the regulations thereunder for the inclusion of excess contributions made by an electing small business corporation in the gross income of certain shareholder-employees for a year or years prior to distribution. It is immaterial in the case of contributions to an exempt trust whether the employee's rights in the contributions to the trust are forfeitable or nonforfeitable either at the time the contribution is made to the trust or thereafter. Whether a contribution to an exempt trust is made by the employer or the employee must be determined on the basis of the particular facts and circumstances of the individual case. An amount contributed to an exempt trust will, except as otherwise provided in this subdivision, be considered to have been contributed by the employee if at his individual option such amount was so contributed in return for a reduction in his basic or regular compensation or in lieu of an increase in such compensation. The preceding sentence shall not apply to an amount contributed to an exempt trust either (*a*) in a taxable year of the employee ending prior to January 1, 1972, or (*b*) at any time prior to December 6, 1972, where the employee has relied upon a ruling by the Commissioner to him or his employer that such amount will be treated as the contribution of the employer.

* * * * *

PAR. 2. Paragraph (a) of § 1.403(a)–1 is amended to read as follows:

**§ 1.403(a)–1 Taxability of beneficiary under a qualified annuity plan.**

(a) An employee or retired or former employee for whom an annuity contract is purchased by his employer is not required to include in his gross income the amount paid for the contract at the time such amount is paid (except to the extent a shareholder-employee of an electing small business corporation must include excess contributions paid on his behalf in the year paid under section 1379(b)), whether or not his rights to the contract are forfeitable, if the annuity contract is purchased under a plan which meets the requirements of section 404(a)(2). For purposes of the preceding sentence, it is immaterial whether the employer deducts the amounts paid (other than certain amounts paid on behalf of a shareholder-employee by an electing small business corporation) for the contract under such section 404(a)(2). Whether an annuity contract is purchased under a qualified plan by the employer or the employee must be determined on the basis of the particular facts and circumstances of the individual case. An annuity contract will, except as otherwise provided in this subdivision, be considered to have been purchased by the employee if at his individual option, and to the extent that, an amount is paid for such a contract in return for a reduction in his basic or regular compensation or in lieu of an increase in such compensation. The preceding sentence shall not apply to an amount paid for an annuity contract under a qualified plan either (1) in a taxable year of the employee ending prior to January 1, 1972, or (2) at any time prior to December 6, 1972, where the employee has relied upon a ruling by the Commissioner to him or his employer that such amount will be treated as the contribution of the employer. See § 1.403(b)–1 for rules relating to annuity contracts which are not purchased under qualified plans but which are purchased by organizations described in section 501(c)(3) and exempt under section 501(a) or which are purchased for employees who perform services for certain public schools.

* * * * *

PAR. 3. Paragraph (a)(1) of § 1.405–3 is amended to read as follows:

**§ 1.405–3 Taxation of retirement bonds.**

(a) *In general.* (1) As in the case of employer contributions under a qualified pension, annuity, profit-sharing, or stock bonus plan, employer contributions on behalf of his common-law employees under a qualified bond purchase plan are not includible in the gross income of the employees when made (except to the extent includible in the gross income of a shareholder-employee of an electing small business corporation in the year paid under section 1379(b)), and employer contributions on behalf of self-employed individuals are deductible as provided in section 405(c) and § 1.405–2. Whether a contribution under a qualified bond purchase plan is made by the employer or the employee must be determined on the basis of the particular facts and circumstances of the individual case. An amount contributed under a qualified bond purchase plan will, except as otherwise provided in this subdivision, be considered to have been contributed by the employee if at his individual option such amount was so contributed in return for a reduction in his basic or regular compensation or in lieu of an increase in such compensation. The preceding sentence shall not apply to an amount contributed under a qualified bond purchase plan either (i) in a taxable year of the employee ending prior to January 1, 1972, or (ii) at any time prior to December 6, 1972, where the employee has relied upon a ruling by the Commissioner to him or his employer that such amount will be treated as the contribution of the employer. Further an employee or his beneficiary does not realize gross income upon the receipt of a retirement bond pursuant to a qualified bond purchase plan or from a trust described in section 401(a) which is exempt from tax under section 501(a). Upon redemption of such a bond, ordinary income will be realized to the extent the proceeds thereof exceed the basis (determined in accordance with paragraph (b) of this section) of the bond. The proceeds of a retirement bond are not entitled to the special tax treatment of section 72(n) and § 1.72–18.

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[FR Doc.72–21001 Filed 12–5–72;9:00 am]

# DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## [ 7 CFR Part 909 ]

## GRAPEFRUIT GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

### Limitations of Handling

Notice is hereby given that the Department is giving consideration to the following proposal, which would limit the handling of fresh grapefruit by establishing grades and sizes, recommended by the Administrative Committee, established pursuant to Marketing Order No. 909 (7 CFR Part 909), regulating the handling of fresh grapefruit grown in Arizona and designated part of California. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

All persons who desire to submit written data, views, or arguments, in connection with the proposal should file the same in quadruplicate with the Hearing Clerk, Room 112A, U.S. Department of Agriculture, Washington, DC 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available

for public inspection at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)).

The Administrative Committee on November 16, 1972, held a meeting to consider the need for regulation during the current season. The recommendations of the committee reflect its appraisal of the crop and current and prospective market conditions. Shipments of grapefruit from the production area for the week ended November 4, 1972, were 26 carloads. Seasonal shipments of grapefruit in heavy volume are expected to begin on or about January 1, 1973. Grapefruit is reported to be of poorer quality this year, and the committee believes regulation is desirable during the period January 1, through August 31, 1973, to prevent the handling on and after January 1, 1973, of any grapefruit of lower grades and smaller sizes than those herein specified, so as to provide consumers with good quality fruit, consistent with: (1) The overall quality of the crop, and (2) improve returns to producers pursuant to the declared policy of the act.

Such proposal reads as follows:

**§ 909.338 Grapefruit Regulation 38.**

(a) Order:

(1) Except as otherwise provided in subparagraph (2) of this paragraph, during the period January 1, 1973, through August 31, 1973, no handler shall handle from the State of California or the State of Arizona to any point outside thereof:

(i) Any grapefruit which do not meet the requirements for the U.S. No. 2 grade which for purpose of this section shall include the requirement that the grapefruit be fairly well colored, instead of slightly colored, and including as a part of the fairly well formed requirement, the requirement that the fruit be free from peel that is more than 1 inch in thickness at the stem end (measured from the flesh to the highest point of the peel): *Provided,* That in lieu of the tolerances provided for the U.S. No. 2 grade, the following tolerances, by count, shall be allowed for the defects listed:

(*a*) Ten percent for fruit which is not at least fairly well colored;

(*b*) Ten percent for defects other than color, but not more than one-twentieth of this amount, or one-half of 1 percent shall be allowed for decay and not more than one-half, or 5 percent, shall be allowed for any single defect caused by broken skins, sunburn, scars, or peel that is more than 1 inch in thickness at the stem end; and

(*c*) Fifteen percent in addition to the tolerance provided in (i)(*b*) for scars which are light colored, fairly smooth, with no depth and aggregate more than 25 percent of the fruit surface; or

(ii) Any grapefruit which measure less than 3$^{9}/_{16}$ inches in diameter, except that a tolerance of 5 percent, by count, for grapefruit smaller than 3$^{9}/_{16}$ inches shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerance specified in the revised U.S. Standards for Grapefruit (California and Arizona), 7 CFR 51.925–51.955: *Provided,* That in determining the percentage of grapefruit in any lot which are smaller than 3$^{9}/_{16}$ inches in diameter, such percentage shall be based only on the grapefruit in such lot which are of a size 3$^{13}/_{16}$ inches in diameter and smaller.

(2) Subject to the requirements of subparagraph (1)(i) of this paragraph, any handler may, but only as the initial handler thereof, handle grapefruit smaller than 3$^{9}/_{16}$ inches in diameter directly to a destination in Zone 5 or Zone 6.

(b) As used herein, "handler," "grapefruit," "handle," "Zone 5," and "Zone 6," shall have the same meaning as when used in said amended marketing order; the terms "U.S. No. 2," "fairly well colored," "slightly colored" and "fairly well formed" shall have the same meaning as when used in the aforesaid revised U.S. Standards for Grapefruit; and "diameter" shall mean the greatest dimension measured at right angles to a line from the stem to the blossom end of the fruit.

Dated: November 30, 1972.

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

[FR Doc.72-20906 Filed 12-5-72;8:58 am]

## [ 7 CFR Part 916 ]

## NECTARINES GROWN IN CALIFORNIA

### Expenses and Rate of Assessment for the 1972–73 Fiscal Period

Consideration is being given to the following proposal submitted by the Nectarine Administrative Committee, established under the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916), regulating the handling of nectarines grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the provisions thereof:

(a) That the Secretary find that provisions pertaining to the expenses in paragraph (a) of § 917.211 *Expenses and rate of assessment* (37 F.R. 13527) be amended as follows:

**§ 917.211 Expenses and rate of assessment.**

(a) *Expenses.* Expenses that are reasonable and likely to be incurred during the fiscal period March 1, 1972, through February 28, 1973, will amount to $360,000.

* * * * *

All persons who desire to submit written data, views, or arguments, in connection with the aforesaid proposal shall file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)).

Dated: November 30, 1972.

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

[FR Doc.72-20907 Filed 12-5-72;8:58 am]

## [ 7 CFR Parts 1032, 1050, 1062, 1064, 1065 ]

[Docket No. AO-313-A23, etc.]

## MILK IN SOUTHERN ILLINOIS AND CERTAIN OTHER MARKETING AREAS

### Notice of Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

| 7 CFR Part | Marketing area | Docket No. |
|---|---|---|
| 1032 | Southern Illinois | AO-313-A23. |
| 1050 | Central Illinois | AO-355-A12. |
| 1062 | St. Louis-Ozarks | AO-10-A45. |
| 1064 | Greater Kansas City | AO-23-A44. |
| 1065 | Nebraska-Western Iowa | AO-86-A28. |

Notice is hereby given of the filing with the hearing clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the aforesaid marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued 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).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended, were formulated, was conducted at Bridgeton, Mo., on October 18, 1972, pursuant to notice thereof which

was issued on October 3, 1972 (37 F.R. 21171).

The material issues on the record of the hearing relate to:

1. Adoption of an advertising and promotion program as authorized under Public Law 91–670; and

2. The specific terms and provisions necessary to implement such program in the aforesaid marketing areas.

FINDINGS AND CONCLUSIONS

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

1. *Adoption of an advertising and promotion program.* The respective orders should be amended to provide for an advertising and promotion program to be administered in each case by an agency organized by producers and producers' cooperative associations and financed by producer moneys deducted from pool proceeds.

The amendments to the Agricultural Marketing Agreement Act under Public Law 91–670 provide that a Federal milk order may, with the approval of producers on the market, include provisions for establishing or providing for the establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products (hereinafter referred to in this part as the "advertising and promotion program" or "the program").

The hearing on the matter here under consideration was requested by seven dairy cooperatives representing a majority of producers in the respective markets. These associations are the Associated Milk Producers, Inc., (AMPI), Champaign County Milk Producers Association, Mid-America Dairymen, Inc., Mid-West Dairymen's Co., Mississippi Valley Milk Producers Association, Prairie Farms Dairy, Inc., and Wisconsin Dairies Cooperative.

Under the proposal supported at the hearing and as herein adopted, the advertising and promotion program under each respective order will be funded through a 5-cent per hundredweight assessment each month on producer milk pooled during such month. Such moneys will be deducted from the aggregate value of producer milk in computing the uniform price. Except for certain reserves withheld by the market administrator to cover refunds and administrative costs, the money will be turned over to and administered by an agency organized by producers and producers' cooperative associations under such order. The agency will be responsible for the development and implementation of programs and projects approved by the Secretary and designed to carry out the purposes of the act as prescribed in the attached amending orders.

Any producer not desiring to participate in the program, upon proper application, will be eligible for refund of the assessments made against his proportionate share of total producer marketings of milk, such refunds to be made by the market administrator on a quarterly basis. The program as adopted also provides for suitable adjustments to producers assessed under mandatory programs of the same nature under authority of any State law.

It is proponents' contention that there must be a sound and comprehensive program of promotion, education and research in the use of milk and dairy products if producers in the five markets are to compete with other beverage products, substitutes, and alternative foods competing for the consumer's nutritional dollar. Sellers of competing food products, they stated, engage in intensive advertising and promotional plans as a means of stimulating the sales of their products. Proponents suggested the need, therefore, that dairy farmers (members and nonmembers) join together in strong support of an advertising and promotion program as provided for under Public Law 91–670 if they are to hope for a continuing healthy and growing market in the future.

Proponents pointed to the long term decline in consumption of milk and milk products as well as in its share of the food dollar. The per capita civilian domestic consumption of milk solids in dairy products has declined about 9 percent from 1960 to 1971.[1] Consumer expenditures for dairy products as a percentage of all food expenditures dropped from 17.3 percent in 1960 to 14.3 percent in 1971.

In contrast to the declining trend in milk and dairy product consumption as a whole, proponents testified that in the case of cheese in its various forms there have been extensive promotional activities and that per capita consumption has increased. For instance, per capita consumption of American cheese increased from 5.4 pounds in 1960 to 7.4 pounds in 1971.

Proponents further testified that there is substantial support in these markets for the proposed programs, as evidenced both by the proportion of total producers represented by proponent cooperatives and the extent of support now being given by cooperatives to various advertising and promotional programs. Proponents favor the programs here proposed, claiming that a single Agency for each market can maximize effectiveness in the use of funds for promotion of milk and milk products and that more equitable participation by producer members and nonmembers alike will result.

Currently, proponents represent more than three-fourths of the producers on each of the St. Louis-Ozarks, Greater Kansas City and Nebraska-Western Iowa markets. In the Southern Illinois market, more than 80 percent of producers on the market are members of the several proponent cooperatives, and in Central Illinois about two-thirds.

At the present time, most dairy farmers pooled under each of the five markets are currently contributing toward various advertising, research, educational, and promotion programs, but in varying degrees. The proceeds from these contributions are turned over to such organizations as the local Dairy Councils, State American Dairy Associations, the Midland United Dairy Industry Association and the United Dairy Industry Association in Chicago.

Proponents testified that producers in each of the five markets presently support the promotion of milk and dairy products as follows:

*St. Louis-Ozarks.* About 95 percent of the producers are contributing at the rate of 5¼ cents per hundredweight.

*Southern Illinois.* Most producers contribute 5¼ cents per hundredweight of their milk marketings.

*Greater Kansas City.* Producer-members of a proponent cooperative (about 80 percent of the market) contribute 5 cents per hundredweight. Members of another cooperative contribute 3 cents per hundredweight.

*Nebraska-Western Iowa.* Producer members of a proponent cooperative (about 80 percent of the market) contribute 5½ cents per hundredweight. Producer-members of another cooperative contribute 2-cents per hundredweight.

The foregoing data suggest that for advertising and promotional programs as here proposed, there is reasonable expectation of support by a large majority of producers in each of the five markets. There was no testimony on the record in opposition to the adoption of the proposed programs. In these circumstances, it is concluded that a program essentially as proposed by the cooperatives should be adopted in each market. Specific modifications are necessary, however, as discussed below.

2. *Terms and provisions.* The proposed rate of 5 cents per hundredweight on producer milk suggested by proponents is a reasonable assessment on the marketings of producers under the respective orders and is adopted. Based on the volume of milk marketed in 1971 under these orders, an assessment rate of 5 cents per hundredweight on producer milk will provide a potential of approximately $2.4 million annually.

The enabling legislation specifically provides that the promotion funds deducted from producer proceeds "shall be paid to an agency organized by milk producers and producers' cooperative associations in such form and with such methods of operation as shall be specified in the order."

A definition of "Agency" therefore is incorporated in each order to identify the administrative body organized by producers and producers' cooperatives that will be authorized to expend the funds for advertising and promotional activities. As hereinafter used, the term "Agency" is to be understood to be the

[1] Official notice is taken of data in the "Dairy Situation", May 1972 published by Economic Research Service, U.S. Department of Agriculture.

Agency as it would be organized pursuant to the terms of a particular order.

The Agency under the terms prescribed herein is responsible for administration of the terms and provisions of the program within the scope of its authority. Subject to the approval of the Secretary, it also is empowered to enter into contracts and agreements with persons or organizations as deemed necessary to carry out such program. In addition, the Agency may recommend to the Secretary amendments to the terms of the program and make such rules and regulations as are necessary to carry out its stated objectives.

The powers, duties, and functions specifically assigned to the Agency under the terms herein adopted are of a nature and scope to provide participating [2] producers on the market full and necessary authority through their representatives on the Agency to develop and administer advertising and promotion programs designed to accomplish the purposes of Public Law 91-670.

The Act states that the Agency "* * * may designate, employ, and allocate funds to persons and organizations engaged in such programs wihch meet the standards and qualifications specified in the order." The guidelines concerning this matter are set forth in the amendments to the respective orders. Under the terms of such amendments the Agency will develop and submit to the Secretary for approval, programs and projects that may provide for: (a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising and promotion of milk and milk products on a nonbrand basis; (b) the utilization of the services of other organizations to carry out Agency programs and projects, if the Agency finds that such activities will benefit producers supplying the market; and (c) the establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers supplying the market.

Producers held that certain major considerations should be guidelines in the constituency of such an Agency:

(1) There should be adequate representation of producers in the market both for the membership of various cooperatives and for nonmembers; and

(2) The Agency should be a workable unit, not so large as to encumber its effective operation or impose excessive administrative costs on the program.

The procedures adopted herein authorize cooperative associations in each market to select Agency members to represent their participating producer members. It is provided, likewise, that Agency representatives for participating nonmembers will be elected in a referendum conducted by the market administrator among individual participating producers. In the case of any small cooperative association not having the minimum number of participating members to qualify for a representative, participating producer members of such cooperative will be included with participating nonmembers in such referendum.

It is provided also that cooperative associations may choose to combine their participating memberships for purposes of selecting Agency members. Such combined participating membership then will be treated as a single group in determining the number of Agency representatives to be selected by the cooperative associations.

Since cooperative members constitute most of the producers in each of these markets, it follows that Agency members will be principally persons selected by the cooperatives. Such Agency members (selected by cooperatives individually or in combination) may be producers or individuals not engaged in milk production, for example, employees of the cooperative.

In the case of a cooperative that does not have sufficient participating membership to select an Agency representative, and has not elected to combine with another cooperative(s) to achieve representation, its participating members may vote in a referendum together with participating nonmembers in the selection of Agency members to represent such group. The persons selected as Agency members through the referendum procedure should be producers who actively support the program.

The makeup of producer groups in each market, in terms of cooperative members and nonmember producers, varies distinctly from market to market particularly as to the relative size and number of cooperatives involved. It should be anticipated, also, that relevant grouping of producers in any one market may change considerably from year to year. In determining Agency membership it is concluded that allotment of one Agency member for a specified percentage of participating producers in each market (such as 5 percent or 10 percent) will tend to result in proper producer and cooperative representation in the varying circumstances. For each of the markets, except Central Illinois, the adopted provisions allot one Agency member for each full 5 percent of total participating producers on the market. In Central Illinois there would be one Agency member for each 10 percent of participating producers in the market.

This method differs from proponents' plan for allotting Agency membership. Proponents would allow to each cooperative one Agency member for the first 1 percent that its participating producer members represent of total participating producers on the market, and one additional Agency member for each additional 15 percent it represents of the market's participating producers.

A difficulty in the application of such a dual percentage may arise in a market where a number of cooperatives each represent a small percentage of producers and are individually awarded Agency representation. As a group these small cooperatives may achieve a majority membership on the Agency although their producer membership is a minority in the market.

While it cannot be determined from the record that this situation will occur, the data for one market suggest that the potential definitely exists. In the southern Illinois market, proponents testified there are nine cooperatives with membership ranging from as little as 1.5 percent up to about 25 percent of the producers on the market. This situation at least approaches the condition under which a minority of producers might select the majority of members on the Agency.

The allotment of one Agency member for each 5 percent (10 percent in Central Illinois) of participating producers will avoid the difficulty illustrated above. Further, with additional adjustments as explained herein, it will provide Agency representation consistent with proponents' guidelines and reasonable representation of all producers on each market.

The different percentage to be used in Central Illinois is advisable in the interest of conserving administrative expense where there is a smaller number of producers than in the other markets. Producer numbers in each market in August 1972 were: St. Louis-Ozarks, 3,285; Southern Illinois, 2,173; Greater Kansas City, 2,207; Nebraska-Western Iowa, 1,797; and Central Illinois, 777. (Official notice is taken of the August 1972 issue of "Summary of Federal Milk Market Statistics", as compiled and published by the Dairy Division, AMS, USDA.)

An additional consideration in some of these markets, however, is that a single cooperative constitutes a large majority of the producers on the market. Selection of Agency members merely according to the proportion of participating producers represented by such cooperatives in the respective markets could result in a larger Agency than necessary for the purposes of: (1) Adequately representing participating producers; and (2) efficient operation. This would be true in the St. Louis-Ozarks, Greater Kansas City and Nebraska-Western Iowa markets where a single cooperative represents three-fourths or more of the producers on each such market.

If a single cooperative represents a substantial majority of participating producers, Agency representation for such cooperative should be limited to a number necessary to retain a voting majority on the Agency but in no event less than five. Considering the market structure of the five orders as here discussed, a minimum of five members for a majority cooperative's representation will allow the breadth of geographical representation among members in each market that proponents suggested.

As indicated previously, cooperative associations may elect to combine their participating membership with those of other cooperatives. If the combined

[2] Participating producers are those who have not requested refunds. Further, the program adopted herein for each order provides that for the purposes of the Agency's initial formation, all producers under such order will be considered as participating producers.

group in total has a majority of participating producers on the market, the number of representatives that may be selected by such group also shall be limited to the minimum necessary to constitute a majority of the Agency representatives, but in no event less than five.

The participating producer members of any cooperative association(s) having less than the required specified minimum percentage, that elects not to combine as discussed above, and nonmember participating producers, will be authorized (as a group) one Agency representative for each full 5 percent (10 percent in Central Illinois market) that such producers constitute of the total number of participating producers under the respective orders. If, however, such group of producers in total constitutes less than the minimum percentage specified for obtaining at least one Agency member, but not less than 1 percent, the group, nevertheless, will be authorized to elect one Agency representative.

On the basis of proponents' statements of cooperative representation on each market, the procedures herein adopted could result in a maximum of 10 Agency members under the Central Illinois order and 11 each, respectively, under St. Louis-Ozarks, Greater Kansas City and Nebraska-Western Iowa. Under the Southern Illinois order a somewhat greater Agency membership could result because of the greater number of cooperatives on this market than in the other markets.

Under the program herein adopted, the market administrator will conduct a referendum annually to determine representation on the Agency of nonmember participating producers and cooperatives not having sufficient membership to select a representative.

Within 30 days after the effective date of the amended order and annually thereafter, the market administrator shall give notice to all such producers (member and nonmember) of their opportunity to nominate from among their groups Agency members and shall specify the number of representatives that such nonmember and member producers together are authorized.

Following the closing date for nominations, the market administrator shall notify the nominees who are eligible for Agency membership and then shall conduct a referendum in which each individual participating producer (member or nonmember) shall have one vote.

Since cooperative associations may freely elect to combine or not combine for purposes of selecting agency representation, it is provided in the case of a cooperative with less than the indicated minimum percentage that does not combine, that the balloting of its participating producer members shall be on an individual basis, the same as nonmembers. This procedure will tend to promote equity between member and nonmember producers in the selection of representation. Election of Agency membership will be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes of participating producers.

Each person selected for the Agency shall qualify by filing with the market administrator a written acceptance of his willingness and intention to serve in such capacity. It is anticipated that any eligible nominee included on the list that the market administrator is required to circulate to participating nonmember producers and certain participating member producers in the conduct of the referendum, as discussed elsewhere in these findings, would advise the market administrator promptly if he were not willing to be a nominee. Notwithstanding, it is possible that a person elected to membership or so designated by a cooperative may not be able or may not wish to accept the position. This requirement, therefore, is necessary in order that the market administrator will know whether or not the position has been filled. Such acceptance should be filed promptly after notification in order that the formation of the Agency can be prompt.

The term of office of each member of the Agency as herein adopted is 1 year or until a replacement is designated by the cooperative association or is elected.

It is possible that an elected representative may leave the market or otherwise be unable to complete his term of office. It is desirable, therefore, that some procedure be provided for filling the vacancy. It is concluded appropriate in such circumstance that the market administrator appoint as his replacement the then currently participating producer who received the next highest number of eligible votes in the referendum.

Actions to be taken by the Agency are of such importance that a majority of the representatives should be required to be present at any meeting to constitute a quorum and any action taken by the Agency should require a majority of concurring votes of those present and voting. The provisions herein adopted so provide except that the Agency may adopt rules that a decision on any action require a greater proportion than a simple majority of members present.

The Agency's duties set forth in the respective orders are generally necessary for the discharge of its responsibilities. It is intended that activities undertaken by the Agency shall be confined to those reasonably necessary to carry out its responsibilities as prescribed by the program. At the same time it should be recognized that these specified duties are not necessarily all inclusive, and it may develop that there are other duties the Agency may need to perform.

The Congress clearly contemplated that producer activities under Public Law 91–670 would be under direct surveillance of the Secretary. It was specifically provided that "all funds collected under this subparagraph (I) shall be separately accounted for and shall be used only for the purposes for which they are collected." It is essential, therefore, that the Agency prepare and submit to the Secretary for his approval budgets showing projected amounts of available funds and how such funds are to be disbursed. Also, in order to make the audit necessary to establish that Agency funds are used only for authorized purposes, the market administrator or other representative of the Secretary must have access to all of the Agency's records and access to, and the right to examine, any directly pertinent books, documents, papers, and records of any organization performing advertising and promotion activities for such Agency.

Proponents proposed that budgets be prepared and submitted for approval on a quarterly basis. The Agency must be in a position to develop firm plans and make commitments covering a sufficient forward period to insure a continuing viable program. A calendar quarter is concluded to be the minimum practical period for achieving this end and it is provided therefore that a budget shall be submitted to the Secretary for his approval prior to each quarterly period.

All of the possible promotion and other authorized activities that the Agency may wish to pursue cannot be anticipated at this time. Therefore, the authority for the Agency to establish programs and projects is purposely left broad and flexible to facilitate the timely development of such programs suitable to prevailing circumstances in the market.

Any promotion program or project the Agency may consider must comport with the terms and conditions of the order and be evaluated in terms of cost, the statutory objectives to be accomplished, the time required to complete the program or project, and other such factors, in order to arrive at a sound decision as to whether the program or project is justified.

The required budget submissions will permit the Secretary to evaluate projected programs in terms of the declared policy of the Act and also will serve as policy guidelines for Agency members in the conduct of their operations for each ensuing quarterly period. This will be particularly helpful in the transition of Agency membership as the terms of office of individual members expire.

The Agency appropriately must follow prudent operating procedures in the furtherance of the best interests of producers. It is required, therefore, that it shall keep minutes of its meetings and such other books and records as will clearly reflect all its transactions, and on request shall submit such books and records to the Secretary for his examination. It also shall provide for the bonding of all persons handling Agency funds with surety thereon satisfactory to the Secretary.

The amending orders prescribe no specific requirements of the Agency to publish an account of funds collected and the use made thereof or to make releases of information concerning the operation of the program to producers and other interested parties. Since the activities of the Agency are under the direct supervision of the Secretary, it is not necessary to prescribe such requirements to insure

the integrity of the program. However, since the degree of producer participation in the program, and thus its relative success, will depend in large part upon the interest and confidence it generates among producers, the Agency undoubtedly will keep producers on the market fully informed of its milk promotion plans, projects, and activities. In view of these considerations, it is not necessary to prescribe specific informational releases to producers and other parties.

It is possible that the Agency may find it desirable to enlist the aid of individuals with special talents who might be helpful in program and promotion planning by virtue of their particular knowledge, skills, or expertise, on matters directly involved with advertising and promotion programs. Provision is made, therefore, whereby the Agency, at its pleasure, may establish an advisory committee(s) of persons other than Agency members. Such a committee(s) may include, but would not be necessarily limited to persons drawn from universities, land grant colleges, or extension services, public officials, and others, in the dairy industry. Such committee(s) could make recommendations and participate in the deliberations of the Agency but would have no voting rights.

It would not be expected that the market administrator or his staff or other officials of the U.S. Department of Agriculture would serve on such a committee(s) since the activities of the Agency are under the surveillance of the Department.

The Agency should be authorized to incur reasonable expense in its administration of the program, including the employment and the fixing of compensation of any person necessary to the exercise of its powers and performance of its duties. For example, the Agency may find it necessary to retain the services of an attorney from time to time to assist in the preparation of contracts, or to employ a stenographer, or other individual(s) to handle its recordkeeping and bookkeeping functions. Other Agency costs could be expected to involve miscellaneous office costs usually associated with a business office.

It is, of course, appropriate and necessary, that Agency representatives be reimbursed for reasonable expenses incurred in attending meetings and while on other Agency business. This could involve expenses for travel in private car, and expenses incurred for public transportation, meals, and lodging. It would be unreasonable to require members of the Agency to bear such expenses incurred in the interest of all producers on the market.

It was proposed, and it is here adopted, that the amount of money utilized by the Agency for its expenses in administering the program should not exceed 5 percent of the funds received by the Agency from the market administator. This establishes a reasonable limitation on Agency costs and assurance to producers that the funds collected under the program will be expended prudently on advertising and promotion activities.

The Agency, of course, is handling funds otherwise payable to producers. The Agency members therefore should have assurance that they will not be personally liable for the impact of their official acts except for willful misconduct, gross negligence, or any acts that are criminal in nature. To assure that the Agency funds are used only for the purpose contemplated by the Congress, it is provided that such funds shall not be used for political activities, or for influencing governmental policy or acts.

Although a specified assessment automatically will be withheld for the program with respect to milk deliveries of all producers, the authorizing statute, nevertheless, provides that producers not wishing to participate in the program shall have the right to refund of the deductions on their milk. The provision of the act is that "notwithstanding any other provisions of this Act, as amended, any producer against whose marketings any assessment is withheld or collected under the authority of this subparagraph, and who is not in favor of supporting the advertising and promotion programs, as provided for herein, shall have the right to demand and receive a refund of such assessment pursuant to the terms and conditions specified in the order."

The proposals made by producer groups for these markets would implement refunds by a method similar to those provided in other orders where programs of this type have been established. Specifically, a producer desiring a refund on the assessments made against his marketings would submit to the market administrator his signed request, in the manner prescribed by the market administrator, within the first 15 days of the month (December, March, June, or September) preceding the calendar quarter for which refund is requested.

Refunding on a quarterly basis as proposed is reasonable in that it insures refunds on a timely basis, without undue administrative costs, and therefore conforms to the intent of the Congress.

It was suggested by proponents that patron numbers, social security numbers, or similar information will in most cases provide the necessary identification of the producer requesting the refund. While it is intended that the refund procedure not be cumbersome or in any way impede producers who wish to obtain refunds, it is necessary to require records relevant to the refund. It is not possible to anticipate what information might be necessary in all particular cases to identify an applicant for refund, for instance where several dairy farmers having similar names occur on producer payrolls.

In any event, the provisions provided herein will permit the market administrator to develop appropriate procedures to this end. These procedures should include reasonable safeguards to clearly establish that any refund request originates with, and is the action of, the individual producer. It would be inappropriate, for example, for any cooperative or individual not in harmony with the program to file refund requests in the names of individual producers without their full knowledge or understanding of the nature of the action.

To insure that producers have an awareness of the program and of their rights thereunder, it is provided that the market administrator shall forward to each producer a copy of the amended order promptly when the program is effectuated, and therefore to new producers.

All refunds paid should be made by the market administrator directly to the producer requesting the refund. This is a primary consideration in assuring that the payment of the money to the producer will be expedited and that the producer does, in fact, receive the money to which he is entitled. The market administrator is in possession of the information on which to determine the validity of the request, and the identity of the producer, or is in a position to obtain the necessary information for these purposes. Further, inasmuch as all the money involved in the program is in the first instance collected by the market administrator, there is no reason for any other method of payment of refunds than directly from the market administrator to the individual producer.

Proponents recognized that certain elements of flexibility are necessary in the procedure when a dairy farmer is not on the market during the specified notification period in which request for refunds are to be made. It was proposed that a dairy farmer coming on the market after such specified period and before the beginning of the next regular period for requesting refunds be permitted to request refund for the calendar quarter.

It was pointed out, however, that a dairy farmer coming on the market may have been a producer on another market where a similar program applies and where he had requested refund for the calendar quarter or had opportunity to make such request. Proponents suggested that, ideally, one request by a producer should serve for all markets in which his milk is delivered and subject to program assessments.

The program should operate in such a manner that an application properly submitted by a dairy farmer for refund for a calendar quarter under one order will be valid with respect to refund of program assessments on his milk under a second order. As a corollary, there is no need to provide a new producer opportunity to request refund if he already has had such opportunity in another market. To do so would result in unnecessary duplication of the refund procedure and added expense. A second opportunity for such producers to request a refund would also be inequitable compared to the application of the order to producers who are afforded the opportunity only in the specified 15-day period.

In the case of a new producer who has not been under another order where a similar program exists, and who enters the market after the regular refund notification period applicable to a calendar

quarter, or comes on the market during such calendar quarter, application for refund may be made with respect to assessments against such producer's milk during such calendar quarter.

Proponents requested at the hearing that in the event deductions at the start of the program are initiated other than at the beginning of a calendar quarter, a period for requesting refunds be specified in the month prior to the first month in which deductions are made. As proposed in the hearing notice, however, in such circumstances a producer would be allowed to make application for refund for the current calendar quarter up to the beginning date of the next regular period for requesting refunds for the ensuing quarter.

The proposed special refund request period is not considered necessary. The particular circumstance described by proponent would occur only at the beginning of the program. It is not expected under the circumstances in these markets that the proposal would make a significant difference in the funds available.

Proponents recognized that the milk of some producers may be subject to deductions under a State program requiring a mandatory checkoff for a similar advertising and promotion program. Proponents held that a double assessment was not intended and that refund should be made under the Federal order of an amount equal to such State assessment but not in excess of 5 cents per hundredweight. This procedure is provided for in the statute and should be adopted.

A part of the function of the market administrator in relation to handling of applications for refunds is the ascertainment of the amount of funds to be available to the Agency during the ensuing calendar quarter for use in the program. Under the procedure specifying that application for refunds should be made in the first 15 days of the month preceding the quarter, the market administrator will have in hand information from which to estimate the total of assessments on milk during the ensuing quarter that will be available for disbursement to the Agency. Such estimate of available funds will be based, of course, only on existing information at the beginning of the calendar quarter. Changes in producer numbers as well as other occurrences during the quarter will affect somewhat the amount of money available.

Since this is a voluntary program there should be no provision for disclosure by the market administrator regarding the status of any producer under the program. It will be incumbent upon the participants, through their Agency, to conduct programs in a manner and of a nature to set the climate for maximum participation by producers.

It is possible that at some later date producers could request termination of the program, or that the order provisions could be terminated by the Secretary on a finding that they no longer tend to effectuate the declared policy of the Act. In the event that the provisions of the advertising and promotion program are terminated in their entirety, any remaining uncommitted funds applicable thereto should revert to producers since such moneys are derived solely from funds otherwise due producers. In each of these orders market-wide pools exist and such uncommitted funds appropriately should be deposited in the producer-settlement fund for distribution to producers.

Expenses incurred by the market administrator in the administration of the advertising and promotion program should be charged against the advertising and promotion funds. Neither the marketing service fund nor the administrative fund should be charged with costs directly related to the administration of the advertising and promotion program. The program is producer originated and should be self-sustaining. The expenses attendant to its administration appropriately should be borne by participating producers.

The statutory authority supports this position and makes it clear that this is intended to be strictly a producer program. In part the law states that "Establishing or providing for the establishment of * * * program * * * to be financed by producers in a manner and at a rate specified in the order, on all producer milk under the order. * * * All funds collected under this subparagraph shall be separately accounted for and shall be used only for the purpose for which they are collected."

To implement the advertising and promotion program under each order, it is necessary that certain provisions of the current orders be modified.

The provisions for computing the weighted average (or uniform) prices must be modified by inserting a new paragraph prescribing the deduction of 5 cents per hundredweight of producer milk from the aggregate value included in the computation. It is through this procedure that the advertising and promotion funds are reserved. This, of course, has the result of reducing the weighted average (or uniform) prices by 5 cents.

The advertising and promotion moneys so reserved will be held in the producer-settlement fund as a separate account for disposition by the market administrator in accordance with the terms and conditions prescribed under the advertising and promotion program order provisions.

In the Greater Kansas City order where a base and excess payment plan applies, it also is necessary to modify the provisions prescribing the computation of the uniform prices for base and excess milk so that the cost of the advertising and promotion program will be divided pro rata between base and excess milk rather than be placed on base milk alone. Official notice is taken of a decision with respect to the Nebraska-Western Iowa order (37 F.R. 23438) in which a Class I base plan is proposed. Appropriate provisions for computation of uniform prices are contained herein in the event such base plan is adopted.

It is necessary also that appropriate corollary changes be made in the provisions prescribing the obligations of a handler operating a partially regulated distributing plant and the obligations of any handler with respect to other source milk allocated to Class I (on which the pool obligation is the difference between the Class I and the weighted average price) so that such handler's pool obligations will not be increased by 5 cents because of the change in the weighted average price.

It is recognized that, unless otherwise provided for, an audit adjustment involving any handler's balance of payment to or from the producer-settlement fund could also require adjustments in the moneys to be turned over to the program or refunded to producers, as the case may be. However, such adjustment normally would not involve sufficient volumes of milk to significantly affect the moneys available to the program. For this reason and because of the substantial administrative costs that would be involved in reflecting audit adjustment in adjusted payments to the program, it is intended that such audit adjustments shall not result in adjustments of funds available to the program.

Other order modifications not specifically discussed herein are necessary and incidental to insure the proper functioning of the order to accommodate the advertising and promotion program as here established.

### Rulings on Proposed Findings and Conclusions

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

### General Findings

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and

conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the aforesaid marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

## PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. Section 1032.60 is revised as follows:

**§ 1032.60 Producer-handlers.**

Sections 1032.40 through 1032.54, 1032.61 through 1032.90 and 1032.110 through 1032.122 shall not apply to a producer-handler.

2. In § 1032.62, paragraph (b)(5) is revised as follows:

**§ 1032.62 Obligations of handler operating a partially regulated distributing plant.**

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location plus five cents, or the Class II price, whichever is higher; and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

3. In § 1032.71, a new paragraph (c–1) is added to read as follows:

**§ 1032.71 Computation of the uniform price.**

* * * * *

(c–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

* * * * *

4. In § 1032.84, paragraph (b)(2) is revised to read as follows:

**§ 1032.84 Payments to the producer-settlement fund.**

* * * * *

(b) * * *

(2) The value at the weighted average price(s) applicable at the location of the plant(s) from which received plus 5 cents (not to be less than the value at the Class II price) with respect to other source milk for which a value is computed pursuant to § 1032.70(f).

5. Immediately following § 1032.89, a new centerhead and new §§ 1032.110 through 1032.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

**§ 1032.110 Agency.**

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1032.121 (b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1032.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1032.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1032.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1032.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1032.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

**§ 1032.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1032.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1032.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible

for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1032.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

**§ 1032.115 Powers of the Agency.**

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1032.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1032.110 and 1032.117.

**§ 1032.116 Duties of the Agency.**

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select, from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1032.110 and 1032.117;

(c) Keep minutes, books, and records, and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

**§ 1032.117 Advertising, Research, Education, and Promotion Program.**

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

**§ 1032.118 Limitation of expenditures by the Agency.**

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1032.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

**§ 1032.119 Personal liability.**

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1032.120 Procedure for requesting refunds.**

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1032.71 (c-1): *Provided:* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1032.71(c-1).

**§ 1032.121 Duties of the market administrator.**

Except as specified in § 1032.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1032.113(c);

(b) Set aside the amounts subtracted under § 1032.71(c-1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such

producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1032.71(c–1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1032.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1032.71(c–1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1032.110 through 1032.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

**§ 1032.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1032.83.

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## PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. Section 1050.60 is revised as follows:

**§ 1050.60 Producer-handlers.**

Sections 1050.40 through 1050.54, 1050.61 through 1050.90, and 1050.110 through 1050.122 shall not apply to a producer-handler.

2. In § 1050.62, paragraph (b)(5) is revised as follows:

**§ 1050.62 Obligations of handler operating a partially regulated distributing plant.**

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant (not to be less than the Class II price), subtract its value at the weighted average price applicable at such location plus 5 cents, or the Class II price, whichever is higher; and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant (not to be less than the Class II price) less the value of such skim milk at the Class II price.

3. In § 1050.71, a new paragraph (c–1) is added to read as follows:

**§ 1050.71 Computation of the uniform price.**

* * * * *

(c–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

4. In § 1050.84, paragraph (b)(2) is revised to read as follows:

**§ 1050.84 Payments to the producer-settlement fund.**

* * * * *

(b) * * *

(2) The value at the weighted average price(s) applicable at the location of the plant(s) from which received plus 5 cents (not to be less than the value at the Class II price) with respect to other source milk for which a value is computed pursuant to § 1050.70(f).

5. Immediately following § 1050.89, a new centerhead and new §§ 1050.110 through 1050.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

**§ 1050.110 Agency.**

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1050.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1050.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations as provided for under § 1050.113(b), is authorized one agency representative for each full 10 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 10 percent of the total participating producers which have elected not to combine pursuant to § 1050.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1050.113(c), one Agency representative for each full 10 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 10 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1050.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

**§ 1050.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1050.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 10 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1050.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 10 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1050.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1050.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1050.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1050.110 and 1050.117.

§ 1050.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1050.110 and 1050.117;

(c) Keep minutes, books, and records, and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1050.117 Advertising, Research, Education and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1050.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1050.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1050.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1050.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1050.71(c-1). *Provided:* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1050.71(c-1).

§ 1050.121 Duties of the market administrator.

Except as specified in § 1050.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1050.113(c);

(b) Set aside the amounts subtracted under § 1050.71(c-1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1050.71(c-1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1050.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1050.71(c-1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1050.110 through 1050.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

**§ 1050.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund or § 1050.83.

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## PART 1062—MILK IN THE ST. LOUIS-OZARKS MARKETING AREA

1. In § 1062.60, paragraph (a) is revised as follows:

**§ 1062.60 Exemptions.**

(a) *Producer-handler.* Sections 1062.40 through 1062.46, 1062.50 through 1062.54, 1062.61, 1062.62, 1062.70 through 1062.72, 1062.80 through 1062.89 and 1062.110 through 1062.122 shall not apply to a producer-handler; and

* * * * *

2. In § 1062.62, paragraph (b)(5) is revised as follows:

**§ 1062.62 Obligations of handlers operating a partially regulated distributing plant.**

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, substract its value at the uniform price applicable at such location plus 5 cents (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

3. In § 1062.71, a new paragraph (c–1) is added as follows:

**§ 1062.71 Computation of uniform prices.**

* * * * *

(c–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents.

**§ 1062.84 [Amended]**

4. In § 1062.84, *Payments to the producer-settlement fund*, paragraph (b)(2) is revised by inserting the words "plus 5 cents" following the initial words "The value at the weighted average price(s) applicable at the location of the plant(s) from which received * * *"

5. Immediately following § 1062.88, a new centerhead and new §§ 1062.110 through 1062.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

**§ 1062.110 Agency.**

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1062.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1062.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1062.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1062.113(b), and participating producers who are not members of cooperatives are authorized to select from such group of participating producers, in total, pursuant to § 1062.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1062.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

**§ 1062.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1062.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1062.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1062.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1062.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1062.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1062.110 and 1062.117.

§ 1062.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1062.110 and 1062.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1062.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1062.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1062.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1062.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1062.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1062.71 (c-1): *Provided:* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1062.71(c-1).

§ 1062.121 Duties of the market administrator.

Except as specified in § 1062.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1062.113(c);

(b) Set aside the amounts subtracted under § 1062.71(c-1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1062.71(c-1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1062.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1062.71 (c-1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1062.110 through 1062.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1062.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1062.83.

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## PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. Section 1064.60 is revised as follows:

§ 1064.60 Exempt handlers.

Sections 1064.40 through 1064.46, 1064.50 through 1064.53, 1064.61, 1064.70, 1064.71, 1064.80 through 1064.88, and 1064.110 through 1064.122, shall not apply to a handler pursuant to § 1064.7(f), a producer-handler, or to a handler operating a plant from which less than an average of 600 pounds of Class I milk per day is distributed on routes in the marketing area.

2. In § 1064.61, paragraph (b)(5) is revised as follows:

§ 1064.61 Obligations of handler operating a partially regulated distributing plant.

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location plus 5 cents (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

3. In § 1064.71, a new paragraph (c–1) is added to read as follows:

§ 1064.71 Computation of uniform price.

* * * * *

(c–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

4. In § 1064.72 revise paragraphs (a) and (b) to read as follows:

§ 1064.72 Computation of uniform prices for base and excess milk.

* * * * *

(a) Subtract from the amount resulting from the computations made pursuant to paragraphs (a) through (d) of § 1064.71 an amount computed by multiplying the weighted average price plus 5 cents times the hundredweight of milk specified in § 1064.71(e)(2);

(b) Determine the value of excess milk by multiplying the hundredweight of producer milk determined to be excess milk in series beginning with Class III by the respective class prices minus 5 cents for milk of 3.5 percent butterfat content, and adding together the resulting amounts;

* * * * *

§ 1064.80 [Amended]

5. In § 1064.80, *Time and method of payment*, the phrase in paragraph (a) "at not less than the applicable uniform price(s) pursuant to § 1064.71 or § 1064.82" is changed to read "at not less than the applicable uniform price(s) pursuant to § 1064.71 or § 1064.72."

6. In § 1064.84, revise paragraph (a)(2)(ii) to read as follows:

§ 1064.84 Payments to the producer-settlement fund.

(a) * * *

(2) * * *

(ii) The value at the weighted average price(s) applicable at the location of the plant(s) from which received plus 5 cents (not to be less than the Class III price) with respect to other source milk for which a value is computed pursuant to § 1064.70(e).

7. Immediately following § 1064.88 a new centerhead and new §§ 1064.110 through 1064.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

§ 1064.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1064.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1064.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1064.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1064.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1064.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1064.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives but not less than five.

§ 1064.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1064.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1064.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee

(or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontines producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1064.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

**§ 1064.115 Powers of the Agency.**

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1064.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertisng and promotion programs and projects specified in §§ 1064.110 and 1064.117.

**§ 1064.116 Duties of the Agency.**

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1064.110 and 1064.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

**§ 1064.117 Advertising, research, education, and promotion program.**

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

**§ 1064.118 Limitation of exepnditures by the Agency.**

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1064.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

**§ 1064.119 Personal liability.**

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1064.120 Procedure for requesting refunds.**

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1064.71(c–1): *Provided:* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1064.71(c–1).

**§ 1064.121 Duties of the market administrator.**

Except as specified in § 1064.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1064.113(c);

(b) Set aside the amounts subtracted under § 1064.71(c–1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1064.71(c–1).

(3) After the end of each calendar quarter, make a refund to each producer

who has made application for such refund pursuant to § 1064.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1064.71(c–1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1064.110 through 1064.122).

(d) Make necessary audit to establish that all Agency funds are used only for authorized purposes.

**§ 1064.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1064.83.

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## PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.60 is revised as follows:

**§ 1065.60 Producer-handler.**

Sections 1065.40 through 1065.46, 1065.50 through 1065.53, 1065.70 through 1065.73, 1065.80 through 1065.87, and 1065.110 through 1065.122 shall not apply to a producer-handler.

2. In § 1065.62, paragraph (b)(5) is revised as follows:

**§ 1065.62 Obligations of handler operating a partially regulated distributing plant.**

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location plus 5 cents (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

3. In § 1065.71, a new paragraph (d–1) is added as follows:

**§ 1065.71 Computation of uniform prices.**

* * * * *

(d–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

4. In § 1065.82, paragraph (b)(2) is revised as follows:

**§ 1065.82 Payments to the producer-settlement fund.**

* * * * *

(b) * * *

(2) The value at the weighted average price(s) applicable at the location of the plant(s) from which received plus 5 cents (not to be less than the value at the Class III price) with respect to other source milk for which a value is computed pursuant to § 1065.70(e).

5. A new centerhead and new §§ 1065.110 through 1065.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

**§ 1065.110 Agency.**

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1065.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1065.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1065.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1065.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1065.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1065.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

**§ 1065.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1065.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1065.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1065.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1065.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1065.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1065.110 and 1065.117.

§ 1065.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1065.110 and 1065.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1065.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1065.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1065.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1065.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1065.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1065.71(d-1). *Provided:* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refunds with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1065.71(d-1).

§ 1065.121 Duties of the market administrator.

Except as specified in § 1065.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1065.113(c);

(b) Set aside the amounts subtracted under § 1065.71(d-1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1065.71(d-1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1065.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1065.71(d-1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1065.110 through 1065.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1065.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1065.81

AMENDMENTS TO APPLY IF A CLASS I BASE PLAN IS ADOPTED FOR THE NEBRASKA-WESTERN IOWA MARKETING AREA

6. Section 1065.71a is revised to read as follows:

§ 1065.71a Computation of uniform prices for base milk and excess milk.

For each month in which a base plan is effective the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk of 3.5-percent butterfat content received from producers as follows:

(a) From the net amount computed pursuant to § 1065.71 (a) through (e) subtract the amounts specified in subparagraphs (1) through (5) of this paragraph:

(1) The amount computed by multiplying the hundredweight of milk specified in § 1065.71(f)(2) by the weighted average price plus 5 cents for all milk;

(2) The amount obtained by multiplying by the Class III price, less 5 cents, the total hundredweight of milk delivered by all producers who have no Class I base;

(3) The amount computed by multiplying the hundredweight of excess milk by the Class III price, less 5 cents, for 3.5-percent butterfat milk provided that the quantity of milk to which the Class III price, less 5 cents, is applied pursuant to this subparagraph plus the quantity pursuant to subparagraph (2) of this paragraph shall not exceed the quantity of producer milk in Class III;

(4) An amount computed by multiplying any remaining hundredweight of excess milk by the Class II price, less 5 cents, for 3.5-percent butterfat milk to the extent that producer milk in Class II is available for such assignment; and

(5) An amount computed by multiplying any remaining hundredweight of excess milk by the Class I price, less 5 cents, for 3.5-percent butterfat milk;

(b) Divide the net amount obtained in paragraph (a) of this section by the total hundredweight of base milk and subtract not less than 4 cents but less than 5 cents. This result shall be known as the uniform base price per hundredweight of milk of 3.5-percent butterfat content; and

(c) Divide the amount obtained in paragraphs (a) (3), (4) and (5) of this section by the hundredweight of excess milk, and subtract any fractional part of 1 cent. This result shall be known as the uniform excess price per hundredweight of milk of 3.5-percent butterfat content.

§ 1065.80a [Amended]

7. In § 1065.80a, *Time and method of payment to producers and to cooperative associations*, paragraph (a) is revised by inserting the words "less 5 cents" (preceded and followed by commas), immediately following the words "at not less than the Class III price".

Signed at Washington, D.C. on December 1, 1972.

JOHN C. BLUM,
*Deputy Administrator,*
*Regulatory Programs.*

[FR Doc.72-20956 Filed 12-5-72;8:59 am]

# DEPARTMENT OF TRANSPORTATION

## Coast Guard

## [ 33 CFR Part 110 ]

[CGD 72-232P]

## HAMPTON ROADS, VA., AND ADJACENT WATERS

### Proposed Anchorage Grounds

The Coast Guard is considering amending the anchorage regulations for Hampton Roads, Va., and adjacent waters, published in 33 CFR 110.168. The particular section involved is § 110.168 (d) (1), Elizabeth River, Anchorage H-1, West Norfolk, south of Craney Island.

Craney Island Creek is scheduled to be dredged to allow passage of larger, deeper draft vessels to the planned Coast Guard Base at Craney Island. The entrance of larger vessels to this area necessitates a larger turning radius from the Norfolk Harbor. It is proposed to reduce the size of this anchorage to accomplish this.

Interested persons may participate in the proposed rule making by submitting written data, views, or arguments to the Commander, Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA 23705. Each person submitting comments should include his name and address, identify the notice (72-232P) and give any reasons for any recommended change in the proposal. Copies of all submissions received will be available for examination by interested persons at the Office of the Commander (mps), Fifth Coast Guard District.

The Commander, Fifth Coast Guard District, will forward any comments received before January 9, 1973, and his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, who will evaluate all communications received and take final action on the proposal. The proposed regulations may be changed in light of comments received.

In consideration of the foregoing, it is proposed to amend § 110.168(d)(1) of Part 110 of Title 33 of the Code of Federal Regulations to read as follows:

§ 110.168 Hampton Roads, Va., and adjacent waters.

* * * * *

(d) *Elizabeth River*—(1) *Anchorage H-1, West Norfolk.* The water area on the west side of Norfolk Harbor Channel, south of Craney Island enclosed by a line beginning at a point on the western edge of the Norfolk Harbor Channel at latitude 36°52'41" N., longitude 76°20'07" W.; thence to latitude 36°52'39.5' N., longitude 76°20'39" W.; thence to latitude 36°52'18.8" N., longitude 76°20'-34.3" W.; thence to latitude 36°52'22.2" N., longitude 76°20'03.8" W.; thence along the western boundary of the Norfolk Harbor Channel to the point of beginning.

* * * * *

(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 1.45(c)(1), 33 CFR 1.05-1(c)(1))

Dated: November 30, 1972.

W. M. BENKERT,
*Rear Admiral, U.S. Coast Guard,*
*Chief, Office of Marine Environment and Systems.*

[FR Doc.72-20953 Filed 12-5-72;8:59 am]

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## [ 33 CFR Part 110 ]

[CGD 72-233P]

## STRAITS OF JUAN DE FUCA AREA, WASH.

### Proposed Anchorage Grounds

The Coast Guard is considering amending the anchorage regulations to establish a nonanchorage area in Port Angeles Harbor, Wash. The purpose of this nonanchorage area is to protect a submerged outfall sewer pipeline and terminal diffusers.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander, Thirteenth Coast Guard District, 618 Second Avenue, Seattle, WA 98104. Each person submitting comments should include his name and address, identify this notice (72-233P) and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the Office of the Commander, Thirteenth Coast Guard District.

The Commander, Thirteenth Coast Guard District, will forward any comments received before January 9, 1973, and his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that a new § 110.229 be added to Part 110 of Title 33 of the Code of Federal Regulations to read as follows:

§ 110.229 Straits of Juan de Fuca, Wash.

(a) *Anchorage grounds*—(1) *Nonanchorage area (Port Angeles Harbor).* Beginning at a point on the shore at latitude 48°07'04.5" N., longitude 123°24'15.6" W.; thence to latitude 48°07'39.1" N.,

longitude 123°24'00" W.; thence to latitude 48°07'36.7" N., longitude 123°23'46" W.; thence to a point on the shoreline at latitude 48°06'57.4" N., longitude 123°-24'04" W.

(b) *The regulations.* (1) No vessel may anchor in this nonanchorage area at any time.

(2) Dragging, seining, fishing, or other activities which may foul underwater installations within this nonanchorage area are prohibited.

(3) Vessels may transit this nonanchorage area, but must proceed by the most direct route and without unnecessary delay.

(4) The city of Port Angeles will mark this area with signs on the shoreline visible (during normal daylight) 1 mile to seaward reading "Do Not Anchor in This Area."

(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))

Dated: November 30, 1972.

W. M. BENKERT,
*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.*

[FR Doc.72-20954 Filed 12-5-72;8:59 am]

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## [ 46 CFR Part 146 ]

[CGD 72-229 PH]

## METAL BORINGS, SHAVINGS, TURNINGS, CUTTINGS

### Proposed Transportation, Description and Characterization

The Coast Guard is considering amending the dangerous cargo regulations in 46 CFR 146.27 pertaining to the transport of metal borings, shavings, turnings, and cuttings. Amendments under consideration include the addition of a new section to Subpart 146.27 which would describe, in detail, the conditions under which this commodity could be carried in bulk. In addition, consideration is being given to the revision of § 146.27-100, column two, for this commodity in order to provide for a more up-to-date description and characterization.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the United States Coast Guard (GCMC), Washington, D.C. 20590. Each person submitting comments should include his name and address, identify the notice (CGD 72-229 PH), and give reasons for any recommendations. Comments received will be available for examination by interested persons in Room 8234, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC.

The Coast Guard will hold an informal hearing on January 11, 1973, at 9:30 a.m. in Conference Room 8334, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. Interested persons are invited to attend the hearing and present oral or written statements on this proposal. There will be no cross examination of persons presenting statements.

The Commandant will evaluate all communications received before January 15, 1973, and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

The need for this change stems from the large number of fire and/or spontaneous heating-related casualties which have resulted in the past on board cargo vessels transporting this material in bulk under the terms of the current regulations. The intent of this proposed amendment is to provide for a safer transportation environment for this commodity.

In consideration of the foregoing, the Coast Guard proposes to amend Part 146 of the Code of Federal Regulations as follows:

1. By amending Subpart 146.27 by adding a new § 146.27-28 to read as follows:

### Subpart 146.27—Detailed Regulations Governing Hazardous Articles

**§ 146.27-28 Metal borings, shavings, turnings, and cuttings.**

(a) *Applicability.* This section prescribes rules for the stowage and transportation of the hazardous article described as metal borings, shavings, turnings, and cuttings in § 146.27-100.

(b) *Conditions for stowage and transportation.* Metal borings, shavings, turnings, and cuttings may be stowed and transported in bulk in cargo vessels and barges to which this part applies if the following conditions are met:

(1) Each hold in which the article is stowed must have a fire-extinguishment system that uses carbon dioxide or an equivalent to carbon dioxide with respect to fire extinguishing capability.

(2) All wooden sweat battens and dunnage and debris must be removed from the hold before the article is loaded.

(3) During loading and transporting, each bilge must be as dry as practicable.

(4) During loading, the article must be compacted in the hold as frequently as practicable with a bulldozer or means that provides equivalent surface compaction. Upon the completion of loading, the article must be compacted and trimmed to eliminate peaks or mounds.

(5) Other cargo may be loaded in a hold containing the article if—

(i) The cargo to be loaded in the same hold with the article is not another hazardous material as defined in this part;

(ii) The loading of the article is completed first; and

(iii) The temperature of the article in the hold has not been above 130° F. at any time during or upon the completion of loading.

(6) During loading, the temperature of the article in the pile being loaded must be less than 130° F.

(7) The temperature of the article in each hold or compartment must be less than 150° F. when the vessel leaves the port.

(8) If the temperature of the article in a hold has been higher than 150° F., the temperature must have shown a downward trend below 150° F. for at least 8 hours before the vessel leaves the port.

(c) *Temperature of article.* For the purposes of each temperature requirement of this section, the temperature of the article is the highest temperature taken between 10 and 14 inches below the surface at 10-foot intervals over its length and width.

(d) *Duties of master and person in charge.* The following rules apply to the master or person in charge of each vessel that is loading and transporting the article:

(1) The master or person in charge of a vessel that is loading or transporting the article shall insure that the temperature of the article is taken—

(i) Before loading;

(ii) During loading, in each hold at least every 24 hours and, if the temperature is rising, as often as necessary to insure the conditions in this section are met;

(iii) After loading; and

(iv) During carriage, when signs of heating are observed.

(2) During loading, if the temperature of the article in a hold is 200° F. or higher, the master or person in charge of the vessel shall notify the Coast Guard Captain of the Port and suspend loading until the temperature of the article is less than 190° F.

(3) The master of a vessel that is carrying the article shall assure that the article is observed for signs of heating at least once every 24 hours.

(4) After loading, if the temperature of the article in a hold of a vessel is 150° F. or higher, the master or person in charge shall notify the Captain of the Port and insure that the vessel remains in the port area.

(5) After the vessel leaves the port, if the temperature of the article in a hold of a vessel rises above 149° F., the master shall notify the nearest Coast Guard Captain of the Port as soon as possible of—

(i) The name, nationality, and position of the vessel;

(ii) The most recent temperature taken;

(iii) The length of time that the temperature has been above 149° F. and the rate of rise, if any;

(iv) The port where the article was loaded and the destination of the article;

(v) The vessel's last port of call and its next port of call;

(vi) What action has been taken to cool the article; and

(vii) Whether any other cargo is endangered.

(6) The master of a vessel that is transporting the article shall insure that each temperature taken to meet the condition of this section is recorded.

**§ 146.27-100 [Amended]**

2. By amending Subpart 146.27 by completely revising the second column of § 146.27-100 for the article metal borings, shavings, turnings, cuttings as follows:

| * * * Characteristic properties, cautions * * * | markings required |
|---|---|
| *Small pieces of metal scrap which may be mixed with cutting oils, and combustible waste. The material when shipped is subject to spontaneous heating and ignition. Excessive amounts of cast iron borings or organic materials may encourage such heating. The material should be protected from moisture prior to and after loading. During loading, vessels' compartments should be closed or otherwise protected during inclement weather to keep the material dry; water, particularly sea water, should not be applied to the material except in the case of extreme emergency. Holds containing the material may have a reduced oxygen content; personnel should take precautions against possible asphyxiation prior to entering such holds.* | |
| Do not stow explosives in a hold above, below or adjacent to holds used for the stowage of this material. | |
| Do not stow the material in the same hold or compartment with any other hazardous materials cargo. | |
| Bulk shipments must be made under conditions prescribed in § 146.27-28. | |

* * * * *

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

Dated: December 1, 1972.

W. F. REA, III,
*Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.*

[FR Doc.72-20937 Filed 12-5-72;8:45 am]

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## National Highway Traffic Safety Administration

### [ 49 CFR Part 571 ]

[Docket No. 69-18; Notice 15]

### LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

### Turn Signal and Hazard Warning Signal Flashers; Extension of Time for Comments

A notice of proposed amendment to 49 CFR 571.108, Federal Motor Vehicle Safety Standard No. 108, which would amend requirements for turn signal and hazard warning signal flashers was published on November 3, 1972 (37 F.R. 23460). The closing date for comments on this proposal is December 4, 1972. Wagner Electric Corp., American Motors Corp., American Society for Quality Control, and Highway Safety Foundation have petitioned for an extension of the closing date to allow a more adequate opportunity to elevate the proposal and its implications, through testing and gathering of other data. In response to this request, the closing date for comments is hereby extended to January 18, 1973.

This notice is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407) and the delegations of authority at 49 CFR 1.51 and 501.8.

Issued on December 4, 1972.

ROBERT L. CARTER,
*Associate Administrator, Motor Vehicle Programs.*

[FR Doc.72-20967 Filed 12-4-72;11:19 am]

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# CIVIL AERONAUTICS BOARD

### [ 14 CFR Parts 207, 208, 212, 214 ]

[EDR-237A; Docket No. 24908]

### CHARTER GROUPS

### Suspension of "Prior Affinity" Charter Authority Pending Travel Group Charter Experiment; Supplemental Advance Notice of Proposed Rule Making

The Board by advance notice of proposed rule making EDR-237 dated November 9, 1972, and published at 37 F.R. 24193, gave notice that it was considering issuance of a notice of proposed rule making which would propose amendments to Parts 207, et al., of the Board's Economic Regulations so as to suspend the "prior affinity" charter rules pending the travel group charter experiment. Interested persons were invited to participate by the submission of 12 copies of written data, views, or arguments pertaining thereto to the Docket Section of the Board on or before December 15, 1972. Individual members of the general public were invited to participate through submission of comments in letter form without the necessity of filing additional copies thereof, by the above date.

Counsel for various carriers have now requested an extension of time for filing comments to January 3, 1973. It is asserted that the instant proceeding is of such vital importance to the carriers that the additional time requested is needed to prepare adequate responses to the advance notice.

The undersigned finds that good cause has been shown for a grant of the additional time requested for the filing of comments. Accordingly, pursuant to the authority delegated in § 385.20(d) of the Board's Organization Regulations, the undersigned hereby extends the time for submitting comments to January 3, 1973.

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

Dated: December 1, 1972.

[SEAL] ARTHUR H. SIMMS,
*Associate General Counsel, Rules and Rates.*

[FR Doc.72-20950 Filed 12-5-72;8:59 am]

# Notices

## EXECUTIVE OFFICE OF THE PRESIDENT

### Office of Consumer Affairs

### CONSUMER ADVISORY COUNCIL

### Notice of Public Meeting

Pursuant to Executive Order 11671 of June 5, 1972, notice is hereby given that there will be a public meeting of the Consumer Advisory Council to the Office of Consumer Affairs, Executive Office of the President, which will commence at 10 a.m. on December 13 in Room 5104, New Executive Office Building, 17th and H Streets NW., Washington D.C. 20506.

The Consumer Advisory Council is established under section 5 of Executive Order 11583 issued February 24, 1971, to advise the Director of the Office of Consumer Affairs with respect to policy matters relating to consumer interests, the effectiveness of Federal programs and operations which affect the interests of consumers, problems of primary importance to consumers, and ways in which unmet consumer needs can appropriately be met through Federal Government action.

The meeting is open to the public, with the number of persons admitted subject to reasonable limitation according to space available. The agenda will include official swearing-in of new and reappointed Council members, briefings on consumer activities and programs of the Office of Consumer Affairs and various other Federal agencies, to include the Food and Drug Administration and the Federal Trade Commission.

Signed at Washington, D.C., this 1st day of December 1972.

VIRGINIA H. KNAUER,
*Director, Office of Consumer Affairs and Executive Secretary, Consumer Advisory Council.*

[FR Doc.72-20960 Filed 12-5-72;9:00 am]

## DEPARTMENT OF THE TREASURY

### Bureau of Customs

### CALCIUM PANTOTHENATE FROM JAPAN

### Notice of Antidumping Proceeding

On October 20, 1972, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs regulations (19 CFR 153.26, 153.27), indicating a possibility that calcium pantothenate from Japan is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Having conducted a summary investigation as required by § 153.29 of the Customs regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the Bureau of Customs is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of information received from all sources is as follows:

The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs regulations (19 CFR 153.30).

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

Approved: December 1, 1972.

EUGENE T. ROSSIDES,
*Assistant Secretary of the Treasury.*

[FR Doc.72-21009 Filed 12-5-72;8:45 am]

## DEPARTMENT OF JUSTICE

### Law Enforcement Assistance Administration

### PROPOSED EQUAL RIGHTS GUIDELINES

### Notice of Informal Conference

Notice is hereby given that on Thursday, December 21, 1972, an informal conference will be held between the hours of 10 a.m. and 12 noon, and between the hours of 2 p.m. and 4 p.m. in Room 532, Federal Trade Commission Building, Sixth and Pennsylvania Avenue NW., Washington, D.C. Interested persons, groups, and representatives of interested organizations may attend, appear before, and file statements at the conference.

The conference will be convened by Administrator Jerris Leonard and Associate Administrators Richard W. Velde and Clarence M. Coster of the Law Enforcement Assistance Administration. Written and oral statements regarding the following proposed guidelines, which would become applicable to recipients of LEAA grants, if promulgated, will be considered.

The texts of the proposed guidelines are as follows:

MINORITY REPRESENTATION ON STATE PLANNING AGENCY SUPERVISORY BOARDS AND REGIONAL PLANNING UNITS

1. *Purpose.* This guideline provides guidance relating to the implications of title VI of the Civil Rights Act of 1964 concerning minority representation on State planning agency supervisory boards and regional planning unit supervisory boards.

2. *Scope.* The provisions of this guideline apply to all State planning agency supervisory boards and all regional planning unit supervisory boards administering LEAA funds.

3. *Requirement.* No individual on the basis of race, color, or national origin shall be denied appointment or selection for supervisory boards of State planning agencies or regional planning units existing pursuant to Section 203(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

4. *Legal implications.* a. The failure of the chief executive of a State to select otherwise qualified minority members of the law enforcement community, units of local government, public agencies maintaining programs to reduce and control crime, or representatives of community or citizen interests, pursuant to section 203(a) of the Omnibus Crime Control and Safe Streets Act, as amended, and the LEAA guidelines relating to the representative character required of such supervisory boards set forth in the LEAA Guideline Manual for State Planning Agency Grants (M 4100.1), pp. 6-7, 15-16, constitutes a violation of title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.

b. Where the proportion of members of a particular minority group on any such supervisory board is substantially less than the proportion of members of that particular minority group in the general population of the State or region, a prima facie violation of title VI of the Civil Rights Act of 1964 is established.

THE EFFECT ON MINORITIES AND WOMEN OF MINIMUM HEIGHT REQUIREMENTS FOR EMPLOYMENT OF LAW ENFORCEMENT OFFICERS

1. *Purpose.* This guideline is issued to assist in the elimination of discrimination based on national origin, sex, and race caused by the use of restrictive minimum height requirements criteria where such requirements are unrelated to the employment performance of law enforcement personnel.

2. *Scope.* The provisions of this guideline apply to all recipients of LEAA funds. This guideline is of concern to all State planning agencies.

3. *Background.* The use of minimum height requirements as criteria for employee selection, assignment, or similar personnel action tends to disqualify disproportionately women and persons of certain national origins, and races. Discrimination on the ground of race, color, creed, sex, or national origin is prohibited by the Department of Justice regulations concerning employment practices of State agencies or offices receiving financial assistance extended by the Department (28 CFR Part 42, subpart D).

4. *Requirement.* The use of minimum height requirements, which tend to disqualify disproportionately women and persons of certain national origins and races,

such as persons of Mexican and Puerto Rican ancestry, or oriental descent, will be considered violative to this Department's regulations prohibiting employment discrimination.

5. *Exceptions.* In those instances where the recipient of Federal assistance is able to demonstrate convincingly through the use of supportive factual data such as professionally validated studies that such minimum height requirements used by the recipient is an operational necessity for designated job categories, the minimum height requirement will not be considered discriminating.

6. *Definition.* The term operational necessity as used in this guideline shall refer to an employment practice for which there exists an overriding legitimate operational purpose such that the practice is necessary to the safe and efficient exercise of law enforcement duties; is sufficiently compelling to override any discriminatory impact; is effectively carrying out the operational purpose it is alleged to serve; and for which there are available no acceptable alternate policies or practices which would better accomplish the operational purpose advanced, or accomplish it equally well with a lesser discriminatory impact.

Any individual, group, or organization desiring to submit a written statement concerning either, or both, of the proposed guidelines should mail the statement so that it is received not later than Friday, December 15, 1972. Any individual, group, or organization desiring to make an oral presentation at the meeting should mail a written notification of such intention so that it is received not later than December 15, 1972. Each notification should include the name, address, and telephone number of the person or organization filing it, and should begin with a brief statement indicating whether such person favors or opposes such guidelines. Notifications and all other communications with LEAA concerning the proposed guidelines should be enclosed in an envelope plainly marked "Guideline Conference—Personal", and addressed to:

U.S. Department of Justice, Law Enforcement Assistance Administration, Office of Civil Rights Compliance, Washington, D.C. 20530.

After all proper notifications of intention to make an oral statement have been received, the available time will be divided equitably among the persons participating. All persons participating will be informed of the approximate time of their presentation.

At the conference, those persons favoring either one of the guidelines, or both, will be asked to make their presentations during the morning session. Those persons opposed to either one of the guidelines, or both, will be asked to make their presentations during the afternoon session. LEAA reserves the right to limit time allowed for discussion.

Persons, groups, or organizations desiring to participate in the conference are encouraged to cooperate with other such persons in the preparation of oral or written statements concerning points of view jointly held.

Dated: December 4, 1972.

JERRIS LEONARD,
*Administrator.*

[FR Doc.72-21065 Filed 12-5-72;9:24 am]

# DEPARTMENT OF THE INTERIOR

## National Park Service

## CURECANTI NATIONAL RECREATION AREA

### Notice of Intention To Issue Concession Permit

Pursuant to the provisions of section 5, of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Superintendent, Curecanti National Recreation Area, proposes to issue a concession permit to "The Denver Post" authorizing it to provide sale of newspapers for the public at Curecanti National Recreation Area for a period of 5 years from January 1, 1973, through December 31, 1977.

The foregoing concessioner has performed its obligations under a prior permit to the satisfaction of the National Park Service and, therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. However, under the Act cited above, the National Park Service is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Superintendent, Curecanti National Recreation Area, 334 South 10th, Montrose, CO 81401, for information as to the requirements of the proposed permit.

Dated: November 9, 1972.

KARL T. GILBERT,
*Superintendent,*
*Curecanti National Recreation Area.*

[FR Doc.72-20895 Filed 12-5-72;8:45 am]

# DEPARTMENT OF AGRICULTURE

## Soil Conservation Service

## CORNUDAS, NORTH AND CULP DRAWS WATERSHED PROJECT, TEXAS AND NEW MEXICO

### Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, U.S. Department of Agriculture, has prepared a final environmental statement for the Cornudas, North and Culp Draws Watershed Project, Hudspeth County, Tex., and Otero County, N. Mex., USDA-SCS-ES-WS-(ADM)-72-18(F).

The environmental statement concerns a plan for watershed protection and flood prevention. The plan includes conservation land treatment measures on about 110,072 acres of grassland and 10,968 acres of irrigated cropland, supplemented by three floodwater retarding structures.

The final environmental statement was transmitted to CEQ on November 29, 1972.

Copies are available for inspection during regular working hours at the following locations:

Soil Conservation Service, USDA, South Agriculture Building, Room 5227, 14th and Independence Avenue SW., Washington, D.C. 20250.

Soil Conservation Service, USDA, First National Bank Building, Post Office Box 648, Temple, TX 76501.

Soil Conservation Service, USDA, 517 Gold Avenue SW., Post Office Box 2007, Albuquerque, NM 87103.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151. Please order by name and number of statement. The estimated cost is $4.75.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

Dated: November 29, 1972.

J. W. HAAS,
*Acting Deputy Administrator for Watersheds, Soil Conservation Service.*

[FR Doc.72-20910 Filed 12-5-72;8:58 am]

## HITSON, C&L AND WASHBURN DRAWS WATERSHED PROJECT, TEX.

### Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, U.S. Department of Agriculture, has prepared a final environmental statement for the Hitson, C&L and Washburn Draws Watershed Project, Hudspeth County, Tex., USDA-SCS-ES-WS-(ADM)-72-19(F).

The environmental statement concerns a plan for watershed protection, flood prevention, and agricultural water management. The plan includes conservation land treatment measures on about 15,400 acres of grassland and 14,500 acres of irrigated cropland, supplemented, by one floodwater retarding structure, two multiple-purposes structures, and 25,150 feet of diversion.

The final environmental statement was transmitted to CEQ on November 29, 1972.

Copies are available for inspection during regular working hours at the following locations:

Soil Conservation Service, USDA, South Agriculture Building, Room 5227, 14th and Independence Avenue SW., Washington, D.C. 20250.

Soil Conservation Service, USDA, First National Bank Building, Post Office Box 648, Temple, TX 76501.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151. Please order by name and number of statement. The estimated cost is $4.50.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

Dated: November 29, 1972.

J. W. HAAS,
*Acting Deputy Administrator for Watersheds, Soil Conservation Service.*

[FR Doc.72-20909 Filed 12-5-72;8:58 am]

# DEPARTMENT OF COMMERCE

## Office of Import Programs

### MEDICAL UNIVERSITY OF SOUTH CAROLINA

#### Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 879) and the regulations issued thereunder as amended (37 F.R. 3892, et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 73-00062-33-43780. Applicant: Medical University of South Carolina, 80 Barre Street, Charleston, SC 29401. Article: Corticography set, depth electrode and stimulating electrode, bipolar. Manufacturer: E. Puodziunas, Canada. Intended use of article: The article is intended to be used to record brain waves at operation for epilepsy to find the abnormal area of the brain from which the epileptic activity is originating.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The article is capable of making electrical connections with the brain for recording brain waves during operations for epilepsy as an aid in locating epileptic foci. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated November 10, 1972, that the characteristic described above is pertinent to the purposes for which the article is intended to be used. HEW further advises that it knows of no comparable domestic instrument of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

B. BLANKENHEIMER,
*Acting Director,*
*Office of Import Programs Division.*

[FR Doc.72-20918 Filed 12-5-72;8:47 am]

### PURDUE UNIVERSITY

#### Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892, et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00256-98-41700. Applicant: Purdue University, Lafayette, Ind. 47097. Article: Carbon Dioxide TEA Laser System. Manufacturer: Gen Tec. Inc., Canada. Intended use of article: The article is intended to be used to study spontaneous and stimulated Raman scattering by free-charge carriers, multiphoton excitation process, harmonic generation, and frequency mixing of the following materials: InSb, PbTe, InAs, PbSnTe, and various narrow-gap semiconductors.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a peak power of 2 megawatts. The most closely comparable domestic instruments, carbon dioxide lasers, manufactured by TRW, Inc., provide 0.2 megawatts peak power. We are advised by the National Bureau of Standards (NBS) in the memorandum dated November 2, 1972, that the high peak power of 2 megawatts is pertinent to the purposes for which the article is intended to be used. NBS also advises that it knows of no comparable domestically manufactured instrument which is scientifically equivalent to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

B. BLANKENHEIMER,
*Acting Director,*
*Office of Import Programs Division.*

[FR Doc.72-20919 Filed 12-5-72;8:47 am]

# ATOMIC ENERGY COMMISSION

#### Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892, et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00491-75-40600. Applicant: U.S. Atomic Energy Commission, Los Alamos Area Office, Los Alamos, N. Mex. 87544. Article: Mass separator. Manufacturer: Nucletec S.A., Switzerland. Intended use of article: The article is intended to be used for the investigations of nuclear cross sections needed for the development of breeder reactors to meet the Nation's future power requirements.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides an ion current of 400 microamperes ($\mu$A). The most closely comparable domestic instrument is the isotope separator manufactured by the Colutron Corp. (Colutron). The Colutron isotope separator provides less than 40-$\mu$A ion current. We are advised by the National Bureau of Standards (NBS) in its memorandum dated November 13, 1972, that the best obtainable ion current capacity is pertinent to the applicant's study of short half-life isotopes. We, therefore, find that the Colutron isotope separator is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

B. BLANKENHEIMER,
*Acting Director,*
*Office of Import Programs.*

[FR Doc.72-20920 Filed 12-5-72;8:47 am]

### UNIVERSITY OF VIRGINIA 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. 73–00221–50–44630. Applicant: University of Virginia, Environmental Sciences, Brooks Hall, Charlottesville, Va. 22903. Article: Ballon-Borne Radio Altimeter. Manufacturer: Meeda Scientific Instrument, Israel. Intended use of article: The article is intended to be used to measure the altitude of instruments attached to the tether of a large balloon during investigations of the air flow regime in and around convective cumulus clouds. Application received by Commissioner of Customs: October 31, 1972.

Docket No. 73–00219–65–46070. Applicant: University of Southern California, University Park, Los Angeles, Calif. 90007. Article: Scanning Electron Microscope, Model S4–10. Manufacturer: Cambridge Scientific Instrument, Ltd., United Kingdom. Intended use of article: The article will be used to study through microscopy, cathodoluminescence and selected area diffraction, a wide range of materials, including semiconductors, metals, ceramics, biological materials, and geological materials. Such phenomena as appearance, voltage distribution, cathodoluminescence, and magnetic domain will be involved in the various scientific and engineering research studies. The foreign article will also be utilized in biology, engineering, dentistry, geology, and medical courses. Application received by Commissioner of Customs: November 6, 1972.

Docket No. 73–00218–33–46500. Applicant: University of Rochester School of Medicine and Dentistry, 260 Crittenden Boulevard, Rochester, NY 14642. Article: Ultramicrotome, Model OM U3. Manufacturer: C. Reichert Optische Werke, Austria. Intended use of article: The article is intended to be used in conjunction with a transmission electron microscope for studies of:

(i) The ultrastructure of normal and pathologic spleen and bone marrow from animals and humans,

(ii) The three-dimensional structure of normal and pathologic blood cells both in suspension and within the hemopoietic tissues, and

(iii) The ultrastructural fine detail of blood cell membranes at high resolution.

In addition, the article will be used for research training for hematology trainees to teach the students the techniques of electron microscopy including those involved in specimen preparation. Application received by Commissioner of Customs: November 6, 1972.

Docket No. 73–00216–00–61800. Applicant: Santa Monica College, 1815 Pearl Street, Santa Monica, CA 90405. Article: Planetarium projector, Model MS–8. Manufacturer: Minolta Camera Co., Ltd., Japan. Intended use of article: The article is intended to be used, together with the domestically manufactured control console in the courses listed below to demonstrate astronomical phenomena and also allow students participation and involvement: Stellar Astronomy, Solar Astronomy, Astronomical Observation and Modern Problems in Astronomy. Also scheduled are a series of astronomy classes geared to primary and secondary students in a program offered by the Earth Science Department of the college, specifically, Introduction to the Natural Environment, Weather and Climate, and Celestial Navigation and Piloting. Application received by Commissioner of Customs: October 31, 1972.

Docket No. 73–00215–99–46070. Applicant: Tulane University, 6823 St. Charles Avenue, New Orleans, LA 70118. Article: Scanning electron microscope, Model SS 600. Manufacturer: Cambridge Scientific Instruments, Ltd., United Kingdom. Intended use of article. The article is intended to be used to train graduate students and postdoctorals in the use and application of scanning electron microscopy to research problems relating to biological fine structure. The article will also be used as a demonstration device in undergraduate courses and as a source of teaching materials. The courses involved include:

Biology 758—Electron microscopy.
Biology 709–754—Special problems.
Biology 301—Cellular and molecular biology.
Biology 411—Cell biology.
Biology 422—Biology of microorganisms.
Biology 423—Invertebrate morphology.
Biology 434—Plant morphology.
Biology 610—Cellular biology of parasitism.

Ancillary to these educational purposes, the article will also be applied to several research programs by students and faculty, some of which include the following:

(1) Investigations of the fine structure of osmoregulatory organs in vertebrates and invertebrates,

(2) Investigation of the surface fine structure of endoparasitic helminths,

(3) Verification of microanatomical features of fungal spores in relation to taxonomic problems, and to investigate the composition of water bottom samples in connection with ecological problems, and

(4) Study of the microstructure of microorganisms, including a variety of bacteria and protozoa.

Application received by Commissioner of Customs: October 30, 1972.

Docket No. 73–00213–33–46040. Applicant: University of Florida, College of Medicine, M–268 Medical Science Building, Gainesville, Fla. 32601. Article: Electron microscope, Model Elmiskop 101. Manufacturer: Siemens AG, West Germany. Intended use of article: The article is intended to be used in the study of biological materials, principally tissue specimens from a variety of mammalian organs. The experiments conducted involve, for the most part, alteration of the physiological state of the testicular vascular bed, blockage of the efferent duct systems and the introduction of tracer materials to determine the integrity of the epithelial components after treatment with specific drugs. The article will also be used for teaching purposes in the courses MED 605, Research Methods in Anatomy; MED 678, Advanced Microscopic Anatomy; and MED 632, Techniques in Electron Microscopy. Application received by Commissioner of Customs: November 1, 1972.

Docket No. 73–00185–98–42900. Applicant: University of Oregon, Department of Physics, Eugene, Oreg. 97403. Article: Superconducting magnet. Manufacturer: S.H.E. Manufacturing Corp., United Kingdom. Intended use of article: The article is intended to be used in carrying out studies of the electronic point-scattering lifetime over the Fermi surface in dilute alloys, using the de Haas-van Alphen (dHvA) quantum oscillations in the magnetic susceptibility. Similar measurements of other anisotropic properties (for example, the conduction electron g-factor) will also be carried out using the dHvA effect. A second set of studies will apply to a lifetime-mapping technique to the study of the magnetic field and temperature dependence of resonant scattering by "magnetic" and "nonmagnetic" impurities (the "Kondo" problem) and by rare earth impurities. Studies of the electronic band structure and quantum chemistry of the NaTl family of intermetallic compounds and quantum oscillations in the susceptibility of refractory metals, such as transition metal carbides, as a means of determining the origin of their very useful electronic properties and cohesion are also intended. The article will also be used for graduate educational programs including Research Participation (Physics 501) and Ph. D. Thesis Research (Physics 503). Application received by Commissioner of Customs: October 5, 1972.

Docket No. 73–00211–00–46040. Applicant: University of Chicago, Department of Pathology, 950 East 59th Street, Chicago, Ill. 60637. Article: Universal Cassette for Elmiskop 101, Electron Microscope. Manufacturer: Siemens AG, West Germany. Intended use of article: The article is an accessory to an existing electron microscope beting used in studies of diagnostic material consisting of human renal biopsies. In addition, extended studies will be made of several experimental models produced in rats that have resemblance to human renal disease. Finally, a high resolution study of membrane formation in the renal medulla induced by electrolyte imbalance is to be

continued with emphasis on the unique nature of the liposomes formed. The article will also be used in medical school courses CPP 307 and Pathology 324 for teaching of clinical pathologic correlations from renal disease. Application received by Commissioner of Customs: October 27, 1972.

Docket No. 73-00223-33-71200. Applicant: Temple University, Broad and Montgomery Streets, Philadelphia, Pa. 19122. Article: Freeze-drying plant, Type FT-1 and accessories. Manufacturer: Bergman and Beving AB, Sweden. Intended use of article: The article is intended to be used in studies to determine the effect of drugs on histochemical fluorescence in brain. In addition the article will be used in the course Psychology 510, Physiological Psychology Laboratory designed to provide students with current research know-how including the use of freeze-drying apparatus. Application received by Commissioner of Customs: October 25, 1972.

Docket No. 73-00224-33-46500. Applicant: Veterans' Administration Hospital, Archer Road, Gainesville, Fla. 32601. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for ultrathin sectioning of resin-embedded specimens of normal and diseased tissues from humans as well as experimental animals. These specimens will be examined with an electron microscope during experiments centered primarily around human diseases and their experimental counterparts in laboratory animals, in order to study the ultrastructure of the disease process itself. The article will also be used in a course in electron microscopy, both at the technical and professional level, for instruction in the techniques of electron microscopy and interpretation of the ultrastructural features of disease states. Application received by Commissioner of Customs: November 7, 1972.

Docket No. 73-00225-33-46500. Applicant: W.V.U. School of Medicine, Department of Anesthesiology, Morgantown, W. Va. 26505. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in carrying out experiments on the normal, physiological structure of cells and tissues in regard to the transport and ingestion of macromolecules. In addition, variations in the structure of cells and tissues under experimental pathological conditions will be studied. Specific projects include: (1) The passage of protein tracers into skeletal muscle cells during pathological conditions induced by degeneration, (2) immunocytochemical localization of autonomic nervous system proteins, and (3) autoradiographic localization of anesthetic agents at the level of the electron microscope. Studies will be conducted to determine the effect of anesthetic agents on lung cytology and to study the damage of lung tissue resulting from pulmonary edema. The article will also be used for graduate level teaching in various courses depending on students point of origin. Application received by Commissioner of Customs: November 1, 1972.

B. BLANKENHEIMER,
*Acting Director,*
*Office of Import Programs.*

[FR Doc.72-20917 Filed 12-5-72;8:47 am]

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Health Services and Mental Health Administration

## NATIONAL COMMITTEE ON VITAL AND HEALTH STATISTICS

### Notice of Public Meeting

Pursuant to Executive Order 11671, the Administrator, Health Services and Mental Health Administration, announces the meeting date and other required information for the following National Advisory body scheduled to assemble the month of December 1972, in accordance with provisions set forth in section 13(a) (1) and (2) of that Executive order:

| Committee name | Date, time, place | Type of meeting and/or contact person |
|---|---|---|
| U.S. National Committee on Vital and Health Statistics, International Classification of Diseases Subcommittee. | Dec. 13, 9:30 a.m., Conference Room B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD. | Open. Contact Mrs. Alice Dolman, Room 9A-54, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, Code 301—443-1069. |

Purpose: To advise on ninth revision proposals prepared and submitted by the Federal Government on the International Classification of Diseases initiated by the World Health Organization.

Agenda: Final review of the recommendations on the Ninth Revision of the Classification of Diseases to be submitted to the World Health Organization.

Items for discussion are subject to change due to priorities as directed by the President of the United States, or the Secretary of Health, Education, and Welfare.

A roster of members may be obtained from the contact person listed above.

Dated: November 30, 1972.

ANDREW J. CARDINAL,
*Acting Associate Administrator for Management, Health Services and Mental Health Administration.*

[FR Doc.72-20916 Filed 12-5-72;8:47 am]

## National Institutes of Health

## PRIMATE RESEARCH CENTERS ADVISORY COMMITTEE

### Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the Primate Research Centers Advisory Committee commencing at 8:30 p.m. on December 6, 1972, and at 8:45 a.m. on December 7, 1972, and at 8:45 a.m. on December 8, 1972, at the Delta Primate Research Center, Covington, La. This meeting will be open to the public on December 6 from 8:30 p.m. to 9 p.m. for opening remarks and introduction of guests; it will be closed to the public on December 7 for the purpose of site visiting an applicant; and it will be closed to the public on December 8 from 8:45 a.m. until adjournment for review, discussion, and evaluation of applications in accordance with section 13(d) of Executive Order 11671 and the Secretary's Determination of September 27, 1972. Attendance by the public will be limited to space available.

The Information Officer who will furnish summaries of the meetings and rosters of committee members is Mr. James Augustine, Division of Research Resources, Building 31, Room 4B03, Bethesda, Md. 20014, 496-5545.

The Executive Secretary from whom substantive program information may be obtained is Dr. William J. Goodwin, Building 31, Room 5B30, Bethesda, Md. 20014, 496-5451.

Dated: November 30, 1972.

JOHN F. SHERMAN,
*Deputy Director,*
*National Institutes of Health.*

[FR Doc.72-20973 Filed 12-5-72;8:55 am]

# ATOMIC ENERGY COMMISSION

[Docket No. 50-412]

## DUQUESNE LIGHT CO. ET AL.

### Notice of Receipt of Application for Construction Permit and Facility License and Availability of Applicant's Environmental Report; Time for Submission of Views on Antitrust Matter

Duquesne Light Co., Ohio Edison Co., Pennsylvania Power Co., the Cleveland Electric Illuminating Co., and the Toledo Edison Co. (the applicants), pursuant to section 103 of the Atomic Energy Act of 1954, as amended, have filed an application, which was docketed October 20, 1972, for authorization to construct and operate a pressurized water nuclear reactor at its site, located in Shippingport Borough, Beaver County, Pa. The site consists of 449 acres of land, and is located on the south bank of the Ohio River approximately 1 mile from Midland, Pa., 5 miles east of East Liverpool, Ohio, and 22 miles northwest of Pittsburgh, Pa.

The proposed nuclear facility, designated by the applicant as Beaver Valley Power Station, Unit 2, is designed for initial operation at approximately 2660 megawatts (thermal) with a net electrical output of approximately 852 megawatts.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within 60 days after November 28, 1972.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20545, and at the Beaver Area Memorial Library, 100 College Avenue, Beaver, PA 15009.

The applicants have also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in appendix D to 10 CFR Part 50, a report entitled, "Applicants' Environmental Report—Construction Permit Stage," dated November 6, 1972. The report has been made available for public inspection at the aforementioned locations. The report, which discusses environmental considerations related to the proposed construction of the Beaver Valley Power Station, Unit 2, is also being made available at the Commonwealth of Pennsylvania, State Clearing House, 5100 Finance Building, Harrisburg, PA 17120, and at the Southwestern Pennsylvania Regional Planning Commission, 564 Forbes Avenue, Pittsburgh, PA 15219.

After the report has been analyzed by the Commission's Director of Regulation or his designee, a draft environmental statement related to the proposed action will be prepared by the Commission. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement. The summary notice will request comments from interested persons on the proposed action and on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials thereon will be made available when received.

Dated at Bethesda, Md., this 21st day of November 1972.

For the Atomic Energy Commission.

R. C. DEYOUNG,
*Assistant Director for Pressurized Water Reactors, Directorate of Licensing.*

[FR Doc.72-20358 Filed 11-28-72;8:45 am]

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[Docket Nos. 50-416, 50-417]

## MISSISSIPPI POWER AND LIGHT CO.

### Notice of Receipt of Application for Construction Permits and Facility Licenses; Time for Submission of Views on Antitrust Matter

Mississippi Power and Light Co., 308 East Pearl Street, Jackson, MS 39201, pursuant to section 103 of the Atomic Energy Act of 1954, as amended, has filed an application dated November 17, 1972, for authorization to construct and operate two single-cycle, forced circulation, boiling water nuclear reactors at its site, located in Claiborne County, Miss. The proposed site consists of 2,300 acres and is located on the east bank of the Mississippi River, approximately 25 miles south of Vicksburg, Miss., and 37 miles north of Natchez, Miss.

Each unit of the proposed facility, designated by the applicant as the Grand Gulf Nuclear Station, Units 1 and 2, is designed for initial operation at approximately 3,833 megawatts (thermal) with a net electrical output of approximately 1,313 megawatts.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within 60 days after December 5, 1972.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and in the Harriet Person Memorial Library, Municipal Building, Point Gibson, Miss. 39150.

Dated at Bethesda, Md., this 30th day of November 1972.

For the Atomic Energy Commission.

ROGER S. BOYD,
*Assistant Director for Boiling Water Reactors, Directorate of Licensing.*

[FR Doc.72-20939 Filed 12-5-72;8:45 am]

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[Docket No. 50-396]

## UNIVERSITY OF VIRGINIA

### Notice of Issuance of Construction Permit

No request for a hearing or petition for leave to intervene having been filed following publication of the notice of proposed action in the FEDERAL REGISTER on September 12, 1972 (37 F.R. 18486), the Atomic Energy Commission (the Commission) has issued Construction Permit No. CPRR-115 to the University of Virginia. The construction permit authorizes the University to construct the Cooperatively Assembled Virginia Low-Intensity Educational Reactor (Cavalier) for educational and training purposes on its campus located at Charlottesville, Va.

The Commission has found that the application for the construction permit, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations as published in 10 CFR Ch. I. The Commission has made the findings required by the Act and the Commission's regulations which are set forth in the construction permit, and has concluded that the issuance of the construction permit will not be inimical to the common defense and security or to the health and safety of the public.

A copy of Construction Permit No. CPRR-115 is available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC, or a copy may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 16th day of November 1972.

For the Atomic Energy Commission.

ROBERT J. SCHEMEL,
*Acting Assistant Director for Operating Reactors, Directorate of Licensing.*

[FR Doc.72-20936 Filed 12-5-72;8:45 am]

# CIVIL AERONAUTICS BOARD

[Docket No. 24488; Order 72-11-132]

## INTERNATIONAL AIR TRANSPORT ASSOCIATION

### Order Regarding Proportional Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of November 1972.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement was adopted for January 1, 1973, effectiveness at the Worldwide Passenger Traffic Conference held September–October 1972, at Torremolinos, Spain.

The agreement reflects adjustments in proportional fares to/from United States points used in the construction of through fares across the Atlantic and Pacific, and results from recent increases, in United States domestic first-class fares filed to implement the Board's action in Phase 7 of the "Domestic Passenger-Fare Investigation."[1]

The Board, acting pursuant to sections 102, 204(a) and 412 of the Act, does not find the following resolutions, incorporated in the agreement as indicated, to be adverse to the public interest or in violation of the Act:

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[1] Previous filings implementing the 2.7-percent domestic increases approved by the Board were reflected in an IATA agreement (CAB 23275, R-1 through R-3) to increase the corresponding proportionals accordingly. The agreement was approved by the Board in Order 72-10-46 of Oct. 16, 1972.

| CAB Agreement 23402 | IATA No. | Title | Application |
|---|---|---|---|
| R-1 | 015 | North Atlantic Proportional Fares—North America | 1/2; 1/2/3. |
| R-2 | 015a | South Pacific Proportional Fares—North America | 3/1. |
| R-3 | 015b | North and Central Pacific Proportional Fares—North America | 3/1. |

*Accordingly, it is ordered,* That:

Agreement CAB 23402, R-1 through R-3, be and hereby is approved.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

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

[FR Doc.72-20951 Filed 12-5-72;8:59 am]

# FEDERAL POWER COMMISSION

## NATIONAL GAS SURVEY DISTRIBUTION-TECHNICAL ADVISORY TASK FORCE-REGULATION AND LEGISLATION

### Agenda for Meeting

Agenda for meeting to be held in Conference Room 2043 of the Federal Power Commission, 441 G Street NW., Washington, DC, December 14, 1972, 10 a.m.

Presiding: Mr. Charles A. Gallagher, FPC Survey Coordinating Representative and Secretary.

1. Call to order and introductory remarks—Mr. Gallagher.
2. Review of surveys on State regulation—Mr. Jonel Hill.
3. Review of position papers—Mr. Arthur R. Seder, Jr.
4. Discussion of legislative and regulatory recommendations including aspects of the environmental impact on regulation and legislation—Mr. A. R. Seder, Jr.
5. Consideration of format and timing of final report—Mr. A. R. Seder.
6. Status of assigned work programs and estimated date for completion—Mr. A. R. Seder.
7. Other business.
8. Date of next meeting.
9. Adjournment—Mr. Gallagher.

This meeting is open to the public.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.72-21035 Filed 12-5-72;8:45 am]

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[Docket No. RP72-113]

## COLORADO INTERSTATE GAS CO.

### Notice of Further Extension of Time

NOVEMBER 28, 1972.

On November 21, 1972, Commission Staff Counsel filed a motion for an extension of time to and including December 6, 1972, within which to file staff's evidence in the above-designated matter. On the same day, Colorado Interstate Gas Co. filed a motion to modify the other procedural dates fixed by the order of the Chief Administrative Law Judge issued on September 25, 1972. The motion states that all parties and Commission Staff Counsel have been contacted and have expressed no objection to the request.

Upon consideration, notice is hereby given that the procedural dates fixed by the order issued September 25, 1972, are modified as follows:

1. Staff evidence shall be filed and served on or before December 6, 1972;
2. Interveners' evidence shall be filed and served on or before January 4, 1973;
3. Applicant's rebuttal evidence shall be filed and served on or before January 18, 1973;
4. The prehearing conference will commence on December 12, 1972, at 10 a.m., e.s.t.;
5. The hearing will commence on January 30, 1973, at 10 a.m., e.s.t.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.72-21037 Filed 12-5-72;8:45 am]

# FEDERAL RESERVE SYSTEM

## CHASE MANHATTAN CORP.

### Order Approving Acquisition of Bank

The Chase Manhattan Corp., New York, N.Y., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Chase Manhattan Bank of the Mid-Hudson (National Association), Saugerties, N.Y., the successor by merger to Saugerties National Bank and Trust Co., Saugerties, N.Y. (Bank). The bank to be acquired has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of voting shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the second largest banking organization in New York in terms of domestic deposits, controls four subsidiary banks with aggregate deposits of approximately $13.6 billion, representing 14.1 percent of the total deposits in commercial banks in the State. (Unless otherwise noted, deposit data are as of December 31, 1971, and market data are as of June 30, 1970, adjusted to reflect bank holding company formations and acquisitions approved by the Board through October 31, 1972.) Consummation of the proposal would not significantly increase applicant's share of deposits in the State.

Bank ($12.9 million in deposits) is the 17th largest of 29 banks in the Mid-Hudson banking market, which includes all of Dutchess, Putnam, and Ulster Counties, and the Newburgh area of Orange County, controlling 1.7 percent of the deposits in that market. The nearest office of one of applicant's banking subsidiaries is approximately 60 miles south of Bank's Barclay Heights branch and there is no significant existing competition between this or any other of applicant's subsidiaries. While applicant is a likely potential entrant to the market, it is unlikely that, absent this proposal, applicant would enter de novo. Its ket, it is unlikely that, absent this proposal, applicant would enter de novo. Its subsidiaries are prohibited until January 1, 1976, from branching into the market and, due to the low ratio of population to banking offices in the market, establishment of a de novo subsidiary appears unlikely. Additionally, consummation of the proposal would not be likely to raise barriers to entry since Bank is not a significant factor in the market and there are 21 independent banks remaining for acquisition. Consummation of the proposal will not have any significant adverse effects on existing or potential competition.

The financial and managerial resources and future prospects of applicant, its subsidiary banks and Bank are satisfactory and consistent with approval. The banking needs of the communities involved are being adequately met at present. However, applicant proposes to provide through Bank an alternative source of specialized banking needs. Considerations relating to convenience and needs of the communities to be served are consistent with approval. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

Applicant owns two nonbanking subsidiaries, Berkeley Service Corp., Boston, Mass., and Dovenmuehle, Inc., Chicago, Ill., which were acquired on June 4, 1969, and December 19, 1969, respectively. Berkeley Service Corp. is a service agency for the Shapiro Factors Division of the Chase Manhattan Bank, and Dovenmuehle, Inc., is a mortgage servicing company.

In making its determination herein, the Board has relied upon a finding that the combination of an additional subsidiary bank with applicant's existing nonbanking subsidiaries is unlikely to have an adverse effect upon the public interest at the present time. However, applicant's banking and nonbanking activities remain subject to Board review and the Board retains the authority to require applicant to modify or terminate its nonbanking activities or holdings if the Board at any time determines that the combination of applicant's banking and nonbanking activities is likely to

have adverse effects on the public interest.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York pursuant to delegated authority.

By order of the Board of Governors,[1] effective November 28, 1972.

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

[FR Doc.72-20926 Filed 12-5-72;8:46 am]

## CLEVETRUST CORP.

### Formation of Bank Holding Company

CleveTrust Corp., Wilmington, Del., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to the Cleveland Trust Co., Cleveland, Ohio, as well as 100 percent of the voting shares (less directors' qualifying shares) of the Cleveland Trust Co. of Painesville, Painesville, Ohio, and of the Cleveland Trust Co. of Lorain, Lorain, Ohio, both of which are proposed new banks and which would acquire certain assets of the Cleveland Trust Co. 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 Cleveland. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 27, 1972.

Board of Governors of the Federal Reserve System, November 30, 1972.

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

[FR Doc.72-20925 Filed 12-5-72;8:46 am]

## DURANT BANCORPORATION, INC.

### Formation of Bank Holding Company

Durant Bancorporation, Inc., Durant, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 81.07 percent or more of the voting shares of The Durant Bank & Trust Co., Durant, Okla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 27, 1972.

Board of Governors of the Federal Reserve System, November 30, 1972.

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

[FR Doc.72-20924 Filed 12-5-72;8:46 am]

## FIRST AMTENN CORP.

### Proposed Acquisition of Atlantic Discount Co., Inc.

First Amtenn Corp., Nashville, Tenn., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Atlantic Discount Co., Inc., Jacksonville, Fla., and 48 wholly owned subsidiaries of this company located in Florida and Georgia. Notice of the application was published in newspapers circulated in Florida, in the communities where offices of the proposed subsidiary are located.

Applicant states that the proposed subsidiary would engage in the following activities: (1) Making or acquiring, for its own account or the account of others, loans and other extensions of credit such as would be made by a finance company, including secured and unsecured loans to individuals; discounting of installment sales contracts; and secured commercial financing, such as dealer floor-plan financing and lease financing; and (2) acting as agent or broker in selling the following types of insurance to borrowing customers: Credit life insurance, accident and health insurance, and property damage insurance on collateral supporting loans made by Atlantic Discount Co. and its subsidiaries. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 27, 1972.

Board of Governors of the Federal Reserve System, November 30, 1972.

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

[FR Doc.72-20929 Filed 12-5-72;8:46 am]

## FIDELITY FINANCIAL CORPORATION OF MICHIGAN

### Formation of Bank Holding Company

Fidelity Financial Corporation of Michigan, Birmingham, Mich., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares of Fidelity Bank of Michigan, Birmingham, Mich. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 26, 1972.

Board of Governors of the Federal Reserve System, November 28, 1972.

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

[FR Doc.72-20930 Filed 12-5-72;8:46 am]

## FIRST NATIONAL CITY CORP.

### Proposed Acquisition of Gateway Life Insurance Company

First National City Corp., New York, N.Y., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to indirectly acquire voting shares of Gateway Life Insurance Co., Phoenix, Ariz. Applicant has applied (37 F.R. 19402) to acquire Acceptance Finance Co., Clayton, Mo., a consumer finance company. Gateway Life Insurance Company is a wholly owned subsidiary of Acceptance Finance Co. and would be acquired by First National City Corp. indirectly, through the acquisition

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Sheehan, and Bucher. Governor Brimmer voted against this action for the reasons set forth in the dissenting statement in the matter of the application of First National City Corp. to acquire the National Exchange Bank of Castleton-on-Hudson (58 Bulletin 724).

of Acceptance Finance Co. Notice of the application was published on the following dates in the following newspapers:

On August 24, 1972:

The Gainesville Times, Gainesville, Ga.
The Augusta Chronicle-Herald, Augusta, Ga.
The Orlando Sentinel Star, Orlando, Fla.
The Pensacola News Journal, Pensacola, Fla.
The Fort Walton Beach Playground News, Fort Walton Beach, Fla.
The Miami Herald News, Miami, Fla.
The Wall Street Journal, Pacific Coast and Southwest Editions.

On August 25, 1972:

The Atlanta Journal-Constitution, Atlanta, Ga.
The Macon Telegraph-News, Macon, Ga.

Applicant states that the proposed subsidiary would engage in the underwriting, as reinsurer, of group term life and accident and health risks only in connection with credit extended by its parent company, Acceptance Finance Co.

Interested persons may express their views as to whether such activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto. In considering this application the Board will take into account the record of its March 24, 1972, hearing on six similar applications by other applicants involving the underwriting of credit life and health and accident insurance.

Interested persons may also express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 26, 1972.

Board of Governors of the Federal Reserve System, November 28, 1972.

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

[FR Doc.72-20927 Filed 12-5-72;8:46 am]

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## MERCANTILE BANKSHARES CORP.

### Order Approving Acquisition of Bank

Mercantile Bankshares Corp., Baltimore, Md., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3) to acquire not less than 80 percent of the voting shares of Westminster Trust Co., Westminster, Md. (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls six banks with aggregate deposits of approximately $323 million, and is the sixth largest banking organization in Maryland, with 5.4 percent of commercial bank deposits in the State. (All banking data are as of December 31, 1971, and reflect bank holding company formations and acquisitions approved by the Board through October 31, 1972.) Acquisition of Bank ($20.8 million in deposits) would increase applicant's share of statewide deposits by only 0.4 percent and its ranking in the State would remain unchanged.

Bank is the second largest of 11 banking organizations competing in Carroll County, with 12.1 percent of countywide deposits. Applicant's offices located closest to Bank are about 18 and 20 miles southeast of Westminster, in Cockeysville and Pikesville, respectively. It appears that there is no significant existing competition between Bank and any of applicant's banking offices. Moreover, it appears unlikely that such competition would develop in the future in the light of the facts of record, notably, the distances separating Bank from applicant's present subsidiary banks, the number of banks located in the intervening area, and the projected moderate growth of Carroll County through 1980. On the basis of the record before it, the Board concludes that consummation of the proposed acquisition would not have an adverse effect on competition in any relevant area.

The financial and managerial resources and prospects of applicant and its subsidiary banks, and Bank, are regarded as satisfactory and consistent with approval of the application. It appears that the banking needs of the area are being met; however, customers of Bank should benefit from the higher lending limits and additional services that applicant will be able to provide. Considerations relating to the convenience and needs of the community to be served lend slight weight toward approval of this application. It is the Board's judgment that the proposed transaction is in the public interest and should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Richmond pursuant to delegated authority.

By order of the Board of Governors,[2] effective November 28, 1972.

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

[FR Doc.72-20928 Filed 12-5-72;8:46 am]

# POSTAL RATE COMMISSION

## UNITED PARCEL SERVICE FACILITIES

### Notice of Presentation and Visit

DECEMBER 4, 1972.

Notice is hereby given that on December 12, 1972, a presentation will be made by United Parcel Service to the Commissioners and employees of the Postal Rate Commission for the purpose of describing its operations relating to use of U.S. mail service. On December 13, 1972, a visit will be made to United Parcel Service facilities in Baltimore, Md.

No particular matter at issue in contested proceedings before the Commission nor the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission will be discussed. A report of the presentation and visit will be on file in the Commission's docket room.

By direction of the Commission.

JOSEPH A. FISHER,
*Secretary.*

[FR Doc.72-21002 Filed 12-5-72;8:55 am]

# POSTAL SERVICE

## POSTAL CONTRACTING MANUAL

### Notice of Amendments

Notice is hereby given that the Postal Contracting Manual, Publication 41 (see 39 CFR Part 601), has been amended by the issuances listed below:

(1) Transmittal Letter 2, dated September 8, 1972.[1]

(2) Transmittal Letter 3, dated October 16, 1972.

(3) Transmittal Letter 4, dated October 18, 1972.

(4) Transmittal Letter 5, dated December 5, 1972.

This notice is given pursuant to § 601.105 of Title 39, Code of Federal Regulations, which provides that notice of changes made in the Postal Contracting Manual will be periodically published in the FEDERAL REGISTER; that the text of such changes will be filed with the Director, Office of the Federal Register; and that subscribers to the basic manual will receive the amendments from the

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[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Brimmer, Sheehan, and Bucher. Absent and not voting: Governor Daane.

[1] Transmittal Letter 1 accompanied the basic manual.

Government Printing Office. (For other availability of the Postal Contracting Manual, see 39 CFR 601.04.)

Amendments of the Postal Contracting Manual accompanying Transmittal Letters 2, 3, 4, and 5 were filed with the Director, Office of the Federal Register simultaneously with the filing of this document.

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411, 2008)

ROGER P. CRAIG,
*Deputy General Counsel.*

[FR Doc.72-20922 Filed 12-5-72;8:47 am]

# SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

## CRYSTALOGRAPHY CORP.

### Order Suspending Trading

NOVEMBER 29, 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 Crystalography 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 30, 1972, through December 9, 1972.

By the Commission.

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

[FR Doc.72-20935 Filed 12-5-72;8:46 am]

[File No. 500-1]

## MINUTE APPROVED CREDIT PLAN, INC.

### Order Suspending Trading

NOVEMBER 29, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.05 par value, and all other securities of Minute Approved Credit Plan, 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 30, 1972, through December 9, 1972.

By the Commission.

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

[FR Doc.72-20934 Filed 12-5-72;8:46 am]

[812-3196]

## NEW AMERICA FUND, INC.

### Notice of Filing of Application

NOVEMBER 30, 1972.

Notice is hereby given that New America Fund, Inc. (Applicant), 1900 Avenue of the Stars, Los Angeles, CA 90067, a closed-end diversified management investment company registered under the Investment Company Act of 1940 (the Act), has filed an application pursuant to section 17(b) of the Act for an order of the Commission permitting the sale of an aggregate of 111,464 shares of common stock of Oxford Electric Corp. (Oxford), a Delaware corporation, to Oxford pursuant to an agreement between Oxford and Applicant dated April 12, 1972. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant owns 6.5 percent or 111,464 shares of the common stock of Oxford (the Shares). Under section 2(a)(3) of the Act, Applicant is an affiliate of Oxford, and Oxford is an affiliated person of Applicant. Section 17(a) of the Act, as here pertinent, provides that it is unlawful for any affiliated person of a registered investment company knowingly to purchase any securities from such investment company unless an exemption be granted pursuant to section 17(b) of the Act. Section 17(b) of the Act provides that the Commission may exempt such a transaction from the provisions of section 17(a) if (1) the terms of the proposed transaction, including the consideration to be paid or received are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of the registered investment company as recited in its registration statement and reports filed under the Act; and (3) the proposed transaction is consistent with the general purpose of the Act.

Applicant represents that it purchased the Shares on May 7, 1969, from A. P. Parts Corp. in a transaction which did not involve an issuer, underwriter, or dealer and was therefore exempt under section 4(1) of the Securities Act of 1933, as amended.

In accordance with the April 12, 1972, agreement between Applicant and Oxford, Oxford has agreed to purchase the Shares from Applicant at a price of $2.20 per share or a total of $245,220.80. The price of the shares was equal to the price for the Shares on the American Stock Exchange at the time that the agreement between the two parties was reached. Applicant expects to receive an aggregate of $245,220.80 from Oxford for the Shares.

At the Applicant's annual meeting of stockholders held December 16, 1971, the stockholders of Applicant voted to change Applicant's principal investment objective and policy from that of investing in restricted securities to investing in marketable securities. Applicant is now authorized to invest up to 100 percent of its total assets in marketable securities, and Applicant is currently in the process of disposing of its investments in restricted securities including the Shares.

Notice is further given that any interested person may, not later than December 22, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter, accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address set forth above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Company Regulation, pursuant to delegated authority.

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

[FR Doc.72-20933 Filed 12-5-72;8:46 am]

[812-3285]

## PITTWAY CORP.

### Notice of Filing of Application

NOVEMBER 30, 1972.

Notice is hereby given that Pittway Corp. (Applicant), 601 Skokie Boulevard, Northbrook, Illinois 60062, a subsidiary of Standard Shares, Inc. (Standard), a closed end, nondiversified, management

investment company, has filed an application pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 (Act) and Rule 17d–1 under section 17(d) of the Act for an order of the Commission permitting Valois, S.A. (Valois) and Perfect-Ventil GmbH (P–V), subsidiaries of Applicant, to enter into and consummate the agreements described below. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

At July 31, 1972, Standard owned 1,138,900 shares of Applicant's common stock, constituting approximately 38 percent of the outstanding common stock of Applicant. Applicant, at said date, owned 100 percent of the outstanding equity of P–V and 80 percent of the outstanding equity of Valois. As a result of such stock ownership, Standard may be deemed to be in control of Applicant, and Applicant, and through it, Standard, may be deemed to control both P–V and Valais, within the meaning of the Act. As a result of such control, P–V and Valais may be deemed to be affiliated persons of Applicant and of Standard, within the meaning of the Act.

Applicant is a diversified operating company engaged in manufacturing burglar and fire alarm equipment and devices, packaging aerosol products, manufacturing aerosol valves, publishing trade magazines and directories, and investment participations in real estate ventures in and near Chicago, Ill., and Montreal, Quebec, Canada. Its aerosol operations are conducted in the United States by its areosol division through Barr-Stalfort Co., a packager of aerosol products, and Seaquist Valve Co., a manufacturer of aerosol valves and related products, and outside the United States through three separate corporate subsidiaries: Seaquist Valve Co. of Canada, Ltd., P–V and Valois.

Applicant states that in December 1968, as part of its program to expand its aerosol valve operations into foreign markets, Applicant organized P–V, a German corporation, with Carl G. Siebel, a nonaffiliated German citizen, with Applicant acquiring 49 percent of the equity for cash. Siebel acquired the remaining 51 percent for machinery, equipment and an exclusive and irrevocable license, including the right to sublicense others, to manufacture, use, and sell in Europe, Africa, and other designated areas of the world certain aerosol valves under certain patents, design patents, and patent applications owned and filed, respectively by Siebel.

Applicant further states that as a result of the acquisition of Siebel's interest by P–V in September 1971, Applicant became, and presently is, the owner of 100 percent of the equity of P–V.

Applicant states that its affiliation with Valois began in November 1970 with its purchase from Mr. and Mrs. Jean Ramis, nonaffiliated French citizens, of 80 percent of their 100 percent equity interest in Valois, a French corporation engaged in the manufacture, sale, and distribution of aerosol valves, principally for the perfume, cologne, and pharmaceutical industries. Applicant states that the original arrangements contemplated its acquisition of the Ramis' entire interest, but that in order to comply with the sellers' requirements, acquisition of the remaining 20 percent was deferred until effected in July 1972 by Applicant's designee, Compagnie Financiere d'Investissements et de Participations (COFIP), a nonaffiliated French corporation.

Applicant states that although both Valois and P–V are engaged in the manufacture, sale, and distribution of aerosol products, their products are generally used in different segments of the aerosal industry; that P–V products are adapted for general commercial purposes, e.g., hair sprays, shaving soaps, starches, etc., and Valois products for special purposes, such as perfumes, colognes, and pharmaceuticals.

In order to broaden Valois' product line and increase its market penetration in France and other areas, Applicant proposes to cause P–V and Valois to enter into a license agreement (License Agreement), pursuant to which P–V would grant Valois an exclusive sublicense with respect to the patent rights of which it is presently a sublicensee from Siebel to manufacture, use and sell aerosol valves, atomizers, pumps, and accessories, and inventions involved in filling processes and filling facilities (Products) within the geographical area of Europe, Africa, and the Near East, as defined therein (Territory). The license would be for the unexpired term (including renewals) of the underlying patents. P–V would retain a nonexclusive, royalty-free license to manufacture, use, and sell the Products within the Territory, except in France. The License Agreement contains provisions requiring Valois to manufacture the products to P–V's specifications, and gives P–V a right of inspection. It also provides for the exchange of information with respect to any improvements and for the filing of patent applications covering patentable improvements by the party making the same, subject to the provisions in the License Agreement. In consideration of the grant of the license, Valois would pay to P–V a royalty of 5 percent of its net sales in the Territory, subject to minimum royalties of 150,000 French francs (FF) for 1973, 250,000 FF for 1974, and 400,000 FF for 1975, and would also be responsible for the French added value tax and any other applicable French indirect taxes.

Applicant states that P–V has developed and owns valuable and secret know-how relating to the manufacture, use and sale of the Products which Valois would require in order to obtain the maximum benefits from the license. Accordingly, Applicant proposes to cause P–V and Valois to enter into a purchase agreement (Purchase Agreement), pursuant to which P–V would sell to Valois for a purchase price of 500,000 FF all of the unpatented manufacturing and engineering technology, for the exclusive and perpetual use of Valois in the Territory, which P–V presently owns or controls pertaining to the manufacture, use and sale of the Products, including all drawings, designs, formulae, processes specifications, material specifications, purchasing specifications, test data, and manuals (know-how); provided, however, that Valois would grant to P–V a nonexclusive, royalty-free license to use the know-how in the Federal Republic of Germany. P–V would agree not to disclose the know-how to any other person in the Territory except as may be reasonably necessary for the manufacture and sale of the Products.

Applicant represents that the proposed transactions reflect its careful and considered business judgments as to the most efficient and advantageous manner of conducting its worldwide aerosol business operations and as to the fairness and reasonableness of the consideration to be paid by Valois for the rights it will acquire under the agreements with P–V, and, accordingly, that the agreements involve no risks to Applicant's stockholders, or to the stockholders of Standard, other than those normally associated with unfettered and informed business decisions by an operating company in fields in which it already has extensive experience and expertise. Applicant further asserts that its control of both corporations insures that the transactions between them do not disadvantage the stockholders of Applicant or of Standard and that no controlling influence has been exercised by any outside party.

Applicant represents that the proposed transactions are fair and reasonable and do not involve overreaching; and that such transactions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 17(a) of the Act, as here pertinent, prohibits an affiliated person of a registered investment company or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company or any company controlled by such registered investment company any property unless the Commission, upon application pursuant to section 17(b), grants an exemption from the provisions of section 17(a) if evidence establishes that the terms of the proposed transactions, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned. In addition, the proposed transaction must be consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

Section 17(d) of the Act and Rule 17d–1 thereunder, taken together, provide among other things, that it shall be unlawful for any affiliated person of a registered investment company or any affiliated person of such a person, acting as principal, to effect any transaction in which such registered company, or a company controlled by such registered

Company, is a participant unless an application regarding such arrangement has been granted by an order of the Commission, and that, in passing upon such an application, the Commission will consider whether the participation of such registered or controlled company in such arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. A joint enterprise or arrangement, as used in Rule 17d–1 is defined as a written or oral plan, contract, authorization, or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company or a controlled company thereof and any affiliated person of such registered company or any affiliated person of such person have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking.

Section 6(c) permits the Commission, upon application, to exempt a transaction or transactions from any provision of the Act if it finds that such an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 19, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address set forth above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Company Regulation, pursuant to delegated authority.

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

[FR Doc.72-20931 Filed 12-5-72;8:45 am]

[812-3288]

## STATE STREET INVESTMENT CORP.

### Notice of Filing of Application for an Order Exempting Sale by Open-End Company of Its Securities at Other Than Public Offering Price

NOVEMBER 30, 1972.

Notice is hereby given that State Street Investment Corp. (Applicant), 225 Franklin Street, Boston, MA 02110, a Massachusetts corporation registered under the Investment Company Act of 1940 (Act) as a diversified, open-end management investment company, has filed an application pursuant to section 6(c) of the Act requesting an order of the Commission exempting Applicant from the provisions of section 22(d) of the Act which, in pertinent part, prohibit a registered investment company from selling any redeemable security issued by it to any person except either to or through a principal underwriter for distribution at a current public offering price as described in the prospectus, insofar as such section might prohibit Applicant, which does not have a current prospectus, from acquiring the assets of Sego Trading Co. (Sego) in exchange for shares of Applicant without the imposition of any sales charges. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant represents that Sego, a New Jersey corporation, was incorporated in 1927 and has since operated as a family private investment company, investing and reinvesting its assets in a diversified portfolio of securities. Substantially all of Sego's assets are in the form of investments in marketable securities, cash, and cash items. At the present time Sego has 18 shareholders; is a personal holding company for Federal income tax purposes; and is subject to Federal and New Jersey corporate income taxes. Applicant asserts that Sego is excepted from the definition of an investment company by reason of section 3(c)(1) of the Act.

On October 11, 1972, Applicant and Sego entered into an agreement (Agreement) whereby substantially all of the assets of Sego (the "Agreed Assets") are to be acquired by Applicant in exchange for shares of Applicant's common stock. Excluded from the Agreed Assets of Sego to be transferred to Applicant are Sego's investments in rental real estate and interests in oil and gas leases. Such assets will be either retained by Sego or converted into cash or marketable securities and transferred to Applicant. Pursuant to the Agreement, the number of Applicant's shares to be delivered to Sego shall be determined on the closing date as defined in the Agreement by dividing the aggregate value of the Agreed Assets of Sego (subject to certain adjustments as set forth in the Agreement) to be transferred to Applicant by the net asset value per share of Applicant.

Applicant and Sego have applied for a ruling from the Internal Revenue Service (the receipt of which is a condition to the consummation of the proposed transaction) to the effect that the contemplated transaction will constitute a tax-free reorganization and consequently, among other things, the Federal tax basis to Applicant of the assets acquired from Sego will be the same as those assets had in the hands of Sego. The adjustment provided for in the Agreement requires that in determining the number of shares of Applicant to be delivered to Sego, the aggregate value of the Agreed Assets of Sego shall be reduced by an amount determined by application of a formula designed to compensate Applicant for any potential tax liability resulting from any excess in the proportion of the net asset value of Sego represented by realized and unrealized appreciation over the proportion of the net asset value of Applicant represented by realized and unrealized appreciation. The value of the Agreed Assets of Sego is to be further reduced by an amount equal to three-quarters of 1 percent of the value of the securities of Sego to be transferred to Applicant.

As of August 31, 1972, the market value of the assets of Sego to be delivered to Applicant was approximately $8,382,000. Following consummation of the transaction, Applicant intends to sell certain securities transferred to it by Sego having a market value of up to, but not in excess of, 20 percent of the value of the Agreed Assets of Sego at the closing date. The remainder of the assets received will be retained in Applicant's portfolio. When the shares of Applicant are received by Sego, Sego will distribute such shares to its stockholders upon liquidation of Sego. Applicant has been advised that the stockholders of Sego have no present intention of redeeming any substantial number, or otherwise transferring any, of Applicant's shares following the proposed transaction.

Applicant represents that neither Sego nor any shareholder, director, or officer of Sego is either an "affiliated person" of Applicant, or an "affiliated person" of any "affiliated person" of Applicant. The Agreement was negotiated at arms length by the principals of Sego and Applicant.

Section 22(d) of the Act provides that registered open-end investment companies may sell their shares only at the current public offering price as described in the prospectus. Section 6(c) of the Act permits the Commission, upon application, to exempt a transaction if it finds that such an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 19, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should

order a hearing thereon. Any such communication should be addressed. Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Company Regulation, pursuant to delegated authority.

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

[FR Doc.72–20932 Filed 12–5–72;8:45 am]

# SELECTIVE SERVICE SYSTEM

## REGISTRANTS PROCESSING MANUAL

The Registrants Processing Manual is an internal manual of the Selective Service System. The following portions of that manual are considered to be of sufficient interest to warrant publication in the FEDERAL REGISTER. Therefore these materials are set forth in full as follows:

[Temporary Instruction 600–3]

DISTRIBUTION OF REGISTRANT PROCESSING MANUAL

Due to the many instances of local board consolidation, relocation, and collocation now taking place, RPM chapters and revisions will continue to be distributed as they have been in the past, until further notice. You will be notified when the distribution schedule contained in Table No. 600–1 (October 1, 1972) of Chapter 600 of the RPM is to be implemented.

This temporary instruction will terminate on June 30, 1973.

Issued: November 20, 1972.

[Temporary Instruction 626–1]

PANEL REASSIGNMENT OF CERTAIN APPEAL CASES

1. The reassignment of certain appeal cases from the originally designated panel of a State Appeal Board to another panel of the same appeal board may be accomplished under the following conditions:

a. The registrant had previously requested a personal appearance before a panel of the appeal board, had failed to appear as scheduled, and had offered a satisfactory and timely explanation as to the reason for his failure to appear, and

b. Such reassignment would avoid undue delay in registrant processing, and

c. Both panels have the same geographic jurisdiction within the appeal board area.

2. The reassignment may be made by the Appeal Board Clerk with the concurrence of the Chairman of each appeal panel concerned and will be documented in the minutes and appropriate Docket Book entries for both panels.

This temporary instruction shall terminate upon publication of revised Chapter 626, RPM.

Issued: November 28, 1972.

BYRON V. PEPITONE,
*Acting Director.*

NOVEMBER 30, 1972.

[FR Doc.72–20955 Filed 12–5–72;8:59 am]

# SMALL BUSINESS ADMINISTRATION

[License No. 10/10–0160]

## FARWEST EQUITY VENTURES, INC.

### Notice of Application for License as Small Business Investment Company

Notice is hereby given concerning the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the SBA Rules and Regulations governing small business investment companies (13 CFR 107.102 (1972)) under the name of Farwest Equity Ventures, Inc. (applicant), 507 Denny Building, Seattle, WA 98121, for a license to operate in the State of Washington as a small business investment company under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers and directors are as follows:

James F. Lonergan, president, treasurer, and director, 8390 Woodbrook Lane, Mercer Island, WA 98040.
James W. Dupar, secretary and director, 737 Belmont Place, East, Seattle, WA 98102.
Carl Nipp, director, 960 Lake Front Road, Lake Oswego, OR 97034.
Robert R. Vickers, director, 2225 Coberg Road, Eugene, OR 97401.

The applicant is registered as a closed-end nondiversified investment company under the Investment Company Act of 1940 in accordance with the provisions of that Act and has requested that the capitalization of the applicant ($300,000) be raised through public sale of its securities.

The applicant has also filed an offering circular with the Securities and Exchange Commission in accordance with its rules that the sale of these securities be exempt from registration under the Securities Act of 1933 in accordance with the provisions of Regulation E issued under that Act.

The applicant will raise its private capital through a public offering under the provisions of the aforementioned Regulation E. It is expected that the securities offered for sale will be sold primarily by Mr. James F. Lonergan, president of the company, who is licensed to sell the securities in the State of Washington. The applicant may allow one or more licensed broker-dealers to sell this common stock for a commission of $1 per share without any reimbursement of costs from the applicant but no sales agreements have been negotiated or entered into with any such broker-dealers at this time. There is no relationship between the applicant and any firm engaged in business as a broker-dealer.

The exact amount of private capital and the owners thereof will not be known until the applicant is licensed since the stock has yet to be sold.

The applicant will begin operations with a minimum initial capitalization of $300,000, net after organization expenses. The applicant will not be licensed by SBA until this amount of capital is raised and if raised in accordance with the provisions of the aforementioned (net proceeds so received by the company) Regulation E. The first 100,000 cannot be issued to more than 25 responsible persons and no more than $500,000 can be issued.

No concentration in any particular industry is planned. The applicant intends to make investments in small business concerns, with growth potential, located primarily within the State of Washington.

Matters involved in SBA's consideration of the application include the general business reputation and character of the management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and regulations.

Notice is further given that any interested person may, not later than fifteen (15) days from the date of publication of this notice, submit to SBA, in writing, relevant comments on the proposed company. Any communication should be addressed to: Associate Administrator for Operations and Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Seattle, Wash.

Dated: November 28, 1972.

ANTHONY G. CHASE,
*Deputy Administrator.*

[FR Doc.72–20899 Filed 12–5–72;8:47 am]

# INTERSTATE COMMERCE COMMISSION

[Notice 100]

## APPLICATIONS BY MOTOR CARRIERS OF PROPERTY OR PASSENGERS

NOVEMBER 30, 1972.

The following applications are governed by the Interstate Commerce Commission's special rules governing notice

of filing of applications by motor carriers of property or passengers under sections 5 and 210a(b) of the Interstate Commerce Act, and certain other proceedings with respect thereto. (49 CFR 1100.240)

MOTOR CARRIERS OF PROPERTY

No. MC–F–11730. Authority sought for control by QUALPECO TRANSPORTATION, INC., a noncarrier, 750 Third Avenue, New York, NY 10017, of (A) M & M TRANSPORTATION COMPANY, 186 Alewife Brook Parkway, Cambridge, MA 02138; (B) B & P MOTOR EXPRESS, INC., 720 Gross Street, Pittsburgh, PA 15224; and (C) C. I. WHITTEN TRANSFER COMPANY, Post Office Box 1833, Huntington, WV 25719, and for acquisition by HERBERT T. KERR, also of New York, N.Y. 10017, of control of M & M TRANSPORTATION COMPANY; B & P MOTOR EXPRESS, INC.; and C. I. WHITTEN TRANSFER COMPANY, through the acquisition by QUALPECO TRANSPORTATION, INC. Applicant's attorney: Herbert Burstein, 1 World Trade Center, New York, N.Y. 10048. Operating rights sought to be controlled: (A) *General commodities*, with usual exceptions, as a *common carrier* over regular and irregular routes, from, to, and between specified points in the States of Massachusetts, Connecticut, New Jersey, New York, Pennsylvania, Rhode Island, with certain restrictions, serving various intermediate and off-route points, as more specifically described in Docket No. MC–69275 and subnumbers thereunder; (B) *general commodities*, with usual exceptions, over regular and irregular routes, from, to, and between specified points in the States of Pennsylvania, Maryland, Virginia, Michigan, Ohio, Illinois, Indiana, Wisconsin, West Virginia, New York, New Jersey, Kentucky, and the District of Columbia, with certain restrictions, serving various intermediate and off-route points over three alternate routes for operating convenience only, as more specifically described in Docket No. MC–1936 and subnumbers thereunder; and (C) explosives and related commodities, over regular and irregular routes, from, to, and between specified points in the States of West Virginia, Pennsylvania, Ohio, Kentucky, Virginia, North Carolina, New Jersey, Alabama, Connecticut, Delaware, Maryland, Vermont, Massachusetts, Maine, New York, Tennessee, Illinois, New Hampshire, Rhode Island, Wisconsin, Iowa, Florida, Michigan, Louisiana, Texas, Arkansas, and the District of Columbia, with certain restrictions, serving various intermediate and off-route points over one alternate route for operating convenience only, as more specifically described in Docket No. MC–47142 and subnumbers thereunder. This does not purport to be a complete description of all of the operating rights of the carriers involved. The foregoing summaries are believed to be sufficient for purposes of public notice regarding the nature and extent of these carriers' operating rights, without stating, in full, the entirety, thereof. QUALPECO TRANSPORTATION, INC., holds no authority from this Commission. However, it is controlled by U.S. INDUSTRIES, INC., which presently controls M & M TRANSPORTATION COMPANY, B & P MOTOR EXPRESS, INC., and C. I. WHITTEN TRANSFER COMPANY. Application has not been filed for temporary authorization under section 210a(b).

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.72–20947 Filed 12–5–72;9:00 am]

[Notice 130]

## ASSIGNMENT OF HEARINGS

DECEMBER 1, 1972.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 127418 Sub 5, Trop-Artic Refrigerated Service, Inc., now assigned January 10, 1973, at Atlanta, Ga., is postponed indefinitely.

MC–73165 Sub 302, Eagle Motor Lines, Inc., now assigned December 4, 1972, at Birmingham, Ala., is canceled and application dismissed.

No. 35585, Akron, Canton & Youngstown Railroad Co., et al. v. Aberdeen and Rockfish Railroad Co., et al., No. 35585 Sub 1, Burlington Northern, Inc., et al. v. Aberdeen and Rockfish Railroad Co., et al., No. 32055, Louisville and Nashville Railroad Co., et al. v. Akron, Canton, & Youngstown Railroad Co., et al., No. 34275, Cincinnati, New Orleans & Texas Pacific Railway Co., et al., v. Akron, Canton & Youngstown Railroad Co., et al., continued prehearing conference now assigned December 5, 1972, at Washington, D.C., is postponed to December 12, 1972, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 136155 Sub 2, Gay Trucking Co., Inc., now being assigned hearing January 10, 1973 (3 days), at Atlanta, Ga., in a hearing room to be later designated.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.72–20948 Filed 12–5–72;9:00 am]

[Notice 35]

## MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

DECEMBER 1, 1972.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice therof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC–13300 (Deviation No. 27) (Correction), CAROLINA COACH COMPANY, 1201 South Blount Street, Raleigh, NC 27602, filed October 25, 1972. Carrier's representative: James E. Wilson, Suite 1032, Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, D.C. 20004. The summary of this deviation notice published in the FEDERAL REGISTER November 15, 1972, should be corrected to show the correct deviation number assigned to the deviation notice to be Deviation No. 27, incorrectly shown in the summary of the notice as Deviation No. 26.

No. MC–29647 (Deviation No. 4), CHARLTON BROS. TRANSPORTATION CO., INC., Post Office Box 2097, Hagerstown, MD 21740, filed November 10, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Harrisburg, Pa., over Interstate Highway 78 to junction Interstate Highway 287, thence over Interstate Highway 287 to junction U.S. Highway 1, at Metuchen, N.J., thence over U.S. Highway 1 to Hoboken, N.J., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Harrisburg, Pa., over Pennsylvania Highway 230 to Lancaster, Pa., thence over U.S. Highway 30 to Philadelphia, Pa., thence over U.S. Highway 1 to Hoboken, N.J. (also from Philadelphia over city streets to Camden, N.J., thence over U.S. Highway 130 to the junction U.S. Highway 1), and return over the same routes.

No. MC–48958 (Deviation No. 43), ILLINOIS - CALIFORNIA EXPRESS, INC., Post Office Box 9050, Amarillo, TX 79105, filed November 17, 1972. Carrier's representative: Morris G. Cobb, same address as applicant. Carrier proposes to operate as a *common carrier*, by

motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Amarillo, Tex., over U.S. Highway 87 (Interstate Highway 27) to Lubbock, Tex., thence over U.S. Highway 84 to junction Texas Highway 208, thence over Texas Highway 208 to junction Interstate Highway 20 (U.S. Highway 80), thence over Interstate Highway 20 (U.S. Highway 80) to Abilene, Tex., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Amarillo, Tex., over U.S. Highway 287 via Wichita Falls, Tex., to Rhome, Tex., thence over Texas Highway 114 to Dallas, Tex., (2) from Jacksboro, Tex., over Texas Highway 199 to Seymour, Tex., thence over U.S. Highway 283 to the Texas-Oklahoma State line, (3) from Olney, Tex., over Texas Highway 79 to junction U.S. Highway 283, at or near Throckmorton, Tex., thence over U.S. Highway 283 to Albany, Tex., and (4) from Abilene, Tex., over Texas Highway 351 to junction U.S. Highway 180, thence over U.S. Highway 180 to Albany, Tex., thence over U.S. Highway 283 to Throckmorton, Tex., and return over the same routes.

No. MC-48958 (Deviation No. 44), ILLINOIS - CALIFORNIA EXPRESS, INC., Post Office Box 9050, Amarillo, TX 79105, filed November 20, 1972. Carrier's representative: Morris G. Cobb, same address as applicant. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Phoenix, Ariz., over Interstate Highway 10 to Las Cruces, N. Mex., over U.S. Highway 70 to Roswell, N. Mex., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Salt Lake City, Utah over U.S. Highway 91 to Levan, Utah, thence over Utah Highway 28 to Gunnison, Utah (also from Salt Lake City over U.S. Highway 89 to Gunnison), thence over U.S. Highway 89 to junction Alternate U.S. Highway 89 at or near Kanab, Utah, thence over Alternate U.S. Highway 89 to junction U.S. Highway 89, thence over U.S. Highway 89 to Flagstaff, Ariz., thence over Interstate Highway 17 to Phoenix, Ariz., (2) from Los Angeles, Calif., over U.S. Highway 66 via San Bernardino, Calif., to Albuquerque, N. Mex., thence over U.S. Highway 85 to Denver, Colo. (also from junction U.S. Highway 85 and unnumbered highway about 3 miles south of Greenhorn, Colo., over unnumbered highway to Crow, Colo., thence over Colorado Highway 165 to junction U.S. Highway 85 north of Crow; also from junction U.S. Highway 85 and Colorado Highway 105 approximately ½ mile south of Monument, Colo., over Colorado Highway 105 to Palmer Lake, Colo., thence over Colorado Highway 393 to junction U.S. Highway 85 approximately 1½ miles north of Larkspur, Colo., (3) from Albuquerque, N. Mex., over U.S. Highway 66 to Moriarty, N. Mex., thence over New Mexico Highway 41 to junction U.S. Highway 60, thence over U.S. Highway 60 to Baughn, N. Mex., thence over U.S. Highway 285 to Carlsbad, N. Mex., thence over U.S. Highway 62 to El Paso, Tex., and (4) from junction U.S. Highway 66 and New Mexico Highway 41 over U.S. Highway 66 to Clines Corners, N. Mex., thence over U.S. Highway 285 to junction U.S. Highway 60, and return over the same routes.

No. MC-111383 (Deviation No. 14), BRASWELL MOTOR FREIGHT LINES, INC., 3925 Singleton Boulevard, Post Office Box 4447, Dallas, TX 75208, filed November 21, 1972. Carriers' representative: Lawrence A. Winkle, 4645 North-Central Expressway, Dallas, TX 75205. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) from New Orleans, La., over U.S. Highway 11 to junction Interstate Highway 10, thence over Interstate Highway 10 to junction Interstate Highway 59, thence over Interstate Highway 59 to Meridian, Miss., and (2) from New Orleans, La., over U.S. Highway 90 to junction Interstate Highway 10, thence over Interstate Highway 10 to junction Interstate Highway 65, thence over Interstate Highway 65 to Montgomery, Ala., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Jackson, Miss., over U.S. Highway 51 to junction U.S. Highway 61, thence over U.S. Highway 61 to New Orleans, La., (2) from Jackson, Miss., over U.S. Highway 80 to junction U.S. Highway 11, thence over U.S. Highway 11 to Birmingham, Ala., thence over U.S. Highway 78 to Atlanta, Ga., (3) from Jackson, Miss., over U.S. Highway 80 to Tuskegee, Ala., thence over U.S. Highway 29 to Atlanta, Ga., and (4) from Tuskegee, Ala., over U.S. Highway 80 to Columbus, Ga., thence over Alternate U.S. Highway 27 to junction Georgia Highway 85, thence over Georgia Highway 85 to junction Georgia Highway 85-E, thence over Georgia Highway 85-E via Manchester, Ga., to Woodbury, Ga., thence over Georgia Highway 85 to Atlanta, Ga., and return over the same routes.

No. MC 111383 (Deviation No. 15), BRASWELL MOTOR FREIGHT LINES, INC., 3925 Singleton Boulevard, Post Office Box 4447, Dallas, TX 75208, filed November 21, 1972. Carrier's representative: Lawrence A. Winkle, 4645 North Central Expressway, Dallas, TX 75205. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) from Tulsa, Okla., over U.S. Highway 75 to junction with the Indian Nation Turnpike, thence over the Indian Nation Turnpike to junction U.S. Highway 69, thence over U.S. Highway 69 to junction U.S. Highway 75, thence over U.S. Highway 75 to Dallas, Tex., and (2) from junction U.S. Highways 75 and 266 over U.S. Highway 75 to junction with the Indian Nation Turnpike, thence over the Indian Nation Turnpike to junction U.S. Highway 70, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Oklahoma City, Okla., over U.S. Highway 77 to junction unnumbered highway, near Gainesville, Tex., thence over unnumbered highway to junction U.S. Highway 82, thence over U.S. Highway 82 to Gainesville, Tex., thence over U.S. Highway 77 to Dallas, Tex., (2) from Tulsa, Okla., over U.S. Highway 66 to Oklahoma City, Okla., and (3) from Shreveport, La., over Louisiana Highway 1 to the Louisiana-Texas State line, thence over Texas Highway 77 to Naples, Tex., thence over U.S. Highway 67 to Mount Pleasant, Tex., thence over U.S. Highway 271 to Antlers, Okla., thence over Oklahoma Highway 3 to junction U.S. Highway 75 near Coalgate, Okla., thence over U.S. Highway 75 to Tulsa, Okla., and return over the same routes.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.72-20945 Filed 12-5-72;9:00 am]

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[Notice 98]

## MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

DECEMBER 1, 1972.

The following publications[1] are governed by the new Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

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[1] Except as otherwise specifically noted, each applicant (on applications filed after Mar. 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 96007 (Sub-No. 27) (Amendment), filed August 12, 1971, published in the FEDERAL REGISTER, issues of September 23,1971, and April 12,1972, and republished as amended this issue. Applicant: KENNETH HUDSON, INC., doing business as, HUDSON BUS LINES, 70 Union Street, Medford, MA 02155. Applicant's representative: Mary E. Kelley, 11 Riverside Avenue, Medford, MA 02155. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage, and express* in the same vehicle with passengers, in special operations, between Logan International Airport in Boston, Mass., on the one hand, and, on the other, points in Belknap County, N.H.; points in that part of Hillsborough County, N.H., east of U.S. Highway 202 (except Manchester and Nashua); points in that part of Merrimack County, N.H., east of a line drawn along U.S. Highway 202 from the Hillsborough County line to Henniker, thence along New Hampshire Highway 114 to its junction with New Hampshire Highway 11, thence along New Hampshire 11 to its junction with U.S. Highway 4 and thence along U.S. Highway 4 to the Grafton County line (except Concord, N.H., and Andover, N.H.); points in that part of Grafton County, N.H., east of a line drawn along U.S. Highway 4 from the Merrimack County line to Canaan, thence along N.H. Highway 118 to North Woodstock, thence along U.S. Highway 3 to the Coos County line; and points in that part of Rockingham County, N.H., on and west of New Hampshire Highway 28 (except Derry and Salem). NOTE: Common control may be involved. Hearing: Before Joint Board No. 20, January 16, 1973, at Concord, N.H., at a place to be later designated.

No. MC 136609 (Republication), filed April 10, 1972, published in the FEDERAL REGISTER issue of May 4, 1972, and republished this issue. Applicant: ALL ROADS TRUCKING CORP., 804 71st Street, Brooklyn, NY 11228. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. An order of the Commission, Operating Rights Board, dated November 6, 1972, and served November 21, 1972, finds that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of auto and truck accessories and parts, between New York, N.Y., on the one hand, and, on the other, points in Orange and Rockland Counties, N.Y., and Bergen, Passaic, Essex, Hudson, Union, Middlesex, Somerset, and Monmouth Counties, N.J., under a continuing contract with Long Island Automotive & Wheel Co., Inc., of Philadelphia, Pa., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

APPLICATION FOR FILING PETITIONS

No. MC 33641 (Notice of filing of petition for removal of restriction), filed November 21, 1972. Petitioner: IML FREIGHT, INC., 2175 South 3270 West, Salt Lake City, UT 80217. Petitioner's representative: H. Lynn Davis (same address as above). Petitioner presently holds a certificate in No. MC 33641, authorizing, as pertinent, operations as a motor common carrier, over regular routes, in the transportation of: *General commodities* (with exceptions), (1) between Salt Lake City, Utah, and Elko, Nev., serving all intermediate points, and the off-route points of Cobre and Lamoille, Nev., from Salt Lake City over U.S. Highway 40 to Elko, and return over the same route; and (2) between Elko, Nev., and South San Francisco, Calif., serving all intermediate points in California, and the off-route points of Crockett, Martinez, Richmond, Alameda, and San Leandro, Calif., from Elko over U.S. Highway 40 to junction unnumbered highway (formerly U.S. Highway 40), thence over unnumbered highway (formerly U.S. Highway 40), thence over unnumbered highway via Roseville, Calif., to junction U.S. Highway 40, thence over U.S. Highway 40 to San Francisco, Calif., thence over U.S. Highway Bypass 101 to South San Francisco, and return over the same route. Restriction: The service authorized immediately above in (2) shall be limited to shipments moving between points east of Elko, Nev., on the one hand, and points in California on the other. By the instant petition, petitioner seeks removal of the restriction in (2) above, thereby permitting service to Elko, Nev., on traffic eastbound from points in California. NOTE: Petitioner states it currently holds a Nevada intrastate common carrier certificate in No. CPC A 901, authorizing the transportation of general commodities, over irregular routes, between points in Nevada. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 61955 (Notice of filing of petition for modification of certificate), filed October 16, 1972. Petitioner: CENTROPOLIS TRANSFER CO., INC., 6700 Wilson Avenue, Kansas City, MO 64125. Petitioner's representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Kansas City, MO 64105. Petitioner presently holds a certificate in No. MC 61955, authorizing, as pertinent, the transportation of: *Boilers; boats; building contractors' equipment; water, oil, and gas drilling rigs; derricks; farm implements; graders; industrial equipment; laundry machinery; electric and gasoline motors; concrete pipe; iron and steel pipe; piling; printing machinery; refrigeration equipment; rollers; excavating shovels; stone; stone crushers; iron and steel; timber; trucks; turbines; tables; transformers; tanks; threshing machines; combines; tractors; and wagons*, between points in Kansas on the one hand, and, on the other, points in Missouri. By the instant petition, petitioner seeks modification of its certificate: (1) by adding to its commodity description the following: *And commodities, the transportation of which because of size or weight requires the use of special equipment; contractors' equipment, materials and supplies; and self-propelled articles each weighing 15,000 lbs. or more;* and (2) by expanding its territorial authority to: Between points in Kansas and Missouri. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 119285 (Sub-No. 2) (Notice of filing of petition to modify permit to add Mississippi as a destination State, to increase a weight restriction and to change the name of the Superior Coach Corporation), filed November 22, 1972. Petitioner: YELLOW CAB, INC., Lima, Ohio. Petitioner's representative: Richard C. Pfeiffer, Jr., 88 East Broad Street, Columbus, OH 43215. Petitioner presently holds a permit to operate over irregular routes, in interstate or foreign commerce under MC 119285 (Sub-No. 2) issued March 31, 1969, authorizing petitioner to perform the following service: (1) *Machinery parts and automotive parts*, between Lima, Ohio, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Michigan, New York, Ohio, and Pennsylvania; and (2) *materials and supplies* used in the manufacturing assembly of electric motors, between Union City, Ind., and Lima, Ohio, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Michigan, New York, Ohio, and Pennsylvania. Restriction: The operations authorized herein are subject to the following conditions: (1) Said operations are restricted to the transportation on any one vehicle at any one time of shipments weighing in the aggregate not more than 5,000 pounds, from one consignor, at one location to one consignee at one location; and (2) said operations are limited to a transportation service to be performed under a continuing contract or contracts with Superior Coach Corp., and Westinghouse Electric Corp. Under date of September 30, 1970, Superior Coach became a division of Sheller-Globe Corp. Superior Coach's

correct name is now Superior Coach Division, Sheller-Globe Corp. By the instant petition, petitioner seeks to expand that service by adding Mississippi as a destination State; increase its weight restriction to 14,000 pounds in order to meet the service needs of Superior Coach; and to change the name to Superior Coach Corp. from Superior Coach Division of Sheller-Globe Corp. Any person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATION UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 29555 (Sub-No. 61), filed November 3, 1972. Applicant: BRIGGS TRANSPORTATION CO., a corporation, 2360 West County Road C, St. Paul, MN 55113. 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 regular routes, transporting: *General commodities*, (1) between Cedar Rapids, Iowa, and Ottumwa, Iowa, serving the intermediate points of Amana, Fairfax, Hedrick, Martinsburg, North English, Parnell, Sigourney, South English, Walford, Webster, and Williamsburg, as well as all points intermediate to the above-named points located on said highways, and the off-route points of Conroy, Delta, Fremont, Hayesville, North Amana, Oskaloosa, Rose Hill, Rutledge, South Amana, and the U.S. Naval Reserve aviation base (also known as Ottumwa Airport); and (2) from Cedar Rapids, Iowa, over Iowa Highway 149 to Junction U.S. Highway 63 about 5 miles west of Hedrick, Iowa, thence over U.S. Highway 63 to Ottumwa, Iowa, and return over the same route. NOTE: This application is a matter directly related to MC-F-11713, published in the FEDERAL REGISTER issue of November 22, 1972. If a hearing is deemed necessary, applicant requests it be held at Minneapolis or St. Paul, Minn.

No. MC 32775 (Sub-No. 14), filed November 3, 1972. Applicant: HERMANN FORWARDING CO., a corporation, Post Office Box 1, North Brunswick, NJ 08902. Applicant's representative: Maxwell A. Howell, 1100 Investment Building, 1511 K Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, between points in Massachusetts. NOTE: Applicant states that upon consumation of the merger of El Dorado into applicant, applicant will be authorized to serve Massachusetts over regular routes where it will tack onto the irregular route authority which it is purchasing from Land-Sea-Air Services, Inc. Common control may be involved. This application is a matter directly related to MC-F-11717, published in the FEDERAL REGISTER issue of November 22, 1972. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11722. Authority sought for purchase by B & L MOTOR FREIGHT, Inc., 140 Everett Avenue, Newark, OH 43055, of the operating rights of PAUL P. LANIER, DECEASED (MELVINA J. LANIER AND CLYDE A. RAMBACHER, ADMINISTRATORS OF THE ESTATE), 811 Neal Avenue, Ironton, OH 45638, and for acquisition by THE CAPITOL CORP., also of Newark, Ohio 43055, of control of such rights through the purchase. Applicants' attorney: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Operating rights sought to be transferred: *Ceramic foam, plastics*, and *plastic products*, other than in bulk, as a *common carrier* over irregular routes, from points in Lawrence and Scioto Counties, Ohio, to points in Alabama, Arkansas, Delaware, Florida, Georgia, Illinois (except points in the Chicago, Ill., Commercial Zone as defined by the Commission), Iowa, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin, and that part of Pennsylvania east of U.S. Highway 219, and the District of Columbia, from the plants and warehouses of Dow Chemical Co. at Plaquemine, La., Cape Girardeau and Pevely, Mo., Royersford, Pa., and Freeport, Tex., to points in Lawrence and Scioto Counties, Ohio; *plastic* and *plastic products*, other than in bulk, from the warehouses of Dow Chemical Co. at or near Royersford, Pa., to points in Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, South Carolina, Tennessee, and West Virginia, from the plants and warehouses of Dolco Packing Corp. at or near Red Hill, Pa., to points in Illinois, Indiana, Kentucky, Michigan, Ohio, and West Virginia (except points on and south of U.S. Highway 33); *plastics, plastic products and plastic-coated aluminum*, other than in bulk, from the plants and warehouses of Dow Chemical Co. at or near Findlay, Ohio, to points in Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin, *plastic foam containers*, from the plants and warehouses of Dolco Packing Corp. at or near Lawrenceville, Ga., to points in Delaware, Illinois, Indiana, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, with restrictions. Vendee is authorized to operate as a *common carrier* in Ohio, Indiana, Michigan, New York, Pennsylvania, Maryland, West Virginia, Kentucky, Wisconson, Missouri, Illinois, New Jersey, Massachusetts, Kansas, Delaware, Virginia, Tennessee, Rhode Island, Connecticut, Iowa, and the District of Columbia, and as a *contract carrier* in Ohio, Pennsylvania, West Virginia, Kentucky, New York, Indiana, Illinois, Michigan, Wisconsin, Missouri, Kansas, Delaware, Maryland, New Jersey, Connecticut, Massachusetts, Rhode Island, Kansas, Alabama, Florida, Georgia, Maine, Mississippi, North Carolina, New Hampshire, South Carolina, Tennessee, Vermont, Virginia, Minnesota, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11723. Authority sought for merger by COX & SHAY, INC., 6218 Arlington, Raytown, MO 64133, of the operating rights and property of MARY ELLEN STIDHAM, N. M. STIDHAM, A. E. MANKINS (INEZ MANKINS, EXECUTRIX), AND JAMES E. MANKINS, SR., a partnership, doing business as EAGLE TRUCKING CO., Post Office Box 471, Kilgore, TX 75662, and for acquisition by LEROY COX AND MARTIN SHAY, both of Raytown, Mo. 64133, of control of such rights and property through the transaction. Applicants' attorneys: Tom B. Kretsinger, 450 Professional Building, Kansas City, MO 64106, and Bernard English, 6270 Firth Road, Fort Worth, TX 76116. Operating rights sought to be merged: Numerous specified commodities, as a *common carrier* over irregular routes, from, to, and between specified points in the States of Arkansas, Louisiana, Mississippi, Texas, Georgia, Alabama, Florida, Colorado, Wyoming, Utah, Montana, Kansas, Oklahoma, New Mexico, Nevada, Illinois, Indiana, Iowa, Kentucky, Missouri, Ohio, Tennessee, Arizona, Delaware, Maryland, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Pennsylvania, South Carolina, South Dakota, Virginia, West Virginia, Wisconsin, and the District of Columbia, with certain restrictions, as more specifically described in Docket No. MC-119774 and Sub-numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's operating rights, without stating, in full, the entirety, thereof. COX & SHAY, INC., holds no authority from this Commission. However, they are affiliated with J. L. COX & SON, INC., 9710 East 63d Street, Raytown, MO 64133, which is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a(b).

No. MC–F–11724. Authority sought for control by RANDALL TRUCKING AND LEASING, INC., a noncarrier, 26600 Van Born Road, Dearborn Heigths, MI 48125, of BUCK'S EXPRESS SERVICE, INC., 11499 Conner, Detroit, MI 48214, and for acquisition by KEY LINE FREIGHT, INC., 15 Andre Street SE., Grand Rapids, MI 49507, and in turn by, JOSEPH C. BROMLEY, also of Dearborn Heights, Mich. 48125, of control of BUCK'S EXPRESS SERVICE, INC., through the acquisition by RANDALL TRUCKING AND LEASING, INC. Applicants' attorney: Robert A. Sullivan, 1800 Buhl Building, Detroit, Mich. 48226. Operating rights sought to be controlled: *General commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over irregular routes, between Willow Run Airport, Ypsilanti, Mich., Wayne Major Airport, Romulus, Mich., and Detroit City Airport, Detroit, Mich., on the one hand, and, on the other, points in Macomb, St. Clair, and Sanilac Counties, Mich., between Willow Run Airport, at or near Ypsilanti, Mich., on the one hand, and, on the other, points in Wayne County, Oakland County (except Auburn Heights, Commerce, Drayton Plains, Keego Harbor, Pontiac, Rochester, Waterford, and Wixom), and Washtenaw County (except Saline and Ypsilanti), Mich., with restrictions. Randall Trucking and Leasing, Inc., holds no authority from this Commission. However, it is affiliated with Key Line Freight, Inc., 15 Andre Street SE., Grand Rapids, MI 49507, which is authorized to operate as a *common carrier* in Michigan, Indiana, Wisconsin, Illinois, Minnesota, Nebraska, Kentucky, Missouri, Ohio, and Iowa. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11725. Authority sought for lease by THREE "T" CONSULTANTS & TRANSPORTATION, INC., doing business as THREE "T" TRANSPORTATION, INC., 1575 Elmira, Aurora, CO 80010, of the operating rights and property of TRANS-WORLD MOVERS INC., 4955 Olive Street, Commerce City, CO 80022. Applicants' representative: Hubert L. Passmore, also of Aurora, Colo. 80010. Operating rights sought to be leased: *General commodities*, with exceptions, as a *common carrier* over irregular routes, between Denver, Colo., on the one hand, and, on the other, points within 15 miles of Denver, except points on U.S. Highway 6 east of Denver, points on Colorado Highway 72 north and west of Denver, and points in the area between such sections of highways but not excluding the plantsite of Dow Chemical Co. at Rocky Flats, Colo., with restriction; *household goods* as defined by the Commission, between points in a described area of Colorado, on the one hand, and, on the other, points in Utah on and east of U.S. Highway 91 and those in Colorado on and west of U.S. Highway 85, between points in a described area of Illinois, Indiana, Michigan, and Wisconsin on the one hand, and, on the other, points in Delaware, Kansas, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, and West Virginia, between points in a described area of Illinois, Indiana, and Wisconsin, on the one hand, and, on the other, points in Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia, between Litchfield, Nebr., and points within 25 miles of Litchfield, on the one hand, and, on the other, points in Wyoming, Iowa, Kansas, Missouri, South Dakota, and Colorado, between Cozad, Nebr., and points in Nebraska within 25 miles of Cozad, on the one hand, and, on the other, points in Iowa, Kansas, and Colorado; *household goods*, between Boulder, Colo., on the one hand, and, on the other, points in Iowa, Kansas, Missouri, Nebraska, Illinois, Indiana, and Wisconsin, between points in a described area of Oklahoma on the one hand, and, on the other, points in Missouri, Kansas, Texas, and Arkansas, between points in Woods and Woodward Counties, Okla., on the one hand, and, on the other, points in Kansas, between points in Grant County, Okla., and points within 30 miles of Grant County, on the one hand, and, on the other, points in Kansas, between points in Iowa, on the one hand, and, on the other, points in Nebraska, Minnesota, Illinois, and Kansas; *emigrant movables*, between points in a described area of Colorado, on the one hand, and, on the other, points in Nebraska and Kansas; *new furniture*, from Chicago, Ill., to points in Nebraska and Oklahoma. Lessee is authorized to operate as a *common carrier* in Colorado, Nebraska, Kansas, and Utah. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11726. Authority sought for purchase by ESTES EXPRESS LINES, 1405 Gordon Avenue, Richmond, VA 23224, of a portion of the operating rights of JOHNSON'S EXPRESS, INC. (O. TRACY PARKS, III, TRUSTEE) Box 637, Sanford, NC 27330, and for acquisition by ROBERT W. ESTES, also of Richmond, Va. 23224, of control of such rights through the purchase. Applicants' attorney: Francis W. McInerny, 1000 16th Street NW., Washington, DC 20036. Operating rights sought to be transferred: *Building materials, canned goods*, and *sugar*, as a *common carrier* over irregular routes, from Wilmington, N.C., to points within 50 miles of Hamlet, N.C., including Hamlet; *canned goods, sugar*, and *spray materials*, from Charleston, S.C., to points within 50 miles of Hamlet, N.C., including Hamlet; *general commodities*, with certain exceptions, between points within 50 miles of Hamlet, N.C., including Hamlet; *fresh fruits and vegetables*, between points in North Carolina and South Carolina; brick, clay products, and fertilizers, between points within 100 miles of Hamlet, N.C., including Hamlet. Vendee is authorized to operate as a *common carrier* in North Carolina and Virginia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11727. Authority sought for purchase by BOYD BROTHERS TRANSPORTATION CO., INC., Route No. 1, Clayton, Ala. 36016, of a portion of the operating rights of JOHNSON'S EXPRESS, INC. (O. TRACY PARKS, III, TRUSTEE) Box 637, Sanford, NC 27330, and for acquisition by DEMPSEY BOYD, also of Clayton, Ala. 26016, of control of such rights through the purchase. Applicants' attorney: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Operating rights sought to be transferred: *Textile products*, as a *common carrier* over irregular routes, from Laurinburg, Rockingham, and Saint Pauls, N.C., to Baltimore, Md., Richmond, Va., Washington, D.C., Philadelphia, Pa., and New York, N.Y.; *general commodities*, with the usual exceptions, from New York, N.Y., Washington, D.C., Richmond, Va., Manville, N.J., York, Pa., Baltimore, Md., and points within 10 miles of Baltimore, to points within 50 miles of Hamlet, N.C., including Hamlet; *fresh fruits and vegetables*, from points in North Carolina and South Carolina, to New York, N.Y., Newark and Elizabeth, N.J., Philadelphia, Pa., Baltimore and Frederick, Md., Washington, D.C., and Norfolk and Richmond, Va., including points in the respective commercial zones of the above-named destination points. Vendee is authorized to operate as a *common carrier* in Alabama, Connecticut, Delaware, Massachusetts, New Jersey, New York, Rhode Island, Virginia, Maryland, Pennsylvania, Tennessee, West Virginia, Wisconsin, Florida, Georgia, North Carolina, South Carolina, Kentucky, Maine, New Hampshire, Vermont, Louisiana, Arkansas, Texas, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–11728. Authority sought for purchase by YELLOW FREIGHT SYSTEM, INC., 92d Street, at State Line Road, Post Office Box 8462, Kansas City, MO 64114, of the operating rights of MID-CITY FREIGHT LINES, INC., Atherton, Mo. 64050, and for acquisition by GEORGE E. POWELL, 801 West 64 Terrace, Kansas City, MO 64113, and GEORGE E. POWELL, Jr., 1040 West 57th Street, Kansas City, MO 64113, of control of such rights through the purchase. Applicants' attorneys: JOHN M. RECORDS, Post Office Box 8462, Kansas City, MO 64114, and RICHARD K. ANDREWS, 1500 Commerce Bank Building, Kansas City, MO 64104. Operating rights sought to be transferred: *General commodities*, with usual exceptions, as a common carrier over irregular routes, between Lake City Ordnance Plant, at or

near Independence, Mo., and Independence Mo. Vendee is authorized to operate as a *common carrier* in Illinois, Kansas, Oklahoma, Missouri, Texas, Indiana, Kentucky, Michigan, Ohio, Nebraska, Minnesota, Colorado, Georgia, Arizona, Nevada, New Mexico, Tennessee, Iowa, California, South Carolina, Wyoming, Utah, South Dakota, Wisconsin, Pennsylvania, Maryland, Virginia, Alabama, New Jersey, Louisiana, Arkansas, Delaware, New York, Massachusetts, and Connecticut. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11729. Authority sought for purchase by THE AETNA FREIGHT LINES, INCORPORATED, 2507 Youngstown Road, Post Office Box 350, Warren, OH 44482, of the operating rights of C. L. HOLDER TRUCKING COMPANY, Kermit, Tex. 79745, and for acquisition by J. PHIL FELBURN, 760 Island Drive, Palm Beach, FL 33480, of control of such rights through the purchase. Applicants' attorneys: Leroy Hallman, 4555 First National Bank Building, Dallas, Tex. 75202, and W. D. Girand, Post Office Box 1290, Hobbs, N. Mex. 88240. Operating rights sought to be transferred: *Machinery, equipment, materials,* and *supplies* used in or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts, and *machinery, materials, equipment,* and *supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, except in connection with main pipelines, as a *common carrier* over irregular routes, between points in Texas, Oklahoma, New Mexico, and Kansas, between points in Texas and points in Beaver, Cimarron, and Texas Counties, Okla., on the one hand, and, on the other, points in that part of Colorado on and east of U.S. Highway 85 and on and south of U.S. Highway 24; *earth drilling machinery and equipment, and machinery, equipment, materials supplies, and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in Texas, Oklahoma, New Mexico, and Kansas, between points in Texas, and points in Beaver, Cimarron, and Texas Counties, Okla., on the one hand, and, on the other, points in that part of Colorado on and east of U.S. Highway 85, and on and south of U.S. Highway 24. Vendee is authorized as a *common carrier* in Ohio, Illinois, New York, Pennsylvania, West Virginia, Iowa, Indiana, Michigan, Wisconsin, Alabama, Arkansas, Louisiana, Kentucky, Mississippi, Tennessee, Delaware, New Jersey, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.72-20946 Filed 12-5-72;9:00 am]

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[Notice 174]

## MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

### TRANSFER APPLICATION TO BE ASSIGNED FOR ORAL HEARING

No. MC-FC-73661 (Corrected). This publication corrects the material appearing at 37 F.R. 22782 of October 21, 1972. As indicated thereat, the transfer application is to be assigned for hearing on a consolidated record with the petition filed in No. MC-114132, which petition requests that the name of Bianchi Truck Line, Inc., be changed to Churn's Truck Line, Inc. The attorney for the petitioner in No. MC-114132 is not E. Stephen Heisley, but is instead: William J. Augello, Jr., Augello, Deegan & Pezold, P. C., Horn Professional Center, 103 Fort Salonga Road, Northport, NY 11768.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.72-20949 Filed 12-5-72;9:00 am]

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[Ex Parte No. MC-37; Sub-No. 19a]

## NEW ORLEANS TRAFFIC AND TRANSPORTATION BUREAU

### Petition for Redefinition of New Orleans, La., Commercial Zone

DECEMBER 1, 1972.

Petitioner: New Orleans Traffic and Transportation Bureau; petitioner's representatives: Louis A. Schwartz, Laurence F. Daspit, E. B. McKinneg, 2926 International Trade Mart, No. 2 Canal Street, New Orleans, LA 70130.

By petition filed November 16, 1972, the above-named petitioner requests that the Commission institute a rule-making proceeding for the purpose of redefining the limits of the New Orleans, La., commercial zone, which were most recently defined on October 13, 1959, in New Orleans, La., commercial zone, 81 MCC 726 (49 CFR 1048.27), so as to extend the partial exemption under section 203(b)(8) of the Interstate Commerce Act to include two specifically defined areas west and southwest of the present zone limits.

Petitioner seeks amendment of 49 CFR 1048.27 so that the pertinent portion reads as follows (the italics representing the enlarged area sought for inclusion): "* * * thence north along such parish line to the middle of the Mississippi River, *thence westerly along the middle of the Mississippi River to a point south of Almedia Road, thence in a northerly direction along Almedia Road to Highway 61,* thence north to the shore of Lake Pontchartrain; * * *" Petitioner also ambiguously describes an extension in that area of the involved commercial zone between Augusta Canal, on the south, and the Mississippi River, on the north, adjacent to the Gulf Intercoastal Waterway (Harvey Canal), but due to lack of clarity in this portion of petitioner's proposed boundary description, applicant is directed to submit a detailed street map of the areas proposed for inclusion within the involved commercial zone.

No oral hearing is contemplated at this time, but anyone wishing to make representations in favor, or against, the relief sought in the petition may do so by the submission of written data, views, or arguments. An original and 15 copies of such data, views, or arguments shall be filed with the Commission on or before January 29, 1972. A copy of each representation should be served upon petitioner's representatives. Written material or suggestions submitted will be available for public inspection at the Offices of The Interstate Commerce Commission, 12th and Constitution, Washington, DC, during regular business hours.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.72-20943 Filed 12-5-72;8:59 am]

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## NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

DECEMBER 1, 1972.

The following applications for motor common carrier authority to operate in

intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

California Docket Number not shown, filed November 10, 1972. Applicant: KING CONTRACT CARRIER, INC., doing business as KING TRANSPORTATION CO., 1300 L Street, San Diego, CA. Applicant's representative: Hillyer & Irwin, Attn: Michael F. Welch, 530 B Street, Suite 1400, San Diego, CA. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *Carpets, floor coverings and related materials*, between the following points, serving all intermediate points on said routes and off-routes within 15 miles thereof: (1) To, from, and between all points and places located in the Los Angeles basin territory and points located within 15 miles of the boundaries of said territory described as follows: Los Angeles basin territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately 2 miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U.S. Highway No. 99; northwesterly along U.S. Highway No. 99 to the corporate boundary of the City of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U.S. Highway No. 60; southwesterly along U.S. Highways Nos. 60 and 395 to the county road approximately 1 mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the City of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of The Atchison, Topeka & Santa Fe Railway Co.; southwesterly along said right of way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the county road intersecting U.S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U.S. Highway No. 395; southeasterly along U.S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning.

(2) Los Angeles and San Diego on U.S. Highway 5. (3) Oceanside and Escondido on State Highway 78. (4) To, from and between all points and places located in the San Diego territory and points located within 15 miles of the boundaries of said territory, described as follows: San Diego territory includes that area embraced by the following boundary: Between points in California within an area bounded by a line beginning at the northerly junction of U.S. Highways 101–E and 101–W (4 miles north of La Jolla); thence easterly to Miramar on U.S. Highway 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway (State Highway 67); thence southerly to Bostonia on U.S. Highway 80; thence southeasterly to Jamul on State Highway 94; thence due south to the International Boundary line; west to the Pacific Ocean and north along the coast to point of beginning. (5) Traversing on or over public highways, streets, and roads between all points above authorized for operating convenience. Both intrastate and interstate authority sought.

Hearing: Date, time, and place unknown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the California Public Utilities Commission, State of California, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102 and should *not* be directed to the Interstate Commerce Commission.

Alaska Docket No. 72–281–MP/O, filed November 2, 1972. Applicant: ALASKA TOUR AND MARKETING SERVICES, INC., 627 Southwest 128th Street, Seattle, WA 98146. Certificate of public convenience and necessity sought to operate a service as follows: Transportation of *Passengers and their baggage and express* between or from and to: (1) Nome—between the Nome airport and hotels; between general vicinity of Nome and all highway points accessible from Nome. (2) Kotzebue—between the Kotzebue airport and hotels; and between the general vicinity of Kotzebue and all highway points accessible from Kotzebue, and (3) Barrow—between the Barrow airports and hotels; and between the general vicinity of Barrow and all highway points accessible from Barrow. Both intrastate and interstate authority sought.

Hearing: Date, time, and place unknown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Alaska Transportation Commission, State of Alaska Department of Commerce, 750 Mackay Building, 338 Denali Street, Anchorage, AK 99501, and should *not* be directed to the Interstate Commerce Commission.

Florida Docket No. 72638–CCB, filed November 10, 1972. Applicant: ORLANDO TRANSIT COMPANY, a corporation, 46 Weber Avenue, Orlando, FL. Applicant's representative: Robert C. Matthias, 1601 CNA Building, Orlando, FL. Certificate of public convenience and necessity sought to operate a service as follows: Transportation of *passengers* as a common motor carrier between Orlando and Winter Garden on the one hand and Walt Disney World. Route 3C from downtown Orlando west on Highway 50 to U.S. 27 south on U.S. 27 to U.S. 192 east to Gate 3 Walt Disney World and return over the same route. Route 3D from Winter Garden south on 545 to U.S. 192 east to Gate 3 Walt Disney World and return over the same route. Route 3E from Orlando east on Highway 50 to SR 15A south to SR 15 south to U.S. 192 west on U.S. 192 to Gate 3 Walt Disney World and return over the same route. Route 3F from Orlando west on I–4 to U.S. 27 north on U.S. 27 to U.S. 192 east to Gate 3 Walt Disney World and return over the same route. Route 3G from Orlando on U.S. 17–U.S. 92 north to Sanford to I–4 south to 192 west to Gate 3 Walt Disney World and return over the same route. Request to transport passengers as sightseeing service over the following route: Route 9 leave Orlando via I–4 to Tampa and Busch Gardens and return to Orlando. Both intrastate and interstate authority sought.

Hearing: Date, time, and place unknown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Florida Public Service Commission, Tallahassee, Fla. 32304, and should *not* be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.72-20944 Filed 12-5-72;9:00 am]

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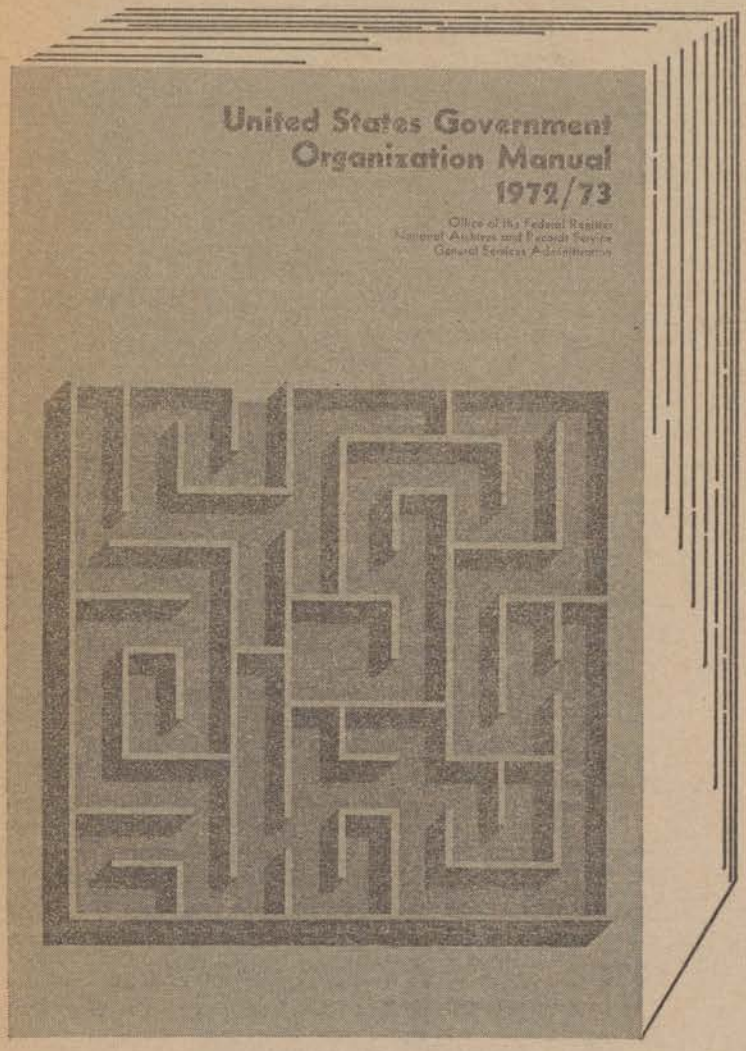


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