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PART I



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PART 33—DECEASED CIVILIAN OFFICERS AND EMPLOYEES: PROCEDURES FOR SETTLEMENT OF ACCOUNTS

Unpaid Compensation

Unpaid compensation of a deceased civilian employee not timely claimed by first priority survivors may be paid to survivors of subordinate priority.

Section 33.6 is revised in entirety to read as follows:

§ 33.6 Claims settlement jurisdiction.

(a) District of Columbia, Canal Zone Government and Government corporations. Claims for unpaid compensation due deceased employees of the government of the District of Columbia and the Canal Zone Government on the Isthmus of Panama shall be paid by these entities and those of wholly owned and mixed ownership Government corporations may be paid by the corporations. 5 U.S.C. 5583(b).

(b) Other agencies. Except as otherwise provided in paragraph (c) of this section, claims for unpaid compensation due deceased employees of other agencies of the Federal Government, including officers and employees of the House of Representatives, may be paid by those agencies.

(c) General Accounting Office. Except as provided in paragraph (a) of this section, claims for unpaid compensation due deceased employees of the Federal Government will be paid only upon settlement by the Transportation and Claims Division of the General Accounting Office in the following cases:

(1) When doubt exists as to the amount or validity of the claim.

(2) When doubt exists as to the person(s) properly entitled to payment.

(3) When the claim involves uncurrent checks. Unnegotiated and/or undelivered checks for unpaid compensation due the decedent which are drawn on designated depositaries and have not been paid prior to the close of the fiscal year next following the fiscal year in which the checks were issued are uncurrent. Claims for the proceeds of such checks must be submitted to the Transportation and Claims Division of the General Accounting Office for settlement pursuant to the provisions of section 1(b) of the act of August 28, 1957, Public Law 85–183, 31 U.S.C. 132. The checks, if available, should accompany the claims.

(d) Payment as provided in paragraphs (a), (b), and (c) of this section shall be made to the person or persons surviving at date of death in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the employee in a writing received in the employing agency prior to his death;

(2) If three is no designated beneficiary, to the surviving spouse of the employee;

(3) If none of the above, to the child or children of the employee and decendents of deceased children by representation;

(4) If none of the above, to the parents of the deceased employee or the survivor of them;

(5) If none of the above, to the duly appointed legal representative of the estate of the deceased employee; and

(6) If none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of his death. 5 U.S.C. 5582(b).

When the person(s) otherwise entitled to payment has not submitted a claim and cannot be located within 3 years after the death of the employee, payment shall be made to the person(s) in the same class of entitlement, or in the absence of anyone in the same class then the person(s) next in order of precedence as described in this paragraph.

(31 U.S.C. 52. Interpret or apply 5 U.S.C. 5583)

[SEAL] ELMER B. STAATS,
Comptroller General of the United States.

[FR Doc.72-21257 Filed 12-8-72;8:45 am]

PART 34—DECEASED MEMBERS OF THE ARMED FORCES AND NATIONAL GUARD: PROCEDURES FOR SETTLEMENT OF ACCOUNTS

Unpaid Pay and Allowances

Unpaid pay and allowances due deceased members of the Armed Forces and the National Guard not timely claimed by first priority survivors may be paid to survivors of subordinate priority.

1. Section 34.1 is hereby amended by revising subparagraph (a)(1) as follows:

§ 34.1 Scope of part.

(a) This part prescribes forms and procedures for the prompt settlement of the accounts of:

(1) Deceased members of the Armed Forces (including deceased commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration) pursuant to 10 U.S.C. 2771.

* * * * *

2. Section 34.3 is revised in entirety to read as follows:

§ 34.3 Jurisdiction.

(a) *Administrative agencies.* Except as otherwise provided in paragraph (b) of this section, pay and allowances due deceased members of the Armed Forces and deceased members of the National Guard shall be paid by the military service or department concerned.

(b) *General Accounting Office.* Payments shall be made only upon settlement by the Transportation and Claims Division of the General Accounting Office in the following cases:

(1) When doubt exists as to the amount or validity of the claim.

(2) When doubt exists as to the person(s) properly entitled to payment.

(3) When the claim involves uncurrent checks. Unnegotiated and/or undelivered checks for pay and allowances due the decedent which are drawn on designated depositaries and have not paid prior to the close of the fiscal year next following the fiscal year in which the checks were issued are uncurrent. Claims for the proceeds of such checks must be submitted to the Transportation and Claims Division of the General Accounting Office for settlement pursuant to the provisions of section 1(b) of the act of August 28, 1957, Public Law 85–183, 31 U.S.C. 132. The checks, if available, should accompany the claims.

(c) Payment as provided in paragraphs (a) and (b) of this section shall be made to the person or persons surviving at date of death in the following order of precedence:

(1) Beneficiary designated by the member in writing to receive an amount, if the designation is received, before the deceased member's death, at the place named in the regulations prescribed by the Secretary concerned;

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

When the person(s) otherwise entitled to payment has not submitted a claim and cannot be located within 3 years after the death of the member, payment shall be made to the person(s) in the same class of entitlement, or in the absence of anyone in the same class then the person(s) next in order of precedence as described in this paragraph.

* * * * *

(Sec. 311, 42 Stat. 25; 31 U.S.C. 52. Interpret or apply 10 U.S.C. 2771; 32 U.S.C. 714; sec. 3, 70A Stat. 619, as amended, 33 U.S.C. 857a; sec 4, 70A Stat. 619, as amended, 42 U.S.C. 213a; Reorganization Plan No. 4 of 1970, 84 Stat. 2090)

[SEAL] ELMER B. STAATS,
Comptroller General of the United States.

[FR Doc.72-21258 Filed 12-8-72;8:45 am]

Title 6—ECONOMIC STABILIZATION

Rulings—Internal Revenue Service, Department of the Treasury

[Price Commission Ruling 1972-284]

SELLING PRICE OF PERISHABLES

Price Commission Ruling

Facts. Retailer A operates several supermarkets. A number of the items A sells are considered "perishables" by the trade because the shelf life is short, turnover is rapid and price reductions are regularly effected to move unsold merchandise before quality deterioration makes it unsalable. In the usual case the merchandise is sold before any invoice is received by A. To determine the selling price for the merchandise A wishes to apply its customary initial percentage markup to the "purchase price actually paid" for the merchandise in accordance with Economic Stabilization Regulations, 6 CFR 300.13 (1972) and the definition of "customary initial percentage markup" in Economic Stabilization Regulations, 6 CFR 300.5 (1972).

Issue. How is a firm to determine the "price actually paid" for such merchandise under the definition of CIPM?

Ruling. The "price actually paid" to which A may apply its CIPM in determining the allowable selling price is either the seller's quotation at the time of delivery or if the seller determines its price by using a market quotation or other source or formula then that quotation, source or formula may be considered the "price actually paid."

To determine the maximum allowable selling price in excess of the base price under § 300.13 of the regulations, a retailer may apply its CIPM to the cost of the merchandise, i.e., the "purchase price actually paid by the selling person and transportation charges to be allocated to the merchandise." Definition of CIPM, § 300.5 of the regulations. This rule does not require that the merchandise be paid for or even that an invoice be received before it may be priced for sale. Where merchandise has been received and the price to be paid is known with reasonable certainty then that price may be used to determine the selling price. Where the merchandise involved is of the kind described in the facts in this case, the price to be paid may be derived from the supplier's daily quotations. Further, if the supplier determines its prices by using market quotations or a formula then the market quotation or formula may be used as the price to be paid.

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

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

Approved: December 5, 1972.

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

[FR Doc. 72-21227 Filed 12-8-72;8:45 am]

Title 7—AGRICULTURE

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

[Navel Orange Reg. 277; Amdt. 1]

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

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this 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 Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b) (1) (i), (ii), and (iii) of § 907.577 (Navel Orange Regulation 277, 37 F.R. 25326) during the period December 1, 1972, through December 7, 1972, are hereby fixed as follows:

§ 907.277 Navel Orange Regulation 557.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 1,456,000 cartons;
(ii) District 2: 103,000 cartons;
(iii) District 3: 144,000 cartons.

* * * * *

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

Dated: December 6, 1972.

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

[FR Doc.72-21210 Filed 12-8-72;8:49 am]

[Lemon Reg. 563]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.863 Lemon Regulation 563.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the

period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 5, 1972.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period December 10, through December 16, 1972, is hereby fixed at 220,000 cartons.

(2) As used in this section, "handled", and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

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

Dated: December 7, 1972.

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

[FR Doc.72–21292 Filed 12–8–72;8:45 am]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program

Correction

In F.R. Doc. 72–20586, appearing at page 25336, in the issue of Thursday, November 30, 1972, the first table appearing immediately under § 1464.17, should read as follows:

[Dollars per hundred pounds, farm sales weight]

Grade	Length 47	Length 46	Length 45	Length 44	Length 43
A1F	69.25	69.25	69.25		
A1F	65.25	65.25	66.25		
A1D	69.25	69.25	69.25		
A3D	65.25	65.25	65.25		
B1F	68.25	68.25	68.25		
B1F	62.25	62.25	63.25	58.25	
B3F	55.25	55.25	56.25	55.25	46.25
B4F	51.25	51.25	52.25	50.25	44.25
B5F	46.25	46.25	47.25	46.25	41.25
B1D	68.25	68.25	68.25		
B3D	61.25	61.25	62.25	57.25	
B4D	53.25	53.25	54.25	52.25	46.25
B5D	49.25	49.25	50.25	49.25	44.25
B3M	44.25	44.25	45.25	44.25	41.25
B4M	50.25	50.25	51.25	50.25	46.25
B5M	47.25	47.25	48.25	47.25	44.25
B3G	44.25	44.25	45.25	44.25	39.25
B4G	47.25	47.25	48.25	47.25	43.25
B5G	45.25	45.25	46.25	45.25	42.25
C1L	42.25	42.25	43.25	42.25	38.25
C2L	73.25	73.25	74.25		
C3L	69.25	69.25	70.25	62.25	
C4L	60.25	60.25	61.25	59.25	
C5L	53.25	53.25	54.25	53.25	
C1F	48.25	48.25	49.25	47.25	
C2F	72.25	72.25	73.25		
C3F	68.25	68.25	69.25	62.25	
C4F	59.25	59.25	60.25	56.25	
C5F	53.25	53.25	54.25	53.25	
	48.25	48.25	50.25	48.25	

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. 72–589]

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:

In § 76.2, paragraph (e) (8) relating to the State of Tennessee 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 amendment shall become effective upon issuance.

The amendment excludes portions of Hamblen and Jefferson Counties 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 amendment relieves restrictions presently imposed but no longer deemed necessary to prevent the spread of hog cholera and must 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 this 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 and unnecessary, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 5th day of December 1972.

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

[FR Doc.72–21211 Filed 12–8–72;8:49 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

SUBCHAPTER C—AIRCRAFT

[Airworthiness Docket No. 72NW8AD; Amdt. 39–1574]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Models 707–300, –300B, –300C, and –400 Series Airplanes

Amendment 39–931 (35 F.R. 1158), AD 70–2–11, as amended by Amendment 39–1011 (35 F.R. 9921), as amended by Amendment 39–1450 (37 F.R. 10068), requires inspection of the stabilizer center section front spar terminal fitting lug on the Boeing Models 707–300, –300B, –300C, and –400 series airplanes. After issuing Amendment 39–1450, the agency determined that clarification of the AD as a result of the addition of a stabilizer strap modification is necessary, therefore, the AD is being further amended to provide for this clarification.

Since this amendment provides a clarification only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), section 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39–931 (35 F.R. 1158), AD 70–2–11, as amended by Amendment 39–1011 (35 F.R. 9921), as amended by Amendment 39–1450 (37 F.R. 10068) is further amended to read as follows:

Applicable to those aircraft listed in Table I of Boeing Alert Service Bulletin 2959, Revision 3, dated April 28, 1972, or later FAA approved revisions.

To detect cracking in the front spar fitting lug of the stabilizer center section of designated Boeing Model 707 Series Airplanes and to provide for the installation of parts necessary to correct this condition, accomplish the following:

(A) Within 50 hours time in service after the effective date of this AD, unless already accomplished within the last 350 hours time in service, visually inspect the stabilizer center section front spar terminal fittings for cracks in the lugs in accordance with Boeing Alert Service Bulletin 2959, Revision 3, dated April 28, 1972, or later FAA-approved revisions, or in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

(1) If no cracks are found, repeat the visual inspections for cracks at intervals not to exceed 400 hours time in service.

(2) If cracks are found, before further flight, accomplish one of the following:

(a) Replace the 7079–T6 front spar assembly with a new assembly having the same part number and repeat visual inspections for cracks every 400 hours, or

(b) Remove cracks in accordance with Part III of Boeing Service Bulletin 2959, Rev. 3, dated April 28, 1972, or later FAA-approved revision and repeat visual inspections for cracks every 400 hours, or

(c) Remove cracks in accordance with a method approved by Chief, Engineering and Manufacturing Branch, FAA Northwest Region, or

(d) Accomplish the stabilizer strap modification for Boeing Service Bulletin 3067, Revision 1, dated September 8, 1972, or later FAA-approved revisions. This modification constitutes terminating action.

(B) The repetitive inspections required by this AD may be terminated when:

(1) The stabilizer front spar fitting has been modified in accordance with Part II of Boeing Service Bulletin 2959, Revision 3, dated April 28, 1972, or later FAA-approved revisions, or

(2) The stabilizer strap modification per Boeing Service Bulletin 3067, Revision 1, dated September 8, 1972, or later FAA-approved revisions is accomplished, or

(3) The 7079–T6 front spar assembly has been replaced by a new 7075–T73 spar assembly.

(C) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, may adjust the repetitive inspection period of the operator if the request contains substantiating data to justify the increase for the operator.

(D) Airplanes having cracked parts which require replacing under this AD may be flown in accordance with FAR 21.197 with the concurrence of the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, to a base where the replacement of parts can be accomplished.

Amendment 29–931 became effective January 30, 1970.

Amendment 39–1011 became effective June 18, 1970.

Amendment 39–1450 became effective May 20, 1972.

This Amendment (39–1574) becomes effective December 22, 1972.

Issued in Seattle, Wash., on December 1, 1972.

C. B. WALK, Jr.,
Director,
FAA Northwest Region.

[FR Doc.72–21181 Filed 12–8–72;8:50 am]

[Airspace Docket No. 72–RM–19]

SUBCHAPTER E—AIRSPACE

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

Alteration of Control Zone and Transition Area

On November 18, 1972, F.R. Doc. 72–19897 was published in the FEDERAL REGISTER (37 F.R. 24657). This document altered the descriptions of the Watertown, S. Dak. control zone and transition area. A review of the description of the 700-foot transition area revealed that the description did not conform to the intended designation which was correctly depicted in the graphic display that accompanied the NPRM. Action is taken herein to effect this change.

Since this change is minor in nature and no substantive change in the regulation is affected, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, F.R. Doc. 72–19897 (37 F.R. 24657) is amended by deleting "* * * extending clockwise from the 238° radial to the 086° radial * * *" in the description of the Watertown, S. Dak. 700-foot transition area.

Effective date. The effective date of the original document may be retained.

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

Issued in Aurora, Colo., on December 1, 1972.

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

[FR Doc.72–21183 Filed 12–8–72;8:50 am]

[Airspace Docket No. 72–SW–68]

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

Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate the Wharton, Tex., transition area.

On October 21, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 22754) stating the Federal Aviation Administration proposed to designate a 700-foot transition area at Wharton, Tex.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective G.m.t., February 1, 1973, as hereinafter set forth.

In § 71.181 (37 F.R. 2143), the following transition area is added:

WHARTON, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Wharton Municipal Airport (latitude 29°15'15" N., longitude 96°09'15" W.), and within 2.5 miles each side of the Eagle Lake, Tex., VORTAC 162° radial extending from the 5-mile radius to 23.5 miles southeast of the Eagle Lake VORTAC.

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

Issued in Fort Worth, Tex., on November 30, 1972.

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

[FR Doc.72–21184 Filed 12–8–72;8:50 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. 34–9883]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Offerings to Public of Own Securities by Brokers and Dealers

On April 12, 1972, in Securities Exchange Act Release No. 9555, published in the FEDERAL REGISTER for April 19, 1972, at 37 F.R. 7709, the Securities and Exchange Commission published a proposal to adopt Rules 15b10–8 (17 CFR 240.15b10–8) and 15b10–9 (17 CFR 240.15b10–9) under the Securities Exchange Act of 1934 (the "Act"). The Commission has considered the comments and suggestions received and has adopted the rules as stated below effective January 31, 1973. Rule 15b10–8 establishes standards for nonmember broker-dealers (i.e. those that are not members of the National Association of Securities Dealers, Inc. (NASD)) who propose to make public offerings of their securities. Rule 15b10–9 sets forth specific requirements for the participation in the underwriting or distribution by such nonmembers of their own issues or those of affiliates.

SUMMARY OF THE ADOPTED RULES

1. Under Rule 15b10–8, the following general criteria apply to all public offerings, whether or not self-underwritten, of securities of nonmember broker-dealers.

A. *Submission of financial statements.* It should be noted that these requirements are designed to insure in all offerings of nonmember broker-dealers, irrespective of whether they are effected through intrastate or Regulation A offerings, that at a minimum the financial disclosures required under the registration provisions of the Securities Act of 1933 will be met.

Under the rule, every nonmember broker-dealer is required to file and disclose in the prospectus, offering circular or other comparable document financial statements (i.e. balance sheet, profit and loss statement or statement of income and expense, a statement of source and application of funds and a statement of changes in each stockholders equity account)[1] for the immediately preceding 3 years. In those situations where the nonmember broker-dealer issuer has not been in existence for 3 years the financial statements filed have to cover the entire period of its existence. The most recent financial statements

[1] To conform with generally accepted accounting principles, this latter requirement has been included in the definition of financial statements, and the requirement contained in the initial proposal that a statement of retained earnings be filed has been deleted.

must be as of a date not more than 90 days prior to the filing of the registration statement and not more than 6 months prior to the effective date of the offering. Finally, the financial statements for the last calendar or fiscal year, as the case may be, or less if the nonmember broker-dealer has not been in existence for 1 year, must contain a balance sheet certified by a certified public accountant or public accountant who shall in fact be independent. If there is an updated balance sheet as of a date in excess of 6 months subsequent to the last full calendar year or fiscal year, it must be certified.

B. *Sales by insiders.* The rule provides that (except for the prohibition in Rule 15b10–9 on sales by associated persons and their immediate families) no more than 25 percent of the equity interest of the owners as of the filing of the registration statement can be offered as a part of the issue.[3]

All remaining securities held by the ownership group must be restricted, except in the case of a bona fide gift or transfer by operation of law, as to sale or transfer for a period of at least 1 year after the termination of the offering. The rule also provides that generally any associated person cannot offer any of his securities as a part of the offering unless they were owned by him for a period of at least 1 year prior to the filing of the registration statement.[3] Generally, these provisions, like those relating to subsequent public offerings by nonmember broker-dealers (see paragraph (C) below), are designed to reduce the potential for manipulation and to minimize the possibility for issuance of "cheap stock" to insiders on the eve of a public offering. Exemptions from these requirements can be granted, however, in special circumstances where the purposes of the rule are not applicable (e.g. the sale by an estate or by a person whose financial circumstances taking into consideration all relevant factors require earlier sale).

C. *Subsequent public offering by a nonmember broker-dealer.* After the nonmember broker-dealer has made an initial public offering of its securities, it is precluded from making another offering to the public of its securities for at least 1 year after the termination of the offering. This provision does not, however, prohibit subsequent offerings within 1 year made solely to employees to effectuate employee stock options, stock purchases, or other similar types of offerings.

D. *Net worth test.* This standard precludes a nonmember from going to the public to obtain funds to finance its broker-dealer operations in excess of three times the broker-dealer's net worth (exclusive of subordinated borrowings) as reflected in the most recent independently audited and certified balance sheet. In determining the maximum dollar amount of the distribution, secondary offerings by selling stockholders are not included.

E. *Net capital standards.* Under this standard, as of the date the distribution has been completed, the offering terminated, and settlement effected, the nonmember's net capital ratio as computed pursuant to Rule 15c3–1 (17 CFR 240.15c3–1) under the Act cannot exceed 10 to 1. Provision has been made in the rule to indicate that a nonmember may comply with this provision if it has obtained a specific exemption from the net capital rule pursuant to Rule 15c3–1(b)(1) (17 CFR 240.15c3–1(b)(1)) or (3) (17 CFR 240.15c3–1(b)(3)) thereunder.[4] To insure that the 10 to 1 net capital ratio is met, the rule requires that all proceeds of the offering be placed in an escrow account pending determination of the ratio at settlement. Additionally, notice of the termination and settlement of the offering along with a computation of its net capital ratio as of the settlement date has to be immediately provided the Commission. If the required ratio is not achieved within 60 days of the effective date of the offering, all moneys received from the offering must be refunded to investors. These provisions, as well as the net worth standard requiring a significant capital commitment by management in relation to that of the public, are designed to provide additional "suitability" protection to the investing public.

F. *Financial reporting.* Finally, the rule requires that after a nonmember has made a distribution to the public of an issue of its securities, it must send to each of its shareholders: (1) Quarterly, a statement of its operations; and (2) annually, independently audited and certified financial statements.[5]

2. Under Rule 15b10–9, a nonmember broker or dealer is generally permitted to underwrite or participate in the distribution of its own securities (subject to meeting the requirement in Rule 15b10–8) or those of an affiliate[6] if it obtained two independent underwriters to certify to the fairness of the offering price. These firms would each have to participate in the preparation of the registration statement and be subject to standards of due diligence in their examination of the offering. Additionally, these firms carry out the responsibilities of a usual underwriter in evaluating the terms of the offering and thus serve to protect the investing public at least partially from the lack of arm's-length bargaining present in such situations. Accordingly, the rule provides that these underwriters must undertake to assume the full legal responsibilities and liabilities of an underwriter under the Securities Act of 1933.[7]

As an additional safeguard a "seasoning" requirement has been included under which both the nonmember broker-dealer issuer (or affiliated nonmember broker-dealer underwriter) and the independent underwriters and a majority of the directors of their respective boards have to have been in the investment banking or securities business for at least 5 years. Additionally, at least 3 of those 5 years have to have resulted in operational profits for the nonmember issuer and independent underwriters.[8]

An exception to these standards has been provided so as to permit a nonmember broker-dealer to underwrite or participate in the distribution of its or an affiliate's securities without the pricing recommendations of two qualified independent underwriters if the offering is for a class of securities for which a "bona fide active independent market" exists. Here there would normally be less need for the independent pricing underwriters since the price at which the issue would be offered to the public would generally by reflective of the current market price for the issuer's securities. In such a situation, however, the nonmember must meet the seasoning and profitability requirements.

Another exception permits a nonmember broker-dealer to participate in a distribution of its or an affiliate's securities

[3] Where an active independent market exists (as defined in the rule) for the nonmember broker-dealer's securities, there is no percentage limitation on the stockholders' equity interest which can be distributed. However, in such a situation shares not sold by such stockholders, if requiring a registration statement to be subsequently filed, cannot be offered for at least 3 months after the termination of the offering.

[3] For this purpose, there is no fungibility concept. Thus, if the person owned 2,000 shares, 1,000 of which had been purchased more than a year ago, the 1,000 shares can be sold on a "FIFO" basis.

[4] If the nonmember is exempt from Rule 15c3–1 by reason by paragraph (b)(2) thereunder, the net capital ratio may be computed in accordance with the exchange's net capital rule to which the nonmember is subject. In such situations, the computation must be made by the exchange.

[5] It should be noted that the Commission recently adopted amendments to Rule 17a–5 under the Exchange Act (17 CFR 2.40.17a–5) which require all broker-dealers to submit specified financial information to customers. See Securities Exchange Act Release No. 9658 (June 30, 1972) and the FEDERAL REGISTER of July 21, 1972, 34 F.R. 14607.

[6] Under the rule, an affiliate is defined as a company: (1) Which controls, is controlled by, or is under common control with a nonmember broker-dealer; (2) which directly or indirectly owns, controls, or holds with power to vote 10 percent or more of the outstanding voting securities of a nonmember broker-dealer; or (3) in which a nonmember broker-dealer or person associated therewith, directly or indirectly owns, controls, or holds with power to vote 10 percent or more of the outstanding securities. The term affiliate would not include, however, an investment company registered pursuant to the provisions of the Investment Company Act of 1940, a separate account as defined in section 2(a)(37) of the Investment Company Act of 1940, a real estate investment trust as defined in section 856 of the Internal Revenue Code, and a tax sheltered program.

[7] The NASD has amended its self-underwriting rule to require such an undertaking by its members.

[8] The above seasoning and profitability requirements do not apply, however, to an affiliated non-broker-dealer issuer.

which is the subject of a firm commitment underwriting without having to obtain an additional pricing underwriter. Since a firm commitment underwriter commits its own funds, if needed, there is a greater likelihood that the terms of the offering (e.g. the price) will be fair. Such participation could not, however, be in an amount exceeding 10 percent of the total dollar amount of the issue since a greater participation might endanger the independence of the underwriter. In addition, in order for the nonmember broker-dealer to so participate, it has to meet the seasoning and profitability requirements set forth above.[9]

In addition, if pursuant to the rule a nonmember participated in the initial distribution of its or an affiliated broker-dealer's securities, the nonmember issuer's associated persons and their immediate families[10] are not permitted to sell in the offering any portion of their ownership interest. Exemptions from this provision may be granted but only in exceptional or unusual circumstances. The rule has been revised to indicate, however, that such individuals may participate in a secondary offering which is being made under the rule if the securities have a bona fide active independent market and are sold on a firm commitment basis through independent broker-dealers. In the latter situation, the regulatory concerns which gave rise to the rule do not appear to be as severe as in initial offerings.

Finally, while the Commission does not agree with some of the commentators that the rule should not apply to any debt offering, it does recognize, as several commentators point out, that there may be unusual and special circumstances, including some types of debt offerings, where the rule should not apply. Also, some question has been raised as to whether the rule should apply to arrangements consisting solely of rental management agreements in connection wth real property such as condominiums and second homes which under current interpretations are deemed securities. In this regard, the Commission believes that in view of the somewhat unique characteristics of some nonmember firms it would be more appropriate for the Commission to evaluate such situations on a case-by-case basis. Accordingly, a general exemptive provision has been added to the rule authorizing the Commission to exempt either unconditionally or on specified terms and conditions those underwritings which are not within the intended meaning and purpose of the rule. In connection with this addition, language has been deleted from paragraph (a)(1) of the previous proposal which required that in unusual or special circumstances where compliance with the rule was not feasible the Commission could exempt a nonmember from the rule upon a written request containing an acceptable alternative. The intent of this revision is not to preclude the Commission from requiring alternative plans, if appropriate, but to provide the Commission with more flexiblity to deal with the various types of offering arrangements that may arise under the rule.

Commission action. The Securities and Exchange Commission, acting pursuant to the provisions of the Securities Exchange Act of 1934, and particularly sections 15(b)(10) and 23(a) thereof, hereby adopts §§ 240.15b10–8 and 240.15b10–9 of Chapter II of Title 17 of the Code of Federal Regulations, effective January 31, 1973, as follows:

§ 240.15b10–8 Standards for public offering of the securities of nonmember broker-dealers.

(a) No nonmember broker or dealer shall make a public offering of an issue of its securities, whether or not exempt from the registration requirements of the Securities Act of 1933 (15 U.S.C. 77a et seq.), unless the following conditions are met:

(1) *Financial statements.* The nonmember broker or dealer has filed therewith and disclosed in the prospectus, offering circular or other comparable document financial statements for the immediately preceding 3 years. If such nonmember broker or dealer has not been in existence for 3 years, financial statements for the entire period of its existence must be so filed and disclosed. In either situation the most recent financial statements must be as of a date not more than 90 days prior to the filing of the registration statement and not more than 6 months prior to the effective date of the offering. The financial statements for the last calendar or fiscal year, as the case may be, or less if the nonmember has not been in existence for 1 year, must contain a balance sheet certified by a certified public accountant or public accountant who shall in fact be independent. If there is an updated balance sheet as of a date in excess of 6 months subsequent to the last full calendar or fiscal year, such statement must also be certified.

(2) *Sales by stockholders of the nonmember broker or dealer.* (i) In addition to the restrictions contained in paragraph (b) of § 240.15b10–9 relating to sales by associated persons and their immediate families, in any public offering of the securities of the nonmember broker or dealer where there is a no bona fide independent market for the class of securities being offered, no more than 25 percent of the equity interest of the stockholders thereof as of the date of the filing of the registration statement may be offered as part of the issue. The remaining equity interest held by such persons shall, except in the case of a bona fide gift or transfer by operation of law, not be sold or transferred for a period of at least 1 year after the termination of the offering.

(ii) In all other public offerings for a class of securities of a nonmember broker or dealer there shall be no limitation on the percentage of stockholders' equity which may be distributed: *Provided, however,* That those securities owned by associated persons of the nonmember broker or dealer, which are not made a part of the public offering and which require a registration statement to be filed and to become effective before being sold to the public shall, except in the case of a bona fide gift or transfer by operation of law, not be sold or transferred for a period of at least 3 months after the termination of the offering. In the case of a bona fide gift or transfer by operation of law the prohibitions on sale or transfer referred to in subdivision (i) of this paragraph and this subdivision (ii) shall apply to the donee and transferee and shall be measured as of the date of the termination of the offering.

(3) *Holding period required prior to sales by associated persons of the nonmember broker or dealer.* A stockholder who is an associated person of a nonmember broker or dealer, may not offer any of his securities as part of an offering if they have not been owned by him for a period of at least 1 year prior to the filing of the registration statement unless (i) they were acquired during the referred to 1-year period as a result of the formation of a successor corporation to a preexisting sole proprietorship or partnership in respect to which he was either the sole proprietor or a partner prior to the previous 1-year period or (ii) they were acquired during the referred to 1-year period as a result of a bona fide stock dividend, stock split, recapitalization, merger, or some other like event.

(4) *Exemptions.* The Commission upon written request may, in exceptional and unusual circumstances (such as, but not necessarily limited to, a sale by an estate or by a person whose financial circumstances, taking into consideration all relevant factors, requires such), exempt a broker or dealer unconditionally or on specified terms from the provisions of subparagraphs (2) and (3) of this paragraph.

(5) *Subsequent public offerings by the nonmember broker or dealer.* After an initial offering has been made by a nonmember broker or dealer to the public of an issue of its securities, no other offering to the public can be made by that nonmember of its securities for a period of at least 1 year after the termination of the offering: *Provided, however,* That offerings made solely to employees during that period, such as employee stock option, stock purchase, or other similar type offerings, shall not be prohibited.

(6) *Net worth.* The total dollar amount of an offering by a nonmember broker or dealer of its securities (exclusive of these securities attributable to selling stockholders) shall be no greater than 3 times the net worth (exclusive of subordinated borrowings) of the nonmember as reflected in the most recent balance sheet as of a date not more than

[9] It should be noted that the firm commitment underwriter must also meet these requirements.

[10] "Immediate family" is defined as a parent, mother or father-in-law, husband or wife, brother or sister, brother- or sister-in-law, children, or any relative to whose support such persons contribute directly or indirectly.

90 days prior to the filing of the registration statement and 6 months prior to the date of the offering.

(7) *Net capital.* As of the date the distribution has been completed, the offering terminated, and settlement effected, the nonmember broker or dealer shall not have "aggregate indebtedness" in excess of 10 times its "net capital" as those terms are defined in § 240.15c3–1 unless it has obtained a specific exemption pursuant to § 240.15c3–1(b) (1) or (3): *Provided, however,* That if the nonmember is exempt from § 240.15c3–1 by reason of subparagraph (2) of this paragraph, the ratio of aggregate indebtedness to net capital (net capital ratio) may be computed under the rule of the National Securities Exchange to which the nonmember is subject. In such circumstances, the National Securities Exchange shall compute the net capital ratio. Notice of the termination and settlement of the offering along with a computation of the net capital ratio as of the settlement date shall be immediately provided the Commission. In addition, all proceeds of any offering of a nonmember broker or dealer's securities shall be placed in an escrow account until, and shall not be paid over to or used by the nonmember unless, such 10 to 1 net capital ratio has been met. If these requirements have not been met within 60 days after the date of the offering, all moneys received from sales of securities of the offering and held in the escrow account must be returned in full to the purchasers thereof and the offering withdrawn.

(8) *Subsequent disclosures by the nonmember broker or dealer.* After a nonmember has made a distribution to the public of an issue of its securities, it shall send to each of its record security holders: Quarterly, a summary statement of its operations; and, annually, independently audited and certified financial statements.

(b) *Definitions.* For the purpose of this section:

(1) The term "nonmember broker or dealer" shall mean any broker or dealer registered under section 15 of the Act, who is not a member of a national securities association registered with the Commission under section 15A of the Act.

(2) The term "associated person" shall mean any officer, director, or branch manager of a nonmember broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such nonmember broker or dealer, and shall include any employee of such nonmember broker or dealer.

(3) The term "bona fide active independent market" shall mean a market in a class of securities of a company which:

(i) Is registered pursuant to the provisions of section 12(b) or section 12(g) of the Act; unless the company, or an industry of which such company is part, has been specifically exempted from the registration provisions of those sections of the Act;

(ii) Has a minimum trading volume for the immediately preceding 12 months of 100,000 shares;

(iii) Has outstanding 250,000 publicly held shares of the class of securities being offered; and

(iv) In the case of over-the-counter securities, has had at least three bona fide independent market makers for a period of at least the immediately preceding 30 business days.

(4) The term "bona fide independent market maker" shall mean a market maker which:

(i) The nonmember broker or dealer reasonably believes continually maintains net capital as determined by § 240.15c3–1 of $50,000 or $5,000 for each security in which it makes a market, whichever is less, and stands ready, willing, and able to effect transactions in reasonable amounts, and at his quoted prices, with other brokers and dealers;

(ii) Regularly publishes bona fide competitive bid and offer quotations in a recognized interdealer quotation system; and

(iii) Furnishes bona fide competitive bid and offer quotations to other brokers and dealers on request.

(5) The term "financial statements" shall mean a balance sheet, profit and loss statement, or statement of income and expense, a statement of source and application of funds, and a statement of changes in each stockholder's equity account.

(6) The term "settlement date" shall mean the date on which the distribution of the net proceeds from an offering is made to the nonmember broker or dealer issuer and/or selling stockholder.

§ 240.15b10–9 Standards for the underwriting or participation by nonmember broker-dealers in the public distribution of their own or affiliate's securities.

(a) No nonmember broker or dealer may underwrite or otherwise participate in a public offering of its own securities or those of an affiliate unless:

(1) The price at which the issue is to be distributed to the public is no higher than that recommended jointly by two qualified independent underwriters who shall each also participate in the preparation of the registration statement and the prospectus, offering circular or other comparable document; shall each exercise the usual standards of due diligence in respect thereto; and shall each otherwise agree to undertake the full legal responsibilities and liabilities of an underwriter under the Securities Act of 1933. The two qualified independent underwriters shall also be represented by a legal counsel independent of the nonmember broker or dealer and/or affiliated issuer who shall review the information contained in the registration statement and the prospectus, offering circular, or other comparable document, and issue an opinion as to whether they conform to all requirements of the Federal securities laws and, in case of an intrastate offering, whether they conform to all of the requirements of the State having jurisdiction.

(2) The nonmember broker or dealer (or its predecessor if the nonmember is a newly formed corporation) or nonmember broker or dealer affiliate, as the case may be, has been actively engaged in the investment banking or securities business for at least 5 years immediately perceding the filing of the registration statement; the nonmember in at least 3 of the 5 years immediately preceding the filing of the registration statement has had a profit from its operations; and the majority of the board of directors holding office, or general partners if the nonmember is a partnership, as of the date of the filing of the registration statement and as of the date of the offering have been actively engaged in the investment banking or securities business for the 5-year period immediately preceding the filing of the registration statement. If the nonmember is a sole proprietorship, then the proprietor must have been actively engaged in the investment banking or securities business for the 5-year period immediately preceding the filing of the registration statement.

(3) In the distribution of the securities of an affiliated nonbroker or dealer issuer:

(i) The financial statements of the issuer conform in all respects with the provisions of § 240.15b10–8; and

(ii) The issuer represents that it will after the distribution to the public send to each of its security holders quarterly, a summary statement of its operations; and, annually, financial statements certified by an independent public accountant.

(b) If pursuant to the requirements of paragraphs (a)(1) and (a)(2) of this section, a nonmember broker or dealer distributes its or an affiliated broker or dealer's securities then the nonmember-issuer's associated persons and their immediate families may not sell, as a part of the offering, any part of their ownership interest unless there is a bona fide active independent market for the securities and such securities are sold pursuant to a firm commitment underwriting my an independent underwriter or underwriters.

(c) *Exceptions.* (1) In cases where the provisions of paragraph (a)(1) of this section have not been complied with, a nonmember broker or dealer who meets the requirements of paragraph (a)(2) of this section, may nevertheless participate as a member of the selling group in the distribution of an issue of its own securities or an issue of an affiliate-issuer's securities if the distribution is the subject of a firm commitment underwriting, managed by an underwriter who is a qualified independent underwriter and such participation does not exceed 10 percent of the total dollar amount of the offering.

(2) In cases where the provisions of paragraph (a)(1) of this section have not been complied with, a nonmember broker or dealer who meets the requirements of paragraph (a)(2) of this section, may nevertheless underwrite or

participate in the distribution of an issue of its own securities or an issue of an affiliate-issuer's securities if the offering is for a class of securities for which a bona fide active independent market exists as of the date of the filing of the registration statement for the current offering and as of the effective date thereof.

(d) This section shall not prohibit any underwriting or other participation by a nonmember broker-dealer in the public distribution of its or an affiliate's securities if the Commission, upon written request or upon its own motion, exempts such underwriting or other participation, either unconditionally or on specified terms and conditions, as not being within the intended meaning and purpose of this section.

(e) Definitions: For the purposes of this section:

(1) The term "nonmember broker or dealer" shall mean any broker or dealer registered under section 15 of the Act, who is not a member of a national securities association registered with the Commission under section 15A of the Act.

(2) The term "associated person" shall have the same meaning as in § 240.-15b10–8.

(3) The term "affiliate" shall mean a company:

(i) Which controls, is controlled by or is under common control with a nonmember;

(ii) Which directly or indirectly owns, controls, or holds with power to vote 10 percent or more of the outstanding voting securities of a nonmember; or

(iii) In which a nonmember, or a person associated with a nonmember, directly or indirectly owns, controls, or holds with power to vote 10 percent or more of the outstanding securities: *Provided, however,* That the term "affiliate" shall not be deemed to include an investment company registered under the Investment Company Act of 1940 as amended, a separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 as amended (15 U.S.C. 80a–2(a)(37)) a real estate investment trust as defined in section 856 of the Internal Revenue Code, or a tax sheltered program.

(4) The term "bona fide active independent market" shall have the same meaning as in § 240.15b10–8.

(5) The term "bona fide independent market maker" shall have the same meaning as in § 240.15b10–8.

(6) The term "financial statements" shall have the same meaning as in § 240.15b10–8.

(7) The term "qualified independent underwriter" shall mean a broker or dealer which:

(i) Has been actively engaged in the investment banking or securities business for at least 5 years immediately preceding the filing of the registration statement;

(ii) In at least 3 of the 5 years immediately preceding the filing of the registration statement has had a profit from its operations;

(iii) As of the date of the filing of the registration statement and as of the date of the offering:

(*a*) If a corporation has a majority on its board of directors of persons who have been actively engaged in the investment banking or securities business for the 5-year period immediately preceding the filing of the registration statement;

(*b*) If a partnership, the majority of its general partners has been actively engaged in the investment banking or securities business for the 5-year period immediately preceding the filing of the registration statement;

(*c*) If a sole proprietorship, the proprietor has been actively engaged in the investment banking or securities business for the 5-year period immediately preceding the filing of the registration statement.

(iv) Has actively engaged in the underwriting of public offerings of securities for at least the 5-year period immediately preceding the filing of the registration statement; and

(v) Is not an affiliate of the nonmember broker or dealer and/or affiliated issuer.

(8) The term "tax sheltered program" shall mean a program in which flow-through tax benefits are a material factor regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate syndications (except real estate investment trusts), citrus grove developments, cattle programs, and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof.

(9) The term "registration statement" shall mean a statement provided for in section 6 of the Securities Act of 1933 (15 U.S.C. 77f) and includes any amendment thereto and any report, document, or memorandum filed as a part of such statement or incorporated therein by reference: *Provided, however,* That such term shall also include a notification on Form 1–A (§ 239.90 of this chapter) filed with the Commission pursuant to the provisions of § 230.255 of this chapter under the Securities Act of 1933 and, in the case of an intrastate offering, any document, by whatever name known, initiating the registration or similar process for an issue of securities which is required to be filed by the laws or regulations of the State where the offering is to be made.

(10) The term "immediate family" shall mean parents, mother-in-law, father-in-law, husband or wife, brother or sister, brother-in-law, or sister-in-law, children, or any relative to whose support such persons contribute directly or indirectly.

(11) The term "firm commitment underwriting" shall mean an underwriting in which the underwriter(s) is contractually obligated to purchase a predetermined number of shares from the issuer at a determined price on the effective date of the offering.

(Secs. 15(b)(10), 23(a), 48 Stat. 895, 901, sec. 8, 49 Stat. 1379, sec. 6, 78 Stat. 565, 15 U.S.C. 78o(b)(10), 78w(a))

By the Commission.

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

DECEMBER 4, 1972.

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Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 72-336]

PART 153—ANTIDUMPING

On April 13, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 7012) inviting interested persons to submit suggestions for improving those provisions of the Customs regulations relating to antidumping procedures (19 CFR Part 153). Subsequently, proposed amendments were published in the FEDERAL REGISTER on April 19, 1972 (37 F.R. 7698) (hereinafter referred to as "the notice"). After consideration of all data, views, or arguments submitted in response to the notice, the following additional changes are made in Part 153:

1. In § 153.8, the proposal to delete the word "reasonably" wherever it appears before the words "direct relationship" is adopted. However, the statement in the commentary to the notice that under the change such items as bad debts and general advertising will no longer be allowed as differences in circumstances of sale is modified to the extent that expenses for general advertising of the particular product under investigation will continue to be considered appropriate for allowance as a circumstance of sale.

2. Paragraph (b) of § 153.15 is changed to specify a circumstance under which manufacturers, producers, or exporters involved will be named in the "Notice of Tentative Discontinuance of Antidumping Investigation."

3. Paragraph (c) of § 153.15 is changed to include in the statement of price assurances an additional assurance to the effect that the manufacturer, producer, or exporter concerned will permit verification of information submitted in periodic reports.

4. Paragraph (e) of § 153.15 has been changed to clarify existing procedures for publication of a "Discontinuance of Antidumping Investigation" notice following publication of a "Withholding of Appraisement Notice" or a "Notice of Tentative Negative Determination."

5. A new § 153.15(h) is added, setting forth procedures for the termination of discontinued antidumping investigations.

6. Section 153.17 is changed to state that merchandise specified in this section must be resold to an unrelated U.S. purchaser before an exporter's sales price can be determined.

7. Paragraph (c) of § 153.33 is changed to make clear existing procedures for publication of a negative determination following publication of a "Notice of Tentative Discontinuance of Antidumping Investigation."

8. In § 153.37, the provisions for opportunity to present views following publication of notice of a tentative decision or a notice of withholding of appraisement have been consolidated. Appropriate changes reflecting this are made in §§ 153.15, 153.33, and 153.41.

Accordingly, Part 153, together with all amendments thereto, of the Customs Regulations, Chapter I, Title 19 of the Code of Federal Regulations, is hereby adopted, and republished as set forth below.

Effective date. Paragraphs (f), (g), and (h) of § 153.15 shall be effective with respect to all discontinued investigations, whether or not discontinued before the date of publication of these amendments. The balance of the amendments shall be effective with respect to all antidumping proceedings in which neither a decision, final or tentative, nor a notice of withholding of appraisement has been published before the 30th day after the date of publication of these amendments in the FEDERAL REGISTER.

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

Approved: December 4, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

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AUTHORITY: The provisions of this Part 153 issued under sections 201–212, 407, 42 Stat. 11 et seq., as amended, section 5, 72 Stat. 585, sections 406, 407, 42 Stat. 18; 5 U.S.C. 301, 19 U.S.C. 160–173. Other authorities are cited to text in parentheses.

§ 153.1 Scope.

This part sets forth procedures and rules applicable to proceedings under the Antidumping Act, 1921, as amended, the assessment of the special dumping duty, and protests relating to matters under the Antidumping Act, 1921, as amended.

Subpart A—Fair Value

§ 153.2 Fair value; definition.

For the purposes of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the fair value of the imported merchandise shall be determined in accordance with §§ 153.3 to 153.5.

§ 153.3 Fair value based on price in country of exportation; the usual test.

(a) *General.* Merchandise imported into the United States will ordinarily be considered to have been sold, or to be likely to be sold, at less than fair value if the purchase price or exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)) is sold for consumption in the country of exportation on or about the date of purchase or agreement to purchase of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(b) *Restricted sales.* When home market sales form the appropriate basis of comparison, they will be used for this purpose whether or not they are restricted. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the home market price will be made.

§ 153.4 Fair value based on sales for exportation to countries other than the United States.

(a) *General.* If it is demonstrated that during a representative period the quantity of such or similar merchandise sold for consumption in the country of exportation is so small, in relation to the quantity sold for exportation to countries other than the United States, as to be an inadequate basis for comparison, then merchandise imported into the United States will ordinarily be deemed to have been sold, or to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170(a)(3))), is sold for exportation to countries other than the United States on or about the date of purchase or of agreement to purchase the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(b) *Restricted sales.* When third country sales form the appropriate basis of comparison, they will be used for this purpose whether or not they are restricted. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the third country price will be made.

§ 153.5 Fair value based on constructed value.

(a) *General.* If the information available is deemed by the Secretary insufficient or inadequate for a determination under § 153.3 or § 153.4 he will determine fair value on the basis of the constructed value as defined in section 206 of the Antidumping Act, 1921, as amended (19 U.S.C. 165).

(b) *Merchandise from controlled economy country.* Ordinarily, if the information available indicates that the economy of the country from which the merchandise is exported is controlled to

an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of fair value under § 153.3 or § 153.4, the Secretary will determine fair value on the basis of the constructed value of the merchandise determined on the normal costs, expenses, and profits as reflected by the prices at which such or similar merchandise is sold by a non-State-controlled-economy country either (1) for consumption in its own market; or (2) to other countries, including the United States.

§ 153.6 Calculation of fair value.

In calculating fair value under section 201(a), Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the criteria in §§ 153.7 through 153.16 shall apply.

§ 153.7 Fair value; differences in quantities.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with such applicable criteria as sales or offers, on which a determination of fair value is to be based, reasonable allowances will be made for differences in quantities if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. In determining the question of allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of exportation with respect to affording in the home market (or third country markets, where sales to third countries are the basis for comparison) discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade.

(b) *Criteria for allowances.* Allowances for price discounts based on sales in large quantities ordinarily will not be made unless:

(1) *Six-month rule.* The exporter during the 6 months prior to the date when the question of dumping was raised or presented (or during such other period as investigation shows is more representative) had been granting quantity discounts of at least the same magnitude with respect to 20 percent or more of such or similar merchandise which he sold in the home market (or in third country markets when sales to third countries are the basis for comparison) and that such discounts had been freely available to all purchasers, or

(2) *Cost justification.* The exporter can demonstrate that the discounts are warranted on the basis of savings specifically attributable to the quantities involved.

(c) *Price lists.* In determining whether a discount has been given, the presence or absence of a published price list reflecting such a discount is not controlling. In certain lines of trade, price lists are not commonly published and in others although commonly published they are not commonly adhered to.

§ 153.8 Fair value; circumstances of sale.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a direct relationship to the sales which are under consideration.

(b) *Examples.* Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances will also generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a direct relationship to the sales which are under consideration, allowances generally will not be made for differences in research and development costs, production costs, and advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser; provided that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less.

(c) *Relation to market value.* In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, where appropriate, may also consider the cost of such differences to the seller, as contributing to an estimate of market value.

§ 153.9 Fair value; similar merchandise.

In comparing the purchase price or exporter's sales price, as the case may be, with the selling price in the home market, or for exportation to countries other than the United States, in the case of similar merchandise described in subdivisions (C), (D), (E), or (F) of section 212(3), Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)), due allowance shall be made for differences in the merchandise. In this regard the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, when appropriate, he may also consider differences in cost of manufacture if it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences.

§ 153.10 Fair value; offering price.

In the determination of fair value, offers will be considered in the absence of sales, but an offer made in circumstances in which acceptance is not reasonably to be expected will not be deemed to be an offer.

§ 153.11 Fair value; sales agency.

If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207 of the Antidumping Act, 1921 (19 U.S.C. 166), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of fair value.

§ 153.12 Fair value; fictitious sales.

In the determination of fair value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

§ 153.13 Fair value; sales at varying prices.

Where the prices in the sales which are being examined for a determination of fair value vary (after allowances provided for in §§ 153.7, 153.8, and 153.9), determination of fair value will take into account either the prices of a preponderance of the merchandise, or the weighted averages of the prices of the merchandise thus sold. Unless there is a clear preponderance of merchandise sold at the same price, weighted averages of the prices of the merchandise sold will normally be used. If there is not a clear preponderance of the merchandise sold at the same price and weighted averages of the prices of the merchandise sold are determined by the Secretary to be inappropriate, the Secretary may use any method for determining fair value which he deems appropriate.

§ 153.14 Fair value; quantities involved and differences in price.

Merchandise will not be deemed to have been sold at less than fair value unless the quantity involved in the sale or sales to the United States, or the difference between the purchase price or exporter's sales price, as the case may be, and the fair value, is more than insignificant.

§ 153.15 Discontinuance of antidumping investigation.

(a) *Price assurances, termination of sales or other circumstances.* Whenever the Secretary of the Treasury is satisfied during the course of an antidumping investigation that either:

(1) Price revisions have been made which eliminate the likelihood of sales at less than fair value and that there is no likelihood of resumption of the prices which prevailed before such revision, and

assurances have been received to this effect; or

(2) Sales to the United States of the merchandise have terminated and will not be resumed and assurances have been received to this effect;

or whenever the Secretary concludes that there are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation, the Secretary may publish a "Notice of Tentative Discontinuance of Antidumping Investigation" in the FEDERAL REGISTER.

(b) *Notice of tentative discontinuance of antidumping investigation.* The notice will set forth a description of the merchandise involved and state the facts relied upon by the Secretary in publishing the notice and that those facts are considered to be evidence warranting the discontinuance of the investigation. In the case of investigations tentatively discontinued pursuant to paragraph (a)(2) of this section, the notice will identify the manufacturers, producers, or exporters who have furnished appropriate assurances. The notice will also state that interested persons shall be given the opportunity to present their views under the procedure set forth in § 153.37, and unless persuasive evidence or argument to the contrary is presented within such period as is specified in the notice the Secretary will publish a final notice discontinuing the investigation. The tentative acceptance of price assurances or assurances of termination of sales to the United States, and price revisions or the termination of sales to the United States will not prevent the Secretary from making a determination of sales at less than fair value in any case where he considers such action appropriate.

(c) *Statement concerning assurances.* Assurances provided for in paragraph (a) of this section, shall be in substantially the following form:

I hereby certify that I am _____ (an officer) _____ (attorney-in-fact) of _____ (name of foreign manufacturer, producer or exporter) and am authorized, on behalf of _____ (name of foreign manufacturer, producer or exporter) to give assurances that (select the applicable provision):

1. All future sales of _____ (commodity) by _____ (name of foreign manufacturer, producer or exporter) for exportation to the United States shall be made at prices which are not less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. et seq.) and that _____ (name of manufacturer, producer or exporter shall make a report to the Commissioner of Customs which shall contain or be accompanied by the information required by § 153.15(f) of the Customs Regulations (19 CFR 153.15(f)) for such period of time and at such intervals as the Secretary may deem appropriate and shall cooperate in allowing whatever verification of such information is deemed necessary by the Secretary; or

2. All sales of _____ (commodity) by _____ (name of foreign manufacturer, producer or exporter) for exportation to the United States have terminated and shall not be resumed.

_____ (Officer or attorney-in-fact)

(d) *Final discontinuance.* As soon as possible after the publication of a "Notice of Tentative Discontinuance of Antidumping Investigation" the Secretary will determine whether final discontinuance is warranted and, if he so determines, publish a "Discontinuance of Antidumping Investigation" notice in the FEDERAL REGISTER.

(e) *Final discontinuance after issuance of a "Withholding of Appraisement Notice" or a "Notice of Tentative Negative Determination."* The procedures specified in paragraphs (b) and (d) of this section will not apply if the decision to issue a "Discontinuance of Antidumping Investigation" notice is made by the Secretary after a "Withholding of Appraisement Notice" or "Notice of Tentative Negative Determination" has been issued and thereafter he has afforded interested parties an opportunity to be heard pursuant to the provisions of § 153.37. In lieu thereof a "Discontinuance of Antidumping Investigation" notice will be published in the FEDERAL REGISTER setting forth the statement of reasons therefor.

(f) *Periodic reports by foreign exporters.* Whenever an investigation has been discontinued by the Secretary on the basis of price assurances, the foreign manufacturer, producer, or exporter of the merchandise which was the subject of the discontinued investigation shall thereafter make a report to the Commissioner of Customs for such period of time and at such intervals as the Secretary may deem appropriate. The periodic reports to the Commissioner of Customs generally shall, as determined by the Secretary, contain or be accompanied by the following:

(1) Prices at, and the terms and conditions on which, the merchandise is being sold for export to the United States and in the applicable foreign market (or information regarding constructed value as set forth in section 206 of the Antidumping Act, 1921, as amended (19 U.S.C. 165));

(2) Published price lists, if any;

(3) Information regarding discounts, quantities involved on a per sale basis, shipping charges, packing costs, and other circumstances of sales in the two markets under consideration;

(4) Information regarding differences in cost of manufacture where similar merchandise is compared pursuant to § 153.9; and

(5) Such other information which the Secretary deems appropriate.

(g) *Reopening of discontinued investigation.* In the event that the Secretary determines, subsequent to the discontinuance of an investigation pursuant to paragraph (d) of this section, that there are reasonable grounds to believe or suspect that there are or are likely to be sales to the United States at less than fair value, he will reopen the investigation by publishing forthwith in the FEDERAL REGISTER a "Withholding of Appraisement Notice" with respect to the merchandise. If, prior to the discontinuance of the investigation, importers and exporters concerned had requested a 6-month withholding of appraisement pursuant to § 153.34(b), when the investigation is reopened the Secretary may withhold appraisement for 6 months. If no such requests have been received, the Secretary may withhold appraisement pursuant to § 153.34(a). The withholding of appraisement may be made effective with respect to merchandise entered, or withdrawn from warehouse, for consumption not more than 90 days before the date of publication. Whenever an investigation is reopened, interested persons will be given the opportunity to present their views pursuant to § 153.37.

(h) *Termination of discontinued investigations.* (1) Whenever the Secretary is satisfied that termination of a discontinued investigation is appropriate, he will publish a "Notice of Tentative Termination of Antidumping Investigation" in the FEDERAL REGISTER. The notice will set forth a description of the merchandise involved and state the facts relied upon by the Secretary in publishing the notice and that those facts are considered to be evidence warranting the termination of the investigation. The notice will also state that interested persons shall be given the opportunity to present their views under the procedure set forth in § 153.37, and unless persuasive evidence or argument to the contrary is presented within the period specified in the notice the Secretary will publish a final notice terminating the investigation.

(2) As soon as possible thereafter the Secretary will determine whether final termination is warranted and, if he so determines, publish a "Notice of Termination of Antidumping Investigation" in the FEDERAL REGISTER.

§ 153.16 Fair value; shipments from intermediate country.

If the merchandise is not imported directly from the country of origin, but is shipped to the United States from another country, the price at which such or similar merchandise is sold in the country of origin will be used in the determination of fair value if the merchandise was merely transshipped through the country of shipment.

§ 153.17 Fair value; merchandise resold in a changed condition.

If exporter's sales price (as defined in section 204 of the Antidumping Act, 1921 (19 U.S.C. 163)), is applicable and the imported merchandise is resold to an unrelated U.S. purchaser in a condition different from that in which it was imported, the Secretary may use such

reasonable basis as he deems appropriate to determine exporter's sales price.

§ 153.18 Fair value; level of trade.

The comparison of the purchase price or exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, with the applicable price in the home market of the country of exportation (or, as the case may be, price to third country markets) will generally be made at the same level of trade. However, if the Secretary finds that the sales of the merchandise to the United States or in the applicable foreign market are insufficient in number to permit an adequate comparison, the comparison will be made at the nearest comparable level of trade and appropriate adjustments shall be made for differences affecting price comparability.

Subpart B—Availability of Information

NOTE: For Bureau of Customs general provisions relating to availability of information see Part 103 of this chapter.

§ 153.23 Availability of information in antidumping proceedings.

(a) *Information generally available.* In general, all information but not necessarily all documents obtained by the Treasury Department, including the Bureau of Customs, in connection with any antidumping proceeding will be available for inspection or copying by any person. With respect to documents prepared by an officer or employee of the United States, factual material, as distinguished from recommendations and evaluations, contained in any such document will be made available by summary or otherwise on the same basis as information contained in other documents. Attention is directed to § 24.12 of this chapter relating to fees charged for providing copies of documents.

(b) *Requsts for confidential treatment of information.* Any person who submits information in connection with an antidumping proceeding may request that such information, or any specified part thereof, be held confidential. Information covered by such a request shall be set forth on separate pages from other information; and all such pages shall be clearly marked "Confidential Treatment Requested." The Commissioner of Customs or the Secretary of the Treasury or the delegate of either will determine, pursuant to paragraph (c) of this section, whether such information, or any part thereof, shall be treated as confidential. If it is so determined, the information covered by the determination will not be made available for inspection or copying by any person other than an officer or employee of the U.S. Government or a person who has been specifically authorized to receive it by the person requesting confidential treatment. If it is determined that information submitted with such a request, or any part thereof, should not be treated as confidential, or that summarized or approximated presentations thereof should be made available for disclosure, the person who has requested confidential treatment thereof shall be promptly so advised and, unless he thereafter agrees that the information, or any specified part or summary or approximated presentations thereof, may be disclosed to all interested parties, the information will not be made available for disclosure, but to the extent that it is self-serving it will be disregarded for the purpose of the determination as to sales at less than fair value and no reliance shall be placed thereon in this connection, unless it can be demonstrated from other sources that the information is correct.

(c) *Standards for determining whether information will be regarded as confidential*—(1) *General.* Information will ordinarily be considered to be confidential only if its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. Further, if disclosure of information in specific terms or with identifying details would be inappropriate under this standard, the information will ordinarily be considered appropriate for disclosure in generalized, summary or approximated form, without identifying details, unless the Commissioner of Customs or the Secretary of the Treasury or the delegate of either determines that even in such generalized, summary or approximated form, such disclosure would still be of significant competitive advantage to a competitor or would still have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. As indicated in paragraph (b) of this section, however, the decision that information is not entitled to protection from disclosure in its original or in another form will not lead to its disclosure unless the person supplying it consents to such disclosure.

(2) *Information ordinarily regarded as appropriate for disclosure.* Except as provided in § 153.23(c)(3), information will ordinarily be regarded as appropriate for disclosure if it:

(i) Relates to price information;

(ii) Relates to claimed freely available price allowances for quantity purchases; or

(iii) Relates to claimed differences in circumstances of sale.

(3) *Information ordinarily regarded as confidential.* Information will ordinarily be regarded as confidential if its disclosure would:

(i) Disclose business or trade secrets;

(ii) Disclose production costs;

(iii) Disclose distribution costs, except to the extent that such costs are accepted as justifying allowances for quantity or differences in circumstances of sale;

(iv) Disclose the names of particular customers or the price or prices at which particular sales were made; or

(v) Disclose the names of particular persons from whom confidential information was obtained, if nondisclosure of the names has been requested (5 U.S.C. 552).

Subpart C—Procedure Under Antidumping Act, 1921

§ 153.25 Suspected dumping; information from Customs officers.

If any district director of Customs has knowledge of any grounds for a reason to believe or suspect that any merchandise is being, or is likely to be, imported into the United States at a purchase price or exporter's sales price less than the foreign market value (or, in the absence of such value, then the constructed value), as contemplated by section 201(b) Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), or at less than its "fair value" as that term is defined in § 153.2, he shall communicate his belief or suspicion promptly to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as is required in § 153.27, if the district director has such information or if it is readily available to him.

§ 153.26 Suspected dumping; information from persons outside Customs Service.

Any person outside the Customs Service who has information that merchandise is being, or is likely to be, imported into the United States under such circumstances as to bring it within the purview of the Antidumping Act, 1921, as amended, may, on behalf of an industry in the United States, communicate such information in writing to the Commissioner of Customs.

§ 153.27 Suspected dumping; nature of information to be made available.

Communications to the Commissioner pursuant to § 153.26, regarding suspected dumping should, to the extent feasible, contain or be accompanied by the following:

(a) A detailed description or sample of the merchandise; if no sample is furnished, the Bureau of Customs may call upon the person who furnished the information to furnish samples of the imported and competitive domestic articles, or either;

(b) The name of the country from which it is being, or is likely to be, imported;

(c) The name of the exporter or exporters and producer or producers, if known;

(d) The ports or probable ports of importation into the United States;

(e) Information indicating that an industry in the United States is being injured, or is likely to be injured, or prevented from being established;

(f) Such detailed data as are available with respect to values and prices indicating that such merchandise is being, or is likely to be, sold in the United States at less than its fair value, within the meaning of the Antidumping Act, 1921, as amended, including information

as to any differences between the foreign market value or constructed value and the purchase price or exporter's sales price which may be accounted for by any difference in taxes, discounts, incidental costs such as those for packing or freight, or other items.

(g) Such material as is available indicating the market price for similar merchandise in the country of exportation and in any third countries in which merchandise of the producer complained of is known to be sold.

(h) Such information as is available as to sales made for consumption in the country of exportation or for exportation otherwise than to the United States over a significant period of time prior to the date upon which the information is furnished.

(i) Such suggestions as the person furnishing the information may have as to specific avenues of investigation to be pursued or questions to be asked in seeking pertinent information.

§ 153.28 Adequacy of information.

If any information filed pursuant to § 153.26 in the opinion of the Commissioner does not conform substantially with the requirements of § 153.27, the Commissioner shall return the communication to the person who submitted it with detailed written advice as to the respects in which it does not conform.

§ 153.29 Initiation of antidumping proceeding; summary investigation.

Upon receipt of information pursuant to § 153.25 or § 153.26 in a form acceptable to the Commissioner, the Commissioner shall conduct a summary investigation. If he determines that the information is patently in error, or that merchandise of the class or kind is not being and is not likely to be imported in more than insignificant quantities, or for other reasons determines that further investigation is not warranted, he shall so advise the person who submitted the information and the case shall be closed.

§ 153.30 Antidumping Proceeding Notice.

(a) *Publication of Antidumping Proceeding Notice.* If the case has not been closed under § 153.29, the Secretary will publish a notice in the FEDERAL REGISTER that information in an acceptable form has been received pursuant to § 153.25 or § 153.26. This notice, to be referred to as the "Antidumping Proceeding Notice," will specify:

(1) A description of the merchandise involved;

(2) Whether the proceeding relates to all shipments of the merchandise in question from an exporting country, or only to shipments by certain persons or firms; in the latter case, the names of such persons and firms will be specified;

(3) The date on which information in an acceptable form was received and that date shall be the date on which the question of dumping was raised or presented for purposes of sections 201(b) and 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b) and 161(a));

(4) The fact that there is some evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States; and

(5) A summary of the information received. If a person outside the Customs Service raised or presented the question of dumping, his name may be included in the notice unless a determination under § 153.23 requires that his name not be disclosed.

(b) *Time limit on publication.* Generally, antidumping proceeding notices issued pursuant to § 153.30 shall be published in the FEDERAL REGISTER within 30 days after the date that information was received pursuant to § 153.25 or § 153.26 in a form acceptable to the Commissioner.

§ 153.31 Full-scale investigation.

(a) *Initiation of investigation.* Upon publication of an Antidumping Proceeding Notice, the Commissioner shall proceed, by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by § 153.32. In order to verify the information presented, or to obtain further details, investigations will, where appropriate, be conducted by Customs representatives in foreign countries, unless the country concerned objects to the investigation. If an adequate investigation is not permitted, or if any necessary information is withheld, the Secretary will reach a determination on the basis of such facts as are available to him.

(b) *Pricing information.* Ordinarily the Commissioner will require the foreign manufacturer, producer, or exporter to submit pricing information covering a period of at least 120 days prior to the date that information in a form acceptable to the Commissioner was received pursuant to § 153.25 or § 153.26. The Commissioner may, however, require the submission of pricing information for such longer period as he deems necessary; and he may also require the submission of pricing information on a current basis during the course of the investigation.

§ 153.32 Determination as to fact or likelihood of sales at less than fair value.

(a) *Fair value determination.* Upon receipt from the Commissioner of Customs of the information referred to in § 153.31, the Secretary of the Treasury will proceed as promptly as possible to determine whether or not the merchandise in question is in fact being, or is likely to be, sold in the United States or elsewhere at less than its fair value.

(b) *Submission of views.* During the course of an antidumping proceeding interested persons may make such written submissions as they desire. Appropriate consideration will be given to any new or additional information submitted. The Secretary or his delegate also may at any time invite any person or persons to supply him orally with information or argument.

(c) *Time limit on investigations.* Generally, within 6 months, or in more complicated investigations, within 9 months, after the date of the publication of an "Antidumping Proceeding Notice", the Secretary will publish in the FEDERAL REGISTER a "Withholding of Appraisement Notice" (§ 153.34), a "Notice of Tentative Negative Determination" (§ 153.33), or a "Notice of Tentative Discontinuance of Antidumping Investigation" (§ 153.15), as appropriate. However, if the Secretary decides that the appropriate tenative decision cannot satisfactorily be made within the 9-month period, he will publish a notice of that fact in the FEDERAL REGISTER, together with the reasons therefor. The notice also will announce the length of additional time, usually not more than 3 months, within which the appropriate action will be taken.

§ 153.33 Negative determination.

(a) *Notice of Tentative Negative Determination.* If it appears to the Secretary that on the basis of information before him a determination of sales at not less than fair value may be required, he will publish in the FEDERAL REGISTER a "Notice of Tentative Negative Determination," which will include a description of the merchandise involved and a statement of the reasons upon which the tentative determination is based. Opportunity to present views will be provided pursuant to § 153.37.

(b) *Final determination.* As soon as possible thereafter, the Secretary will make a final determination and publish his determination in the FEDERAL REGISTER.

(c) *Negative determination after issuance of a "Withholding of Appraisement Notice" or a "Notice of Tentative Discontinuance of Antidumping Investigation."* The procedure specified in paragraphs (a) and (b) of this section will not apply if the decision to issue a negative determination is made by the Secretary after a "Withholding of Appraisement Notice" or a "Notice of Tentative Discontinuance of Antidumping Investigation" has been issued and thereafter he has afforded interested parties an opportunity to be heard pursuant to the provisions of § 153.37. In lieu thereof, a final negative determination will be published setting forth the statement of reasons.

§ 153.34 Withholding of appraisement.

(a) *Three-month period.* If the Secretary determines during the course of his investigations that there are reasonable grounds to believe or suspect that any merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, then its constructed value) under the Antidumping Act, and if there is evidence on record concerning injury or likelihood of injury to or prevention of establishment

of an industry of the United States, he shall publish notice of these facts in the FEDERAL REGISTER in a "Withholding of Appraisement Notice," indicating:

(1) A description of the merchandise involved;

(2) That the belief or suspicion relates only to certain shippers or producers, if this is the case and that the withholding of appraisement is limited to the transactions of such shippers or producers; and

(3) The expiration date of the notice (which shall be no more than 3 months from the date of publication of the notice in the FEDERAL REGISTER, unless a longer period of withholding of appraisement has been requested pursuant to paragraph (b) of this section and has been approved by the Secretary). This withholding of appraisement notice will be issued concurrently with the Secretary's determination pursuant to § 153.35, unless appraisement is being withheld pursuant to paragraph (b) of this section.

(b) *Six-month period.* At any time prior to the issuance of the "Withholding of Appraisement Notice" referred to in paragraph (a) of this section, importers and exporters concerned may request that the period of withholding of appraisement extend for a period longer than 3 months, but in no case longer than 6 months. Upon receipt of such a request, the Secretary will decide whether appraisement should be withheld for a period longer than 3 months. If the Secretary decides that a period of withholding of appraisement longer than 3 months is justified, he will publish a "Withholding of Appraisement Notice" upon the same basis and containing information of the same type as is required by paragraph (a) of this section, except that the expiration date of the notice may be 6 months from the date of publication of the notice in the FEDERAL REGISTER.

(c) *Advice to District Directors of Customs.* The Commissioner shall advise all district directors of Customs of the Secretary's action. Upon receipt of such advice each district director of Customs shall proceed to withhold appraisement in accordance with the pertinent provisions of § 153.48.

§ 153.35 Affirmative determination; General.

If it appears to the Secretary on the basis of the information before him that a determination of sales at less than fair value is required, unless the "Withholding of Appraisement Notice" was issued pursuant to § 153.34(b), he will publish in the FEDERAL REGISTER his "Determination of Sales at Less Than Fair Value." This determination will include:

(a) A description of the merchandise involved;

(b) The name of each country of exportation;

(c) The name of the exporter or exporters or producer or producers, if the determination covers shipments by less than all of the exporters or producers;

(d) The date of the receipt of the information in an acceptable form;

(e) Whether the appropriate basis of comparison is purchase price or exporter's sales price; and

(f) A statement of reasons upon which the determination is based.

§ 153.36 Affirmative determination; appraisement withheld pursuant to § 153.34(b).

If it appears to the Secretary on the basis of the information before him that a determination of sales at less than fair value is required, and if a "Withholding of Appraisement Notice" has been issued pursuant to § 153.34(b), he will publish in the FEDERAL REGISTER his determination of sales at less than fair value within 3 months from the date of publication of such "Withholding of Appraisement Notice." This determination will contain information of the same type as required in §§ 153.35 (a) through (f).

§ 153.37 Opportunity to present views.

Pursuant to publication in the FEDERAL REGISTER of: A "Withholding of Appraisement Notice"; any other notice of tentative disposition of an antidumping investigation; or a notice of tentative modification or revocation of a dumping finding, an opportunity will be provided for the presentation of views by interested persons as set forth below.

(a) *Written.* Interested persons may make such written submissions as they desire, within a period which will be specified in the notice, with respect to the contemplated action. Appropriate consideration will be given to any additional information or argument submitted.

(b) *Oral.* If any interested person believes that any information obtained by the Bureau of Customs in the course of the antidumping proceeding is inaccurate or that for any other reason the tentative decision or the withholding of appraisement is in error, he may request in writing, within a period which will be specified in the notice, that the Secretary of the Treasury afford him an opportunity to present his views in this regard. All such requests shall be accompanied by a statement outlining the issues which the person wishes to discuss. Upon receipt of such a request, the Secretary will notify the person who supplied any information, the accuracy of which is questioned and such other person or persons, if any, as he in his discretion may deem to be appropriate. If the Secretary is satisfied that the circumstances so warrant, an opportunity will be afforded by the Secretary or his delegate for all such persons to appear, through their counsel or in person, accompanied by counsel if they so desire, to make known their respective points of view in regard to those issues which the Secretary or his delegate has determined to be appropriate for discussion. With respect to a "Withholding of Appraisement Notice" issued pursuant to § 153.34(a), such meeting will be held within 3 weeks of the date of the publication of the notice unless for unusual reasons it is clearly impracticable to do so. In all other cases, it normally will be held within 5 weeks of such publication. Reasonable notice of the meeting will be given. The Secretary or his delegate may at any time invite any person or persons to supply him orally with information or argument.

§ 153.38 Referral to U.S. Tariff Commission.

Whenever the Secretary makes a determination of sales at less than fair value he shall so advise the U.S. Tariff Commission.

§ 153.39 Revocation of determination of sales at less than fair value; determination of sales at not less than fair value.

If the Secretary is persuaded from information submitted or arguments received that his determination of sales at less than fair value was in error, and if the Tariff Commission has not yet issued a determination relating to injury, he will publish a notice of "Revocation of Determination of Sales at Less Than Fair Value; Determination of Sales at Not Less Than Fair Value," or, if appropriate, a notice of "Modification of Determination of Sales at Less Than Fair Value," which notice will set forth a description of the merchandise involved and state the reasons upon which it was based. He will notify the Tariff Commission of his action.

§ 153.40 Dumping finding.

If the Tariff Commission determines that there is, or is likely to be, the injury contemplated by the statute, the Secretary of the Treasury will make the finding contemplated by section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), with respect to the involved merchandise.

§ 153.41 Modification or revocation of finding.

(a) *Application to modify or revoke.* An application for the modification or revocation of any finding made as provided for in § 153.40 may be submitted in writing to the Commissioner of Customs, together with detailed information concerning any change in circumstances or practice which has obtained for a substantial period of time, or other reasons, which the applicant believes will establish that the basis for the finding no longer exists with respect to all or any part of the merchandise covered thereby.

(b) *Modification or revocation by Secretary.* The Secretary of the Treasury may, on his own initiative, modify or revoke a finding of dumping.

(c) *Notice of modification or revocation of finding.* If it appears to the Secretary that a modification or revocation of an existing dumping finding may be appropriate, he will publish in the FEDERAL REGISTER a "Notice of Tentative Determination to Modify or Revoke Dumping

Finding," which will include a description of the merchandise involved and a statement of the reasons upon which the tentative determination is based. Opportunity for interested persons to present views will be provided pursuant to § 153.37.

(d) *Final determination.* As soon as possible after publication of a "Notice of Tentative Determination to Modify or Revoke Dumping Finding," the Secretary will make a final determination and will publish his determination in the FEDERAL REGISTER.

§ 153.42 Publication of determinations and findings.

Each determination made in accordance with §§ 153.33, 153.34, 153.35, and 153.36, whether such determination is in the affirmative or in the negative, and each finding made in accordance with § 153.40, will be published in the FEDERAL REGISTER, together with a statement of the reasons therefor.

§ 153.43 List of current findings.

The following findings of dumping are currently in effect:

FINDINGS OF DUMPING

Merchandise	Country	T.D.	Modified by
Portland cement, other than white, nonstaining portland cement	Sweden	55369	
	Belgium	55428	
Portland gray cement	Portugal	55501	
Portland cement, other than white, nonstaining portland cement	Dominican Republic	55883	
Chromic acid	Australia	56130	
Steel reinforcing bars	Canada	56150	
Carbon steel bars and structural shapes	do	56264	
Steel jacks	do	66-191	
Cast iron soil pipe	Poland	67-252	
Titanium sponge	U.S.S.R.	68-212	
Pig iron	do	68-261	
Do	Czechoslovakia	68-262	
Do	East Germany	68-263	
Do	Romania	68-264	
Potassium chloride, otherwise known as muriate of potash	France	69-263	
Do	West Germany	69-264	
Potassium chloride otherwise known as muriate of potash, except shipments by U.S. Borax & Chemical Co., Kalium, Saskatchewan, Canada.	Canada	69-265	
Aminoacetic acid (glycine)	France	70-71	
Steel bars, reinforcing bars, and shapes manufactured by The Broken Hill Proprietary Co., Ltd., Melbourne, Australia.	Australia	70-81	
Whole dried eggs	Holland	70-198	
Tuners (of the type used in consumer electronic products)	Japan	70-257	
Television receiving sets, monochrome and color	do	71-76	
Ferrite cores (of the type used in consumer electronic products)	Japan	71-84	
Ceramic wall tile	United Kingdom	71-129	
Clear plate and float glass	Japan	71-130	
Clear sheet glass	Japan	71-131	
Pig iron	West Germany	71-192	
Pig iron	Canada	71-193	
Pig iron	Finland	71-194	
Clear sheet glass	Taiwan	71-226	
Tempered sheet glass	Japan	71-247	
Clear sheet glass weighing over 28 ozs. per sq. ft.	France	71-293	
Clear sheet glass weighing over 16 ozs. per sq. ft.	Italy	71-294	
Clear sheet glass weighing over 28 ozs. per sq. ft.	West Germany	71-295	
Ice cream sandwich wafers	Canada	72-77	
Diamond tips for phonograph needles	United Kingdom	72-91	
Fish netting of manmade fibers	Japan	72-158	
Large power transformers	France	72-160	
Do	Italy	72-161	
Do	Japan	72-162	
Do	Switzerland	72-163	
Do	United Kingdom	72-164	
Asbestos cement pipe	Japan	72-178	
Elemental sulphur	Mexico	72-179	
Cadmium	Japan	72-206	
Instant potato granules	Canada	72-263	
Dry cleaning machinery	West Germany	72-311	
Bicycle speedometers	Japan	72-322	

Subpart D—Action by District Director of Customs

§ 153.48 Action by the District Director of Customs.

(a) *Appraisement withheld; notice to importer.* Upon receipt of advice from the Commissioner of Customs pursuant to § 153.34, the District Director of Customs shall withhold appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption, after the date of publication of the "Withholding of Appraisement Notice," unless the Secretary's "Withholding of Appraisement Notice" specifies a different effective date. Each District Director of Customs shall notify the importer, consignee, or agent immediately of each lot of merchandise with respect to which appraisement is so withheld. Such notice shall indicate: (1) The rate of duty of the merchandise under the applicable item of the Tariff Schedules of the United States if known; and (2) the estimated margin of the special dumping duty that could be assessed. Upon advice of a finding made in accordance with § 153.40, the District Director of Customs shall give immediate notice thereof to the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of appraisement of such shipment.

(b) *Request to proceed with appraisement.* If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the District Director of Customs is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than foreign market value (or, in the absence of such value, than the constructed value), he shall so advise the Commissioner and request authorization to proceed with his appraisement of that shipment in the usual manner.

§ 153.49 Reimbursements of dumping duties.

(a) *General.* In calculating purchase price or exporter's sales price as the case may be, there shall be deducted the amount of any special dumping duties which are, or will be paid by the manufacturer, producer, seller, or exporter, or which are, or will be, refunded to the importer by the manufacturer, producer, seller, or exporter, either directly or indirectly, but a warranty of nonapplicability of dumping duties entered into before the initiation of the investigation, will not be regarded as affecting purchase price or exporter's sales price if it was granted to an importer with respect to merchandise which was:

(1) Purchased, or agreed to be purchased, before publication of a "Withholding of Appraisement Notice" with respect to such merchandise, and

(2) Exported before a determination of sales at less than fair value is made.

(b) *Statement concerning reimbursement.* Before proceeding with appraisement of any merchandise with respect to which dumping duties are found to be due the District Director of Customs shall require the importer to file a written statement in the following form:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter of all or any part of the special dumping duties assessed upon the following importations of _____ (commodity) from _____ (country): (List entry numbers) which have been purchased on or after _____ (date of publication of withholding in FEDERAL REGISTER) or purchased before _____ (same date) but exported on or after _____ (date of determination of sales of less than fair value)

A certificate will be required for all merchandise that is unappraised on the date that the finding of dumping is issued. Thereafter, a separate certificate will be required for each additional shipment.

§ 153.50 Release of merchandise; bond.

When the District Director of Customs in accordance with § 153.34(c) has received a notice of withheld appraisement or when he has been advised of a finding provided for in § 153.40, and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding which is then in his

custody or is thereafter imported, unless an appropriate bond is filed or is on file, as specified hereafter in § 153.51, or unless the merchandise covered by a specified entry will be appraised without regard to the Antidumping Act, 1921, as amended.

§ 153.51 Type of bond required.

(a) *General.* If the merchandise is of a class or kind covered by a notice of withheld appraisement provided for in § 153.48(a) or by a finding provided for in § 153.40, a single consumption entry bond covering the shipment, in addition to any other required bond, shall be furnished by the person making the entry or withdrawal, unless:

(1) A bond is required under paragraph (b) of this section, or

(2) In cases in which there is no such requirement, the District Director of Customs is satisfied that the bond under which the entry was filed is sufficient.

The face amount of any additional bond required under this paragraph shall be sufficient to assure payment of any special duty that may accrue by reason of the Antidumping Act, but in no case shall be for less than $100.

(b) *Bond on Customs Form 7591.* If the merchandise is of a class or kind covered by a finding provided for in § 153.40 and the resale price in the United States is unknown, the bond required by section 208 of the Antidumping Act, 1921 (19 U.S.C. 167), shall be on Customs Form 7591. In such case, a separate bond shall be required for each entry or withdrawal, and such bond shall be in addition to any other bond required by law or regulation. The record of sales required under the conditions of the bond of Customs Form 7591 shall identify the entry covering the merchandise and show the name and address of each purchaser, each selling price, and the date of each sale. The face amount of such bond shall be equal to the estimated value of the merchandise covered by the finding.

§ 153.52 Conversion of currencies.

In determining the existence and amount of any difference between the purchase price or exporter's sales price and the foreign market value (or, in the absence of such value, the constructed value) for the purposes of §§ 153.2 through 153.5 of these regulations or of section 201(b) or 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b), 161(a)), any necessary conversion of a foreign currency into its equivalent in U.S. currency shall be made in accordance with the provisions of section 522, Tariff Act of 1930, as amended (31 U.S.C. 372) and § 16.4 of this chapter: (a) As of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison; or (b) as of the date of exportation, if the exporter's sales price is an element of the comparison.

§ 153.53 Dumping duty.

(a) *Rule for assessment.* A special dumping duty shall be assessed on all importations of merchandise, whether dutiable or free, as to which the Secretary of the Treasury has made public a finding of dumping, entered or withdrawn from warehouse, for consumption, not more than 120 days before the question of dumping was raised by or presented to the Secretary or his delegate, provided the particular importation has not been appraised prior to the publication of such finding, and the District Director of Customs has determined that the purchase price or exporter's sales price is less than the foreign market value or constructed value, as the case may be.

(b) *Entered value not controlling.* The fact that the importer has added, on entry, the difference between the purchase price or the exporter's sales price and the foreign market value or constructed value and the District Director of Customs has approved the resulting entered value shall not prevent the assessment of the special dumping duty.

§ 153.54 Notice to importer.

Before the special dumping duty is assessed, the District Director of Customs shall notify the importer, his consignee, or agent of the appraisement of the merchandise, as in the case of an advance in value.

§ 153.55 Dumping duty; samples.

If the necessary conditions are present, the special dumping duty shall be assessed on samples imported for the purpose of taking orders and making sales in this country.

§ 153.56 Method of computing dumping duty.

If it appears that the merchandise has been purchased by a person not the exporter within the meaning of section 207, Antidumping Act, 1921 (19 U.S.C. 166), where purchase price is less than foreign market value, the special dumping duty shall equal the difference between the purchase price and the foreign market value on the date of purchase, or agreement to purchase, or, if there is no foreign market value, between the purchase price and the constructed value, any foreign currency involved being converted into U.S. money as of the date of purchase or agreement to purchase. If it appears that the merchandise is imported by a person who is the exporter within the meaning of such section 207, where the exporter's sales price is less than foreign market value, the special dumping duty shall equal the difference between the exporter's sales price and the foreign market value on the date of exportation, or, if there is no foreign market value, between the exporter's sales price and the constructed value, any foreign currency involved being converted into U.S. money as of the date of exportation.

Subpart E—Antidumping Protests

§ 153.64 Antidumping protests procedures.

Protests relating to the Antidumping Act, 1921, shall be made in the same manner as protests relating to ordinary Customs duties.

[FR Doc.72-21101 Filed 12-7-72;8:45 am]

Chapter II—U.S. Tariff Commission

PART 206—INVESTIGATIONS OF IMPORT INJURY TO INDUSTRIES, FIRMS, OR WORKERS DUE TO TRADE AGREEMENT CONCESSIONS

Petition for Determination of Eligibility of Workers To Apply for Adjustment Assistance

The new rules of the Tariff Commission set out below are designed to simplify the process of petitioning for a determination of eligibility to receive adjustment assistance for a group of workers pursuant to the adjustment assistance provisions of the Trade Expansion Act of 1962. Specifically, under the new rules, the factual information required for an acceptable worker petition is limited to that information which is likely to be more readily available to the workers or their representatives. Under the former rules, most of the required information for a petition related to the business operations of the workers' firm which information was not available to the workers. The new rules have the advantage of reducing the contents of a petition to permit worker groups to comply with requirements utilizing information currently available to them.

Part 206, Subpart D, of the rules of practice and procedure of the U.S. Tariff Commission (19 CFR Part 206, Subpart D) is amended to read as follows:

Subpart D—Investigations Upon Petition for Determination of Eligibility of Workers To Apply for Adjustment Assistance

Sec.
206.16 Applicability of subpart.
206.17 Who may file petition.
206.18 Contents of petition.
206.19 Acceptance of petition.
206.20 Release of reports.

AUTHORITY: The provisions of this Subpart D issued under section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and sections 401 and 403 of the Trade Expansion Act of 1962 (19 U.S.C. 1802 and 1804).

Subpart D—Investigations Upon Petition for Determination of Eligibility of Workers To Apply for Adjustment Assistance

§ 206.16 Applicability of subpart.

This Subpart D sets forth the special rules applicable to investigations under section 301(c)(2) of the Trade Expan-

sion Act [13] upon petition for a determination of eligibility to apply for adjustment assistance under Chapter 3 of Title III of such Act. For other applicable rules see Subpart A of this part and Part 201 of this chapter.

§ 206.17 Who may file petition.

A petition under this Subpart D may be filed by a group (three or more) of workers in an individual firm or by their certified or recognized union or other duly authorized representative. The workers by whom or on whose behalf the petition is filed must be persons who are, or who have been within 1 year prior to the date of receipt by the Commission of a written request for investigation concerning information as provided for in Tariff Commission Form 301–W, employed regularly in the production of the named or described domestic article by the firm whose workers are claimed to be unemployed, underemployed, or threatened with unemployment or underemployment, by reason of the increase in imports of the named or described foreign article, which increase is as a result in major part of concessions granted under trade agreements.

§ 206.18 Contents of petition.

A petition under this Subpart D shall contain information as provided for in Tariff Commission Form 301–W (copies of Form 301–W may be obtained by prospective petitioners from the Secretary of the Tariff Commission). The petition shall contain concrete information in support of petitioners' claim that, as a result in major part of concessions granted under trade agreements, an article like or directly competitive with an article produced by the petitioners' firm, or an appropriate subdivision thereof, is being imported into the United States in such increased quantities as to cause, or threaten to cause, unemployment or underemployment of a significant number or proportion of workers of such firm or subdivision.

§ 206.19 Acceptance of petition.

A petition under this Subpart D shall be considered properly filed upon receipt thereof by the Commission as hereinafter provided. Upon receipt of a petition containing information as provided for in Form 301–W, the Commission will institute a full investigation.

§ 206.20 Release of reports.

Commission reports to the President concerning investigations to which this Subpart D relates will not be released to the public, but the Commission will make public its conclusion in each investigation.

Issued: December 6, 1972.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.72–21216 Filed 12–8–72;8:49 am]

[13] Section 301(c)(2) of the Trade Expansion Act provides as follows: "In the case of a petition by a group of workers for a determination of eligibility to apply for adjustment assistance under Chapter 3, the Tariff Commission shall promptly make an investigation to determine whether, as a result in major part of concessions granted under trade agreements, an article like or directly competitive with an article produced by such workers' firm, or an appropriate subdivision thereof, is being imported into the United States in such increased quantities as to cause, or threaten to cause, unemployment or underemployment of a significant number or proportion of the workers of such firm or subdivision." (19 U.S.C. 1901.)

Title 21—FOOD AND DRUGS

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

DIETHYLSTILBESTROL

Revocation of All Provisions for Use in Animal Feed

In the FEDERAL REGISTER of August 4, 1972 (37 F.R. 15747) the Commissioner of Food and Drugs announced his findings and conclusions upon the basis of which an order was issued denying a hearing and withdrawing approval of new animal drug applications for liquid and dry diethylstilbestrol premixes (Dockets Nos. FDC–D–452, 494; NADA Nos. 11–295V, 9–525V et al.). Said order provided that manufacturing of such premixes shall stop immediately and feeding of existing supplies of animal feeds containing diethylstilbestrol shall stop as soon as such supplies are exhausted but in any event no later than January 1, 1973. Accordingly, this order provides for revocation of all the regulations providing for the use of diethylstilbestrol in animal feed, effective January 1, 1973.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 121, 131, 135e, and 144 are amended as follows:

PART 121—FOOD ADDITIVES

§ 121.208 [Amended]

1. Section 121.208(d) is amended in Table 6 by deleting subitem a. under item 1., subitem a. under item 2., subitem a. under item 3., subitem a. under item 4., subitem a. under item 5., subitem a. under item 6., subitem a. under item 7., and subitem a. under item 8.

§ 121.241 [Revoked]

2. Section 121.241 *Diethylstilbestrol* is revoked.

§ 121.251 [Amended]

3. Section 121.251(d) is amended in Table 2 by deleting subitem a. under item 1.

§ 121.252 [Amended]

4. Section 121.252(d) is amended in Table 3 by deleting subitem a. under item 2.

PART 131—INTERPRETATIVE STATEMENTS REGARDING WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

§ 131.20 [Amended]

5. In the alphabetical listing in § 131.20 the entry for "Diethylstilbestrol in Animal Feeds" and the text of the warning statement that follows is deleted.

§ 131.21 [Amended]

6. In the alphabetical listing in § 131.21 the entry for "Diethylstilbestrol for sheep" and the text of the warning statement that follows is deleted.

PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 135e.18 [Revoked]

7. Section 135e.18 is revoked.

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

8. Section 144.26(b) is amended by revoking subparagraphs (26) and (38), and by revising subparagraphs (28) and (52), as follows:

§ 144.26 Antibiotic drugs bearing or containing new animal drugs subject to the provisions of section 512(n) of the act.

* * * * *

(b) * * *

(26) [Revoked]

* * * * *

(28) It is a medicated feed for beef cattle containing bacitracin methylene disalicylate in the amounts and for the purposes specified in § 121.252 of this chapter and its labeling bears adequate directions and warnings for such use.

* * * * *

(38) [Revoked]

* * * * *

(52) It is a cattle feed containing zinc bacitracin in the amounts and for the purposes specified in § 121.225 of this chapter and its labeling bears adequate directions and warnings for such use.

* * * * *

Effective date. This order shall become effective on January 1, 1973.

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

Dated: December 1, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72–21300 Filed 12–8–72;8:46 am]

SUBCHAPTER C—DRUGS

PART 135—NEW ANIMAL DRUGS

Subpart C—Sponsors of Approved Applications

CHANGE IN SPONSOR ADDRESS

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135 is amended in § 135.501(c) by revising the

name and address for Code No. 079 as follows to reflect the current mailing address of the sponsor:

§ 135.501 Names, addresses, and code numbers of sponsors of approved applications.

* * * * *

(c) * * *

Code No.	*Firm name and address*
* * *	* * *
079 ----------	Summit Hill Laboratories, Post Office Box 1, Avalon, N.J. 08202.
* * *	* * *

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (12–9–72).

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

Dated: December 4, 1972.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc. 72–21191 Filed 12–8–72;8:46 am]

Title 24—HOUSING AND URBAN DEVELOPMENT

Chapter II—Office of Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Commissioner [Federal Housing Administration], Department of Housing and Urban Development

SUBCHAPTER A—GENERAL

[Docket No. R–72–219]

PART 200—INTRODUCTION

Subpart D—Delegations of Basic Authority and Functions

HONOLULU INSURING OFFICE

Part 200 is being amended to revise the redelegations of authority to the Honolulu Insuring Office for the production of low-rent public housing. Under this redelegation the Director and the Deputy Director of the Honolulu Insuring Office will exercise the authority of an area office director, and the Chief Underwriter and his Deputy for Multifamily Housing will exercise the authority of an operations division director in an area office.

Because this amendment relates to agency personnel and management, comment and public procedure are unnecessary and good cause exists for making the change effective October 19, 1972.

Accordingly, Part 200, Subpart D is amended as follows:

1. In Subpart D, in the table of contents, a new § 200.124 is added as follows:

Sec.
200.124 Chief Underwriter and Deputy Chief Underwriter for Multifamily Housing of the Honolulu Insuring Office.

2. Section 200.123 is amended to read as follows:

§ 200.123 Director and Deputy Director of the Honolulu Insuring Office.

To the position of Director of the Honolulu Insuring Office, and under his general supervision to the position of Deputy Director of the Honolulu Insuring Office, with respect to the production of low-rent public housing within the jurisdiction of the Honolulu Insuring Office, there is redelegated the authority to perform the functions and exercise the authorities set forth in § 200.118.

3. In Subpart D a new § 200.124 is added to read as follows:

§ 200.124 Chief Underwriter and Deputy Chief Underwriter for Multifamily Housing of the Honolulu Insuring Office.

To the position of Chief Underwriter of the Honolulu Insuring Office and under his general supervision to the position of Deputy Chief Underwriter for Multifamily Housing of the Honolulu Insuring Office, with respect to the production of low-rent public housing within the jurisdiction of the Honolulu Insuring Office, there is redelegated the authority to perform the functions and exercise the authorities set forth in §§ 200.113, 200.115, and 200.116.

(Secretary's delegation of authority, 36 F.R. 5006, March 16, 1971, as amended 37 F.R. 15444, August 2, 1972)

Effective date. This amendment is effective as of October 19, 1972.

EUGENE A. GULLEDGE,
Assistant Secretary for Housing Production and Mortgage Credit-Federal Housing Commissioner.

[FR Doc.72–21236 Filed 12–8–72;8:46 am]

Title 30—Mineral Resources

Chapter I—Bureau of Mines, Department of the Interior

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 82—NOTIFICATION OF LEGAL IDENTITY

In accordance with the provisions of sections 107(d) and 111(b) of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91–173) and pursuant to the authority vested in the Secretary of the Interior under section 508 of the Act, there was published in the FEDERAL REGISTER on Wednesday, June 7, 1972 (37 F.R. 11338), a notice of proposed rule making which provided procedures with respect to the operator's notification of their "legal entity" in order that the Secretary of the Interior may properly carry out his enforcement functions in the administration of the Act, particularly to enable the Secretary to easily and timely ascertain the identity of the person chargeable for violations of the mandatory health and safety standards and other provisions of the Act.

Interested persons were afforded a period of 30 days from the date of publication of the notice within which to submit written comments, suggestions, or objections to the proposed notification. All of the comments, suggestions, and objections, were given careful consideration. The changes made and the principal objections received are discussed below.

The Federal Coal Mine Health and Safety Act of 1969 contains comprehensive provisions for the inspection of all coal mines, the enforcement of the Act and health and safety standards promulgated thereunder, the assessment of penalties, and the appropriate administrative and judicial review. The information required under Part 82, is to be used daily by the enforcement personnel of the Department of the Interior, including inspection and assessment employees in the Bureau of Mines, attorneys in the Department of the Interior, and in the Department of Justice.

The objections received are summarized as follows:

1. An objection was made that section 107(d) of the Act does not authorize the Secretary to require the listing of the names and addresses of each officer and director of a corporation.

The term "person" as defined in section 3(f) of the Act and § 82.1(b) of the regulations applies to both individuals and legal entities. Examples of legal entities are associations, corporations firms, subsidiaries of corporations, or other organizations, which exist under the law.

The requirements of section 107(d) are that each operator of a coal mine shall file with the Secretary the name and address of the mine; the name and address of the person who operates or controls the mine; whether that person is an individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization; and the individual designated as the responsible official at the mine as the principal officer in charge of health and safety at such mine, who shall receive a copy of any notice, order, or decision, issued under the Act affecting the mine.

The basic business judgments which direct and control the method of operation of a coal mine are made directly and indirectly by persons at various levels of the corporate structure. Because of this section 107(d) also provides that: "In any case, where the coal mine is subject to the control of any person not directly involved in the operations of the coal mine, there shall be filed with the Secretary the name and address of such person." This provision is construed as applying to the officers and directors of a corporation.

(2) An objection was made that the requirement that the operator report any change in the information required within 30 days serves no statutory purpose.

Section 107(d) provides, in part, that "any revisions in such names or addresses (of the person who controls or operates the mine) shall be promptly filed with the Secretary." The purpose in requiring any revisions to be promptly filed with the Secretary is to keep the information current. Current information is essential since the Department will be using such information on a daily basis. The 30 days provided in the regulations is considered a reasonable period of time within which operators must file revisions and changes in the information.

3. An objection was made that the Secretary is without authority to subject the operator to a penalty under section 109 of the Act for failure to comply with the regulation.

Section 109(a)(1) of the Act states, in part, "the operator of a coal mine * * * who violates any other provision of the Act, except the provisions of title 4 [IV], shall be assessed a civil penalty by the Secretary * * *". Since the requirements of Part 82 are a restatement of the requirements of section 107(d) of the Act, and Part 82 contains procedural regulations issued under the Act, the Secretary is within his statutory authority to consider the failure of the operator to comply with these notification requirements as a violation of section 107(d) of the Act.

4. An objection was made that section 111(b) does not give the Secretary authority to promulgate the regulations since there is no showing in the notice of proposed rule making that the information is necessary to enable the Secretary to perform his functions under the Act.

Section 111(b) provides, in part, as follows:

"In addition to such records as are specifically required under this Act, every operator of a coal mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary may reasonably require from time to time to enable him to perform his functions under the Act."

In addition, section 508 authorizes the Secretary to issue such regulations as he deems appropriate to carry out any provision of the Act.

The purpose stated in the notice of proposed rule making was that Part 82 would enable the Secretary to properly carry out his enforcement functions in the administration of the Act, particularly to enable the Secretary to easily ascertain who is the person chargeable for violations of the mandatory health and safety standards and other provisions of the Act, and it was therefore necessary for the Secretary to have such information to identify coal mine operators, and the names and addresses of operators and responsible officials thereof. These regulations are a reasonable requirement of the Secretary of the Interior since they encompass the statutory requirements of section 107(d) and, as indicated in the notice, will enable the Secretary to properly carry out his enforcement functions in the administration of the Act by enabling the Secretary to ascertain the person chargeable for violations of the mandatory health and safety standards and other provisions of the Act.

As a result of the comments received, the following changes have been made:

(a) The term "legal entity" has been changed to "Legal Identity" to reflect and clarify the scope and purpose of Part 82.

(b) Paragraphs (b), (c), (d), and (e) of § 82.11 have been changed by adding the requirement that the operator must state the name of the mine or mines, and the Federal identification number(s) if known.

(c) Section 82.20 has been changed by adding a provision that if additional space is required in using the "Legal Identity Report," Form 6-357, the operator may use the back of the form or a separate sheet or sheets.

Part 82, Subchapter O, Chapter I, Title 30, of the Code of Federal Regulations is hereby adopted as set forth below and shall be effective on and after February 1, 1973.

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

NOVEMBER 30, 1972.

Subpart A—Definitions

Sec.
82.1 Definitions.

Subpart B—Notification of Legal Identity

82.10 Scope.
82.11 Notification by operator.
82.12 Changes; notification by operator.
82.13 Failure to notify.

Subpart C—Operator's Report to the Bureau of Mines

82.20 Legal Identity Report.

AUTHORITY: The provisions of this Part 82 issued under secs. 107(d), 111(b), and 508 of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 817(d), 821(b), 957).

Subpart A—Definitions

§ 82.1 Definitions.

As used in this part:

(a) "Operator" means any owner, lessee, or other person who operates controls, or supervises a coal mine.

(b) "Person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization.

(c) "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities.

Subpart B—Notification of Legal Identity

§ 82.10 Scope.

Section 107(d) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 817(d)), requires each operator of a coal mine to file with the Secretary of the Interior the name and address of such mine, the name and address of the person who controls or operates the mine, and any revisions in such names and addresses. Section 111(b) of the Act (30 U.S.C. 821(b)) requires the operator of a coal mine to provide such information as the Secretary of the Interior may reasonably require from time to time to enable the Secretary to perform his functions under the Act. The regulations in this Subpart B provide for the notification to the Bureau of Mines of the legal identity of the operator of a coal mine and the reporting of all changes in the legal identity of the operator as they occur. The submission of the properly completed legal identity report required under Subpart C of this part will constitute adequate notification of legal identity to the Bureau of Mines.

§ 82.11 Notification by operator.

(a) Not later than 30 days after the effective date of this part, the operator of a coal mine shall, in writing, notify the Coal Mine Health and Safety District Manager of the Bureau of Mines in the district in which the mine is located of the legal identity of the operator in accordance with the applicable provisions of paragraphs (b), (c), (d), or (e) of this section.

(b) If the operator is a sole proprietorship, the operator shall state: (1) His full name and address; (2) the name of the mine or mines and the Federal mine identification number(s), if known; and, (3) the full name, address, and trade name, if any, of the proprietorship.

(c) If the operator is a partnership, the operator shall state: (1) The name and address of the mine or mines and the Federal mine identification number(s), if known; (2) the full name and address of all partners; and, (3) the trade name, if any, and the address of the partnership.

(d) If the operator is a corporation, the operator shall state: (1) The name and address of the mine or mines and the Federal mine identification number(s), if known; (2) the full name and address of the corporation and the State of incorporation; (3) the full name and address of each officer and director of the corporation; (4) whether such corporation is a domestic or foreign corporation in the State in which the mine or mines are located; (5) the full name and address of the registered or resident agent(s) for service of process pursuant to State law for each mine, if any; and, (6) if the corporation is a subsidiary corporation, the operator shall state the full name, address, and State of incorporation of the parent corporation.

(e) If the operator is any business organization other than a sole proprietorship, partnership, or corporation, the operator shall state: (1) The legal identity of the organization; (2) the name of the mine or mines and the Federal mine identification number(s), if known; (3) the address of the organization; (4) the name and address of each individual who has an ownership interest in the organization; (5) the name and address of the responsible official(s) of the organization to act and the agent for service of process; and, (6) the name and address of the principal organization officials or members.

§ 82.12 Changes; notification by operator.

Within 30 days after the occurrence of any change in the information required by § 82.11, the operator of a coal mine shall, in writing, notify the Coal Mine Health and Safety District Manager of the Bureau of Mines in the district in which the mine is located of such change.

§ 82.13 Failure to notify.

Failure of the operator to notify the Bureau of Mines in writing of the legal identity of the operator or any changes thereof within the time required under this part will be considered to be a violation of section 107(d) of the Act and shall be subject to penalties as provided in section 109 of the Act.

Subpart C—Operator's Report to the Bureau of Mines

§ 82.20 Legal Identity Report.

Each operator of a coal mine shall file notification of the legal identity and every change thereof with the appropriate Coal Mine Health and Safety District Manager of the Bureau of Mines by properly completing, mailing, or otherwise delivering Form 6–357 "Legal Identity Report" which shall be provided by the Bureau of Mines for this purpose. If additional space is required, the operator may use the back of the form or a separate sheet or sheets.

[FR Doc.72–21235 Filed 12–8–72;8:46 am]

Title 31—MONEY AND FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury

PART 128—TRANSACTIONS IN FOREIGN EXCHANGE, TRANSFERS OF CREDIT, AND EXPORT OF COIN AND CURRENCY

Change in Reporting Requirements

The Department of the Treasury finds it necessary to amend the reporting requirements contained in 31 CFR Part 128 by providing that, beginning with the reports for January 1973, foreign exchange reports by respondents other than bankers and banking institutions will be submitted to the Federal Reserve Bank of New York rather than to the Federal Reserve banks in the various Federal Reserve districts. Reports by bankers and banking institutions will continue to be furnished to the Federal Reserve bank of the district in which the reporter has its principal place of business in the United States. The purpose of the amendment is to insure greater efficiency in the collection and processing of foreign exchange reports by the Federal Reserve banks acting as fiscal agents of the Department of the Treasury.

The Department further finds that notice and public procedure under the provisions of 5 U.S.C. 553 are not necessary in this case since the amendment pertains only to rules of agency procedure and practice and since each reporting institution affected by the amendment will be notified individually by the Department.

Accordingly, Part 128, Chapter I of Title 31 of the Code of Federal Regulations is amended by revising § 128.2 to read:

§ 128.2 Reports.

In order to effectuate the purposes of Executive Order 6560 of January 15, 1934 (Part 127 of this chapter), and in order that information requested by the International Monetary Fund under the articles of agreement of the Fund may be obtained in accordance with section 8(a) of the Bretton Woods Agreements Act (sec. 8(a) 59 Stat. 515; 22 U.S.C. 286f and Executive Order No. 10033, 14 F.R. 561; 3 CFR, 1949 Supp.), every person subject to the jurisdiction of the United States engaging in any transaction, transfer, export, or withdrawal referred to in § 127.1 of this chapter shall furnish to a Federal Reserve bank information relative thereto, including information relative to claims and liabilities arising therefrom, and information determined to be essential to comply with official requests for data made by the International Monetary Fund, to such extent and in such manner and at such intervals as is required by report forms and instructions prescribed by the Secretary of the Treasury. All such persons other than bankers and banking institutions shall furnish the reports required under Subpart B of this part to the Federal Reserve Bank of New York. Bankers and banking institutions shall furnish the required reports to the Federal Reserve bank of the district in which such banker or banking institution has its principal place of business in the United States. In the event that any person required to report has no principal place of business within a Federal Reserve district, the information shall be furnished directly to the Office of the Assistant Secretary for International Affairs, Department of the Treasury, Washington, D.C. 20220, or to such agency as the Department of the Treasury may designate.

(Sec. 5, 40 Stat. 415, as amended, sec. 8, 59 Stat. 515; 50 U.S.C. App. 5, 22 U.S.C. 286f, E.O. 6560, Jan. 15, 1934, E.O. 10033, 14 F.R. 561, 3 CFR, 1949–1953 Comp.)

Effective date. This amendment shall become effective on January 1, 1973.

Dated: December 5, 1972.

[SEAL] JOHN M. HENNESSY,
Assistant Secretary for International Affairs.

[FR Doc.72–21231 Filed 12–8–72;8:45 am]

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Compliance Schedules, Revisions, and Public Hearings; Emergency Episode Procedures

On June 20, 1972 (37 F.R. 12155), the Administrator of the Environmental Protection Agency proposed regulations to amend 40 CFR Part 51 to clarify the requirements relative to compliance schedules adopted as part of State implementation plans under section 110 of the Clean Air Act, as amended (42 U.S.C. 1857c–5).

Comments on the proposed regulations were received from State and local agencies, citizens groups, and industrial organizations. The comments from State and local agencies and from industry generally concerned the difficulties of conducting public hearings, the possible loss of flexibility in making minor changes to compliance schedules, and, in general, the whole administrative burden involved in the hearing-submission-approval process. Comments from citizens groups indicated that they felt that an "opportunity for a public hearing" was inadequate and that the minimum period for reasonable notice was too short. The regulations reflect a consideration of all relevant comments.

Based upon the comments received, the following major changes have been made to the regulations as proposed:

(1) An absolute requirement for a public hearing on compliance schedules has been substituted for the opportunity for a public hearing. This change has been made in response to comments by citizens groups that the opportunity for a hearing, which puts an affirmative obligation on persons to request a hearing, was less consistent with the intent of the Act for broad public participation than an absolute requirement for a hearing. Moreover, upon further legal analysis it was concluded that a public hearing must be held in order to comply with the literal requirements of the statute;

(2) The minimum period of notice for public hearings on compliance schedules has been extended to 30 days to allow for more meaningful evaluation and comments by the public at such hearings;

(3) An equivalency provision has been included to make clear that, subject to the Administrator's approval, States can use their own procedures to satisfy the public hearing requirements if such procedures sufficiently carry out the intent of the Clean Air Act for public participation;

(4) The definition of increments of progress has been revised to list those steps which are generally crucial in insuring compliance by the final date in the schedule. Whenever increments of progress are required by the regulations, and where the listed steps are practicable, these steps, as a minimum, must be included in the schedule to satisfy the requirement that increments of progress be sufficiently detailed to permit close and effective supervision of progress. It should be noted, however, that all the provisions of any compliance schedule submitted for approval will be reviewed and, if such schedule is approved, all increments of progress will be federally enforceable, not just the five required increments;

(5) At the request of a citizens group, it has been made clear that the "prominent advertisement" of a scheduled hearing be in the region affected;

(6) The provision that only the "principal portions" of a plan or revision need be available for inspection has been modified to require availability of the whole plan or revision which is the subject of the hearing; and

(7) In response to a number of comments from State air pollution control agencies, an exception has been made to the public hearing requirements for those changes to increments of progress in a compliance schedule which are not likely to cause the source to be unable to comply with the final date in the schedule. A public hearing requirement for every minor adjustment to a schedule would create a substantial burden on State agencies with no commensurate benefit in terms of air quality.

While the regulations require a public hearing rather than an opportunity for a hearing, it is recognized that the complexities of conducting a hearing may necessitate requiring persons wishing to participate to notify the appropriate State or local agency a reasonable period of time in advance of the hearing. Such a requirement would not be inconsistent with the Act or these regulations.

Material in the proposal dealing with State and local enforcement orders was deleted on the ground that the "applicable implementation plan" is adequately defined in the Act and does not require rule making.

The regulations discussed above are effective upon publication (12-9-72). The Agency finds that good cause exists for making these regulations effective upon publication since the process of obtaining individual compliance schedules by State and local agencies is already underway.

The amendments presented below also include revisions which were not proposed on June 20, 1972. These revisions allow States to defer the submission to the Administrator of the nitrogen oxides compliance schedules for individual stationary sources until the second semiannual report required by the regulations. This differs from the time schedule for all other pollutants, for which the compliance schedules must be submitted no later than the date for submittal of the first semiannual report. The reasons for said deferral are explained in detail in the Agency's June 14, 1972 (37 F.R. 11826) and July 27, 1972 (37 F.R. 15094) notices of proposed rule making.

The Agency finds that good cause exists for not proposing this amendment and for making it effective upon publication since:

1. The Administrator gave notice on June 14 and July 27, 1972, of his intent to follow this course of action for federally promulgated requirements for timing of compliance and submittal of compliance schedules for stationary sources of nitrogen oxides. He also indicated that States that have these portions of their implementation plans approved would not be required to meet a time schedule for compliance more restrictive than would have been promulgated by the Agency if a plan deficiency existed in these areas.

2. This amendment will not require the States that have approved compliance schedules to revise their implementation plans.

The amendment to Appendix L is a clarification of how air pollution emergency episode forecasts should be handled for photochemical oxidants. Previously, it was indicated that an air pollution alert, warning, or emergency should be called only when "meterorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase unless control actions are taken." This is not a realistic requirement with respect to photochemical oxidants since they do not persist for 12 or more hours but rapidly decrease in concentration when the intensity of sunlight decreases. The amendment reflects this needed clarification for photochemical oxidants.

The Agency finds that good cause exists for not publishing this amendment as a notice of proposed rule making and for making it effective upon publication since it is a point of clarification and will not require any revisions to State implementation plans that have been approved by the Administrator.

These regulations are promulgated under the authority of section 301(a) of the Clean Air Act, as amended (42 U.S.C. 1857g(a)).

WILLIAM D. RUCKELSHAUS,
Administrator.

DECEMBER 5, 1972.

Part 51 of Title 40, Code of Federal Regulations, is amended as follows:

1. In § 51.1, new paragraphs (p) and (q) are added as follows:

§ 51.1 **Definitions.**

* * * * *

(p) "Compliance schedule" means the date or dates by which a source or category of sources is required to comply with specific emission limitations contained in an implementation plan and with any increments of progress toward such compliance.

(q) "Increments of progress" means steps toward compliance which will be taken by a specific source, including:

(1) Date of submittal of the source's final control plan to the appropriate air pollution control agency;

(2) Date by which contracts for emission control systems or process modifications will be awarded; or date by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;

(3) Date of initiation of on-site construction or installation of emission control equipment or process change;

(4) Date by which on-site construction or installation of emission control equipment or process modification is to be completed; and

(5) Date by which final compliance is to be achieved.

2. Section 51.4 is revised to read as follows:

§ 51.4 **Public hearings.**

(a) (1) Except as otherwise provided in subparagraph (2) of this paragraph, the State shall, prior to the adoption of any plan or any revision thereof required by § 51.6(a) or prior to the submission to the Administrator of any individual compliance schedule pursuant to § 51.15 (a) or any revision pursuant to § 51.6(d), conduct one or more public hearings on such plan, schedule, or revision. Separate hearings may be held for plans to implement primary and secondary standards.

(2) No hearing shall be required for any change to an increment of progress in an approved individual compliance schedule unless such change is likely to cause the source to be unable to comply with the final compliance date in the schedule. The requirements of §§ 51.6 and 51.8 shall be applicable to such schedules, however.

(b) Any hearing required by paragraph (a) of this section shall be held only after reasonable notice, which shall be considered to include, at least 30 days prior to the date of such hearing(s):

(1) Notice given to the public by prominent advertisement in the region affected announcing the date(s), time(s), and place(s) of such hearing(s);

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located;

(3) Notification to the Administrator (through the appropriate Regional Office);

(4) Notification to each local air pollution control agency in each region to which the plan, schedule, or revision will apply; and

(5) In the case of an interstate region, notification to any other States included, in whole or in part, in the region.

(c) The State shall prepare and retain, for inspection by the Administrator upon his request, a record of each hearing. The record shall contain, as a minimum, a list of witnesses together with the text of each presentation.

(d) The State shall submit with the plan, revision, or schedule a certification that the hearing required by paragraph (a) of this section was held in accordance with the notice required by paragraph (b) of this section.

(e) Upon written application by a State agency (through the appropriate Regional Office), the Administrator may approve State procedures designed to insure public participation in the matters for which hearings are required, and public notification of the opportunity to participate if in the judgment of the Administrator, such procedures, although different from the requirements of this part, in fact provide for adequate notice to and participation of the public. The Administrator may impose any conditions on his approval as he deems necessary. Procedures approved pursuant to this section shall be deemed to satisfy the requirements of this part regarding public hearings.

3. In § 51.6, paragraphs (c), (d), and (e) are revised and new paragraph (f) is added. As amended, § 51.6 reads as follows:

§ 51.6 Revisions.

* * * * *

(c) The plan may be revised from time to time consistent with the requirements applicable to implementation plans under this part.

(d) Any revision of any regulation or any compliance schedule pursuant to paragraph (c) of this section shall be submitted to the Administrator no later than 60 days after its adoption.

(e) Revisions other than those covered by paragraphs (a) and (d) of this section shall be identified and described in the next semiannual report required by § 51.7.

(f) Any revision shall be submitted only after any applicable hearing requirements of § 51.4 have been satisfied.

4. Section 51.15 is revised to read as follows:

§ 51.15 Compliance schedules.

(a) (1) Each plan shall contain legally enforceable compliance schedules setting forth the dates by which all stationary and mobile sources or categories of such sources must be in compliance with any applicable requirement of the plan. Such compliance schedules shall contain increments of progress required by paragraph (c) of this section.

(2) A plan may provide that compliance schedules for individual sources or categories of sources will be formulated following submittal of the plan. Such compliance schedules shall be submitted to the Administrator within 60 days following the date such schedule is adopted but in no case later than the prescribed date for submittal of the first semiannual report required by § 51.7: *Provided, however,* That compliance schedules for nitrogen oxides required for stationary source shall be submitted to the Administrator no later than the prescribed date for the submittal of the second semiannual report required by § 51.7. Where submission of compliance schedules is deferred by a State under this subparagraph, the plan shall specify a final compliance date applicable to each source subject to an applicable requirement of the plan. Compliance schedules submitted pursuant to this subparagraph shall require each source or category of sources to comply with such requirement within the times specified in paragraph (b) of this section but in no event later than the date specified in the plan for final compliance with such requirement.

(b) (1) Any compliance schedule designed to provide for attainment of a primary standard shall provide for compliance with the applicable plan requirements as expeditiously as practicable and in no case, except as provided by Subpart C of this part, later than the date specified for attainment of such primary standard pursuant to § 51.10(b).

(2) Any compliance schedule designed to provide for attainment of a secondary standard shall provide for compliance with the applicable plan requirements in a reasonable time and in no case, except as provided by Subpart C of this part, later than the date specified for the attainment of such secondary standard pursuant to § 51.10(c).

(c) Any compliance schedule or revision thereof extending over a period of more than 1 year from the date of its adoption by the State agency shall provide for legally enforceable increments of progress toward compliance by each affected source or category of sources: *Provided however*: That increments of progress shall not be required for a compliance schedule which does not extend beyond January 31, 1974. Increments of progress shall include, where practicable, each increment of progress specified in § 51.1(q) and shall include such additional increments of progress as may be necessary to permit close and effective supervision of progress toward timely compliance.

5. In Appendix L, the last sentence of paragraphs 1.1(b), 1.1(c), and 1.1(d) are amended to read as follows:

* * * and meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of oxidants, the situation is likely to reoccur within the next 24 hours unless control actions are taken.

[FR Doc.72-21213 Filed 12-8-72;8:46 am]

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

PART 9-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Subpart 9-5.52—Procurement of Special Items

MISCELLANEOUS AMENDMENTS

These changes are being made in order to update the instructions for the procurement of helium as contained in AECPR 9-5.5205, and to make it clear that the regulation applies to both liquid and gaseous helium.

1. In Subpart 9-5.52, Procurement of Special Items, § 9-5.5205, *Helium*, is revised as follows:

§ 9-5.5205 Helium.

§ 9-5.5205-1 Scope.

This section covers acquisition of helium for use by either AEC or cost-type contractors.

§ 9-5.5205-2 Basic source of supply.

(a) *Statutory requirements.* The Helium Act (Public Law 86-777, as amended (50 U.S.C. 167(d)) provides that, to the extent that supplies are readily available, the Atomic Energy Commission shall purchase all major requirements of helium from the Secretary of the Interior.

(b) *AEC policy.* It is the policy of the AEC to obtain its major requirements of helium, whether in gaseous or liquid form, from the Department of Interior (Bureau of Mines) either directly or from suppliers who have purchased or will purchase an equivalent amount of Bureau of Mines helium in accordance with 30 CFR Part 2.

§ 9-5.5205-3 [Reserved]

§ 9-5.5205-4 [Reserved]

§ 9-5.5205-5 Methods of purchase.

(a) Purchases may be made from the Secretary of the Interior for either AEC or cost-type contractors' requirements for helium by forwarding a purchase order in duplicate (Form AEC-103 or the cost-type contractor's purchase order properly identified as in the use of Government Sources of Supply) to the Helium Activity, Bureau of Mines, Department of the Interior, Amarillo, Tex.

(b) Purchases may be made from commercial firms as indicated in subparagraphs (1) and (2) of this paragraph: *Provided,* That the vendor is required to furnish Bureau of Mines helium or buy the equivalent from the Bureau of Mines.

(1) Commercial firms under GSA Schedule Contracts.

(2) Commercial firms, including private distributors listed by the Bureau of

Mines as eligible to sell helium to Federal agencies (30 CFR Part 2), pursuant to usual procurement and contracting procedures.

(c) In all cases, except where purchase is made from the Bureau of Mines directly, the purchase orders shall contain the following statement:

Helium furnished under this procurement shall be Bureau of Mines helium pursuant to 30 CFR Part 2.

(Sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; section 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486)

Effective date. These amendments are effective upon publication in the FEDERAL REGISTER (12–9–72).

Dated at Germantown, Md., this 1st day of December 1972.

For the U.S. Atomic Energy Commission.

ROBERT A. KOHLER,
Acting Director,
Division of Contracts.

[FR Doc.72–21173 Filed 12–8–72;8:50 am]

Chapter 101—Federal Property Management Regulations

SUBCHAPTER B—ARCHIVES AND RECORDS

PART 101–11—RECORDS MANAGEMENT

Miscellaneous Amendments

These amendments provide for: (1) Simplification of procedures for submission of the Vital Records Protection Status Report, (2) submission of a special advisory report when an agency determines that substantive elements of its records program have changed, (3) a new General Records Schedule, Data Automation Program Records, and (4) editorial changes and updated references.

The table of contents for Part 101–11 is amended as follows:

Sec.
101–11.404–2 General Records Schedules.

Subpart 101–11.4—Disposition of Federal Records

1. Paragraph (b) of § 101–11.403–2 is amended as follows:

§ 101–11.403–2 Records retention and disposal standards.

* * * * *

(b) *General records schedules.* The schedules, issued by the Archivist of the United States, govern the retention and disposal of certain types of records common to all agencies. The schedules are permissive as provided by § 101–11.404.

* * * * *

2. Section 101–11.404 is amended by revising §§ 101–11.404–1(c) and 101–11.404–2.

§ 101–11.404 General retention and disposal schedules.

§ 101–11.404–1 Authority.

* * * * *

(c) The Administrator of General Services may promulgate schedules authorizing the disposal, after the lapse of specified periods of time, of records of a specified form or character common to several or all agencies if such records will not, at the end of the periods specified, have sufficient administrative, legal, research, or other value, to warrant their further preservation by the U.S. Government (44 U.S.C. 3303a).

* * * * *

§ 101–11.404–2 General Records Schedules.

(a) The following General Records Schedules governing the retention and disposal of records common to several or all agencies are developed by the National Archives and Records Service after consultation with the U.S. Civil Service Commission, the General Accounting Office, and other appropriate agencies and are approved and issued by the Archivist of the United States.

(1) Civilian Personnel Records.
(2) Payrolling and Pay Administration Records.
(3) Procurement and Supply Records.
(4) Property Disposal Records.
(5) Budget Preparation, Presentation, and Apportionment Records.
(6) Accounting Officers' Accounts.
(7) Expenditure Accounting Records.
(8) Stores, Plant, and Cost Accounting Records.
(9) Travel and Transportation Records.
(10) Motor Vehicle Maintenance and Operation Records.
(11) Space and Maintenance Records.
(12) Communications Records.
(13) Printing, Binding, Duplication, and Distribution Records.
(14) Informational Service Records.
(15) Housing Records.
(16) Administrative Management Records.
(17) Cartographic, Photogrammetric, and Related Records.
(18) Security and Protective Service Records.
(19) Research and Development Records.
(20) Data Automation Program Records.

(b) General Records Schedules and instructions for using the schedules are available at the Office of Federal Records Centers, National Archives and Records Service, GSA. All new schedules at the time they are prepared are announced by GSA bulletins issued and signed by the Archivist of the United States.

Subpart 101–11.7—Vital Records: Records During an Emergency

1. Sections 101–11.701–2 and 101–11.701–3 are revised to read as follows:

§ 101–11.701–2 Authority.

Executive Order 11490 of October 28, 1969 (34 F.R. 17567; 3 CFR, 1966–1970 Comp., p. 820), assigns certain emergency preparedness functions to the Administrator of General Services, including the providing for instructions on the appraisal, selection, preservation, arrangement, reference, storage, and salvage, of essential records. The Office of Emergency Preparedness, in accordance with that agency's responsibilities prescribed in Executive Order 11051 of September 27, 1962 (27 F.R. 9683; 3 CFR, 1959–1963 Comp., p. 635), has reviewed and approved the requirements set forth in this Subpart 101–11.7.

§ 101–11.701–3 Background.

(a) *Reporting requirements.* The original reporting requirements for vital operating records protection programs were set forth in Bureau of the Budget Bulletins No. 51–14, May 22, 1951, and No. 52–5, September 6, 1951. Subsequent Government organizational and functional changes caused revisions in reporting requirements; however, the basic concept of status reporting remains in effect.

(b) *Protection criteria and guides.* The GSA Records Management Handbook, Federal Vital Records Program, provides further clarification of the two categories of records.

2. Section 101–11.701–6 is amended as follows:

§ 101–11.701–6 Preparing offices and coverage.

(a) All departments and agencies shall submit both Parts I and II of the report in keeping with their assigned emergency preparedness responsibilities.

(b) Generally, this means that each bureau, service, or office of a department, or large agency shall prepare a report. Regional or field program reports shall be incorporated within the reports for bureau or service level or above before submission to the General Services Administration. If the department or agency operates a centralized program covering all organizational elements, only one report is required.

(c) Initial reports submitted by an agency shall be complete and serve as a basic reference describing the status of the program. Subsequent reports shall reflect changes only. If there have been no changes in status, this fact shall be clearly indicated by the notation, "No Changes," written on the face of the reporting form. (This practice will eliminate the need to submit reports conveying repetitive information on an annual basis.)

* * * * *

(f) Agency reports shall contain a certification by a top-level management representative or the responsible emergency coordinator that the report is a true reflection of the current status of

the program. This certification is required on all status reports submitted, whether or not items on the reporting form are completed in full or the reports marked "No Changes."

3. Sections 101–11.701–8 through 101–11.701–10 are revised to read as follows:

§ 101–11.701–8 Reporting periods and due dates.

(a) Reports shall be submitted annually, as of June 30, and shall be due 10 workdays thereafter.

(b) A special advisory report shall be submitted when the agency determines that substantive elements of the program have changed (i.e., a change in assigned mission or location of the records). These reports shall be submitted as soon as possible after such changes.

§ 101–11.701–9 Copies and distribution.

All reports shall be submitted in duplicate to the General Services Administration (NC), Washington, D.C. 20408.

§ 101–11.701–10 Availability of forms.

The reporting forms illustrated in §§ 101–11.4917 and 101–11.4918 are available from the General Services Administration. Agency field offices should submit all requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration (BRAF), Washington, D.C. 20405.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This regulation is effective upon publication in the FEDERAL REGISTER (12–9–72).

Dated: December 4, 1972.

ARTHUR F. SAMPSON,
Acting Administrator of General Services.

[FR Doc.72–21219 Filed 12–8–72;8:48 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 19361; FCC 72–1074]

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Class II Public Coast Station in Ponce, P.R.

Report and order. In the matter of amendment of Parts 81 and 83 of the Commission's rules to provide for a Class II Public Coast Station in the vicinity of Ponce, P.R.; Docket No. 19361, RM–1780.

1. A notice of proposed rule making in the above captioned matter was adopted on December 8, 1971, and was published in the FEDERAL REGISTER on December 17, 1971 (36 F.R. 24008). As a result of comments filed by the Interdepartment Radio Advisory Committee (IRAC), a further notice of proposed rule making in this matter was adopted on September 20, 1972, and published in the FEDERAL REGISTER on October 3, 1972 (36 F.R. 20729). The dates for filing comments and reply comments have passed.

2. The notice of proposed rule making was issued in response to a petition (RM 1780) filed by Ponce Marine Services, Inc., which requested that a pair of frequencies be made available for assignment for public ship-shore communications in the vicinity of Ponce, P.R. In that notice, we proposed to amend Parts 81 and 83 of our rules to provide for a pair of frequencies in the 2 MHz band for a Class II Public Coast Station in the vicinity of Ponce, P.R. In order to minimize interference to presently authorized stations, the frequencies 2582 kHz and 2198 kHz were selected.

3. Comments submitted by IRAC indicated that the use of this pair of frequencies by a Class II Public Coast Station in Ponce, P.R. could cause harmful interference to Government stations presently operating on these frequencies in the Puerto Rico area. As a result of the IRAC comments, a substitute pair of frequencies was proposed by the Commission in a further notice of proposed rule making. In place of the above mentioned frequencies, the frequency 2086 kHz (for use by ship stations) and the frequency 2585 kHz (for use by the coast station) were selected for assignment for public ship to shore communications in the vicinity of Ponce, P.R. In order to further minimize the possibility of harmful interference, certain technical limitations on emission and power were also incorporated in the proposed amendments.

4. Comments were filed by Ponce Marine Services, Inc. and Luis A. Ayala Colon, Sucrs., Inc. Both parties fully supported the proposal as set forth in our further notice of proposed rule making and urged its adoption.

5. The Commission believes that the rule amendments will provide for more effective utilization of maritime frequencies in that it will make a pair of 2 MHz frequencies available for direct communications in an area which is not now adequately served under the present frequency assignment plan.

6. In view of the foregoing, *It is ordered,* That pursuant to the authority contained in section 4(i) and 303 (f) and (r) of the Communications Act of 1934, as amended, Parts 81 and 83 of the Commission's rules are amended as set forth below. Since the service herein authorized is urgently needed in the interest of safety of life at sea in the vicinity of Ponce, P.R., the effective date provisions of the Administrative Procedure Act, 5 U.S.C. 533 do not apply. *Accordingly, It is further ordered,* That these rule amendments will be effective December 12, 1972.

7. *It is further ordered,* That the proceeding in Docket No. 19361 is terminated.

Adopted: November 29, 1972.

Released: December 5, 1972.

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

NOTE: Rules changes herein will be covered by T.S.IV(71)–2.

1. The table in § 81.304(a) is amended by adding the frequency 2585 kHz after 2582 kHz to read as follows:

§ 81.304 Frequencies available.

(a) * * *

Carrier frequency (kHz)	See section	Conditions of use
* * *	* * *	* * *
2585	81.306(b)	21.
* * *	* * *	* * *

* * * * *

2. The table in § 81.306(b) is amended by the addition of the following new location and frequencies after the entry for Corpus Christi, Tex.

§ 81.306 Frequencies available below 27.5 MHz.

* * * * *

(b) * * *

Ponce, P.R.	2585	None.	2086	None.

* * * * *

3. In § 83.351, the table in paragraph (a) is amended with regard to frequency 2086.0 kHz, and paragraph (b) (20) and (21) is amended to read as follows:

§ 83.351 Frequencies available.

(a) * * *

Carrier frequency (kHz)	See section	Conditions of use
* * *	* * *	* * *
2086.0	83.354	3, 20, 21, 25.
* * *	* * *	* * *

(b) * * *

(20) Available in accordance with the provisions of § 83.354(b).

(21) Available in accordance with the provisions of § 83.354(c).

* * * * *

4. The table in § 83.354(b) is amended by the addition of the following new location and frequencies after the entry for Corpus Christi, Tex.

§ 83.354 Frequencies below 5000 kHz for public correspondence.

* * * * *

(b) * * *

Ponce, P.R.	2086	None	2585	None.	

* * * * * * *

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. U]

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

Computation of Time Periods by Block Positioners

Correction

In F.R. Doc. 72-19518 appearing on page 24105 of the issue for Tuesday, November 14, 1972, the 12th line of § 221.121 (c), reading "period constitutes a single block in such", should read, "period constitutes a single block. In such".

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 72-1405]

PART 545—OPERATIONS

Issuance of Obligations by Federal Savings and Loan Associations

NOVEMBER 30, 1972.

The Federal Home Loan Bank Board, in Document No. 72-1142, dated September 26, 1972, proposed to amend § 545.24 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.24) to permit all Federal savings and loan associations to issue certain subordinated debt securities in compliance with the provisions of § 563.8-1 of the rules and regulations for Insurance of Accounts (12 CFR 563.8-1), which the Board proposed concurrently with this proposal. The Federal Home Loan Bank Board is permitted to authorize Federal savings and loan associations to issue "notes, bonds, debentures, or other obligations, or other securities (except capital stock)" by section 5(b)(2) of the Home Owners' Loan Act of 1933, as amended, effective August 1, 1968 (12 U.S.C. 1464).

Notice of such proposed rule making was duly published in the FEDERAL REGISTER on October 6, 1972 (37 F.R. 21178), with an invitation for interested persons to submit written comments thereon by November 10, 1972.

On the basis of its consideration of all relevant material presented by interested persons or otherwise available, the Board on November 30, 1972, adopted the amendment to said § 545.24 as so proposed and published, without change, as set forth below, effective January 8, 1973.

§ 545.24 Borrowing, issuance of obligations, and giving of security.

An association may borrow to such extent as is authorized by the terms of its charter or by the Board by advice in writing. An association may issue such notes, bonds, debentures, or other obligations, or other securities, as are not inconsistent with the terms of paragraph (2) of subsection (b) of section 5 of the Home Owners' Loan Act of 1933, as amended: (a) To the extent that such issuance is in compliance with the provisions of § 563.8-1 of this chapter or (b) to such extent as is otherwise authorized by the Board by advice in writing. To such extent as is authorized by the terms of its charter or by the Board by advice in writing, an association may give security, but an association shall not give security for any of its shares or share accounts or for any of its savings accounts representing share interests in the association.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.72-21251 Filed 12-8-72;8:45 am]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 72-1406]

PART 561—DEFINITIONS

PART 563—OPERATIONS

Subordinated Debt Securities; Issuance

NOVEMBER 30, 1972.

The Federal Home Loan Bank Board, in Document No. 72-1143, dated September 26, 1972, proposed to amend Parts 561 and 563 of the Rules and Regulations for Insurance of Accounts (12 CFR Parts 561, 563) to permit insured institutions to issue subordinated debt securities, with the prior written approval of the Federal Savings and Loan Insurance Corporation.

Notice of such proposed rule making was duly published in the FEDERAL REGISTER on October 6, 1972 (37 F.R. 21179), with an invitation for interested persons to submit written comments thereon by November 10, 1972.

On the basis of its consideration of all relevant material presented by interested persons or otherwise available, the Board on November 30, 1972, amended said Parts 561 and 563 as set forth below, to be effective January 8, 1973.

The amendments to §§ 561.2 and 561.3, which are unchanged from the proposal, make clear that the account insurance provided by the Federal Savings and Loan Insurance Corporation is not available to holders of subordinated debt securities.

The revised definition of "net worth" in § 561.13 permits an insured institution to count subordinated debt securities which it has issued as net worth in two situations. An insured institution which has issued subordinated debt securities pursuant to § 563.8-1 may use the principal amount of such securities to comprise up to 20 percent of its total net worth (including such subordinated debt). Language has been added to the proposal to make it clear that an insured institution may also, to the extent explicitly authorized in writing by the Corporation, count as net worth any subordinated debt securities issued with specific Corporation approval. A new definition of "subordinated debt security", unchanged from the proposal, is added as § 561.24.

New § 563.7-2 (also unchanged) makes it clear that no insured institution may issue any securities which guarantee a definite return or which have a definite maturity except for (1) certificate accounts issued under § 563.3-1; (2) securities issued in borrowings made under § 563.8; (3) subordinated debt securities issued pursuant to § 563.8-1; and (4) securities issued with the specific prior written approval of the Corporation.

Section 563.8, adopted as proposed, contains two new provisions relating to borrowing by insured institutions. The first requires the inclusion of subordinated debt securities issued by an insured institution within the limit on borrowing from a source other than a Federal Home Loan Bank. The second requires, in computing the amount of subordinated debt securities available for net worth purposes, the deduction, from the face amount of such outstanding securities, of the amount of any related sinking fund or specific reserve account.

New § 563.8-1 provides for the issuance of subordinated debt securities by insured institutions. It requires insured institutions (except in supervisory cases) to submit an application to the Corporation before issuing any subordinated debt securities; such an application must be submitted to and approved by the Corporation prior to each issuance. Paragraph (b) imposes certain "eligibility requirements" which the applicant institution must meet at the time of its application. Paragraph (d) sets forth certain requirements with respect to the securities themselves. It requires, inter alia, that such securities (1) state that they are subordinated on liquidation, as to principal, interest (including postdefault interest), and premium, to all claims with priorities equal to or higher than savings account holders; (2) be unsecured; (3) be in minimum certificate amounts of at least $50,000; and (4) have an original period to maturity of at least 7 years. The $50,000 minimum certificate amount is a reduction from the $100,000

minimum originally proposed. Paragraph (d) also prohibits any public offering or public advertising in connection with the issuance of securities. The original proposal has been amended to make it clear that "tombstone" advertisements announcing the completion of a private placement of securities are not included in this prohibition.

1. Part 561 is amended by revising §§ 561.2, 561.3, and 561.13 thereof, and by adding a new § 561.24 thereto, to read as follows:

§ 561.2 Insured member.

The term "insured member" means the holder of an account or accounts in an institution insured by the Corporation. Such holder is a separate insured member in each of the capacities and to the extent provided in Part 564 of this subchapter. The term does not include the holder of any subordinated debt security issued by an insured institution.

§ 561.3 Insured account.

An "insured account" is a withdrawable or repurchasable share, investment certificate, deposit, or savings account held by an insured member in an institution insured by the Corporation. Accounts which by the terms of the contract of the holder with the institution or by provisions of State law cannot be withdrawn or the value thereof paid to the holder until all of the liabilities, including other classes of share liabilities, of the institution have been fully liquidated and paid upon the winding up of the institution are not insurable, and are hereinafter referred to as "nonwithdrawable accounts." Subordinated debt securities issued by an insured institution are deemed not to be "accounts," and such securities are not insurable.

§ 561.13 Net worth.

The term "net worth" means the sum of all reserve accounts (except specific or valuation reserves), retained earnings, capital stock, and any other nonwithdrawable accounts of an insured institution; the term also includes (a) up to a limit of 20 percent of total net worth, the principal amount of any subordinated debt securities (the amount of which shall be calculated as provided in § 563.8 of this subchapter) issued upon written approval by the Corporation of an application submitted pursuant to § 563.8–1 of this subchapter, as long as the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is not less than 1 year and (b) to the extent explicitly authorized in writing by the Corporation, the principal amount of any subordinated debt securities issued with the specific approval of the Corporation.

§ 561.24 Subordinated debt security.

The term "subordinated debt security" means any unsecured note, debenture, or other debt security issued by an insured institution and subordinated on liquidation to all claims having the same priority as savings account holders or any higher priority.

2. Part 563 is amended by revising § 563.8 thereof, and by adding new §§ 563.7–2 and 563.8–1 thereto, it read as follows:

§ 563.7–2 Issuance of securities with definite return or definite maturity.

Except as provided in §§ 563.3–1, 563.8, and 563.8–1, or except with the specific prior written approval of the Corporation, no insured institution may issue any securities which guarantee a definite return or which have a definite maturity.

§ 563.8 Limitation upon borrowing.

No insured institution shall borrow in excess of the aggregate amount authorized by the law under which such insured institution operates. No insured institution shall borrow an aggregate amount exceeding one-half the amount paid in and credited on shares, share accounts, savings accounts, stock, certificates of deposit, and investment certificates; nor, within such borrowing limit, an amount aggregating more than one-fifth thereof from sources other than a Federal Home Loan Bank or a State-chartered central reserve institution; except that with prior approval of the Board, any such institution may borrow from a Federal Home Loan Bank or from any Federal agency or instrumentality without limitation upon such terms and conditions as may be required by such bank or agency. No action of an insured institution in obtaining funds through borrowing, in accordance with the provisions of this section, shall be deemed a violation hereof should its aggregate borrowings exceed the limitation of this section because of a subsequent reduction in the amounts paid in and credited on shares, share accounts, savings accounts, stock, certificates of deposit, and investment certificates. For the purposes of this section, the issuance of subordinated debt securities by an insured institution shall be considered borrowing. For the purposes of this section, § 561.13 of this subchapter, and § 563.8–1, the amount of such subordinated debt securities shall be calculated as the difference between the face amount of such securities and the amount of any related sinking fund or specific reserve account.

§ 563.8–1 Issuance of subordinated debt securities.

(a) *General.* No insured institution shall issue subordinated debt securities unless it has obtained the prior written approval of the Corporation pursuant to this section. If the issuance of such securities is requested in writing by the Corporation, such issuance shall be effected in accordance with such request without regard to the eligibility requirements contained in paragraph (b) of this section. In all other cases, an application for such approval must be submitted to the Corporation in accordance with the provisions of this section.

(b) *Eligibility requirements.* The Corporation will consider and process an application by an insured institution for approval of the issuance of subordinated debt securities only if the applicant meets all of the following eligibility requirements, unless one or more of such requirements are waived by the Corporation upon specific request in the case of a particular application:

(1) The issuance of such securities by the applicant is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution, or bylaws;

(2) Applicant's net worth, without regard to the amount of any subordinated debt securities included or to be included in such net worth, meets the requirements of § 563.13;

(3) Applicant's scheduled items do not exceed 2.5 percent of its specified assets;

(4) All appraised losses have been offset by specific loss reserves to the extent required by the Corporation under § 563.17–2;

(5) Applicant's income from operations before income taxes in its most recent fiscal year and in at least one of its two immediately preceding fiscal years (after distribution of earnings to the holders of savings accounts and payment of interest on, and amortization of, nonsubordinated debt) and its average of such income for such 3-year period is at least three times the annual amount required for interest, debt discount amortization (if any), and amortization of the related expenses of issuance on all outstanding and proposed subordinated debt securities (excluding any debt securities to be refunded out of the proceeds of the proposed subordinated debt securities); and

(6) The aggregate amount of all outstanding and proposed subordinated debt securities (excluding any debt securities to be refunded out of the proceeds of the proposed subordinated debt securities) does not exceed 50 percent of applicant's net worth, not including any such outstanding and proposed subordinated debt securities.

(c) *Application form; supporting information.* An application for approval of the issuance of subordinated debt securities by an insured institution shall be in the form prescribed by the Corporation. Such application and instructions may be obtained from the Supervisory Agent. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) *Requirements as to securities.*—(1) *Form of certificate.* Each certificate evidencing subordinated debt issued by an insured institution pursuant to this section shall—

(i) Bear on its face, in boldface type, the following legend: "This security is not a savings account or deposit and it is not insured by the Federal Savings and Loan Insurance Corporation";

(ii) Clearly state that the security (*a*) is subordinated on liquidation, as to principal, interest (including postdefault interest), and premium, if any, to all claims against the institution having the same priority as savings account holders or any higher priority; (*b*) is unsecured; and (*c*) is not eligible as collateral for any loan by the issuing institution;

(iii) State or refer to a document stating the terms under which the issuing institution may prepay the obligation, which shall include at least the right to prepay within 15 months of the maturity date;

(iv) State or refer to a document stating that no sinking fund or other prepayment or reserve allocation, if any, shall be required to be made, and no payment of principal shall be accelerated without the approval of the Corporation, if after giving effect to such prepayment, allocation, or accelerated payment the institution would fail to meet the net worth or Federal insurance reserves requirements of § 563.13; and

(v) Be in a minimum original amount of at least $50,000, except that upon partial prepayment a certificate for the amount then outstanding may be issued in substitution therefor.

(2) *Limitation as to term.* No subordinated debt security issued by an insured mstitution pursuant to this section shall have an original period to maturity of less than 7 years.

(3) *Prohibitions on public offering and advertising.* (i) No sale or issuance of subordinated debt securities by an insured institution may be made by means of a public offering of such securities (within the meaning of the term "public offering" as used in section 4(2) of the Securities Act of 1933, as now or hereafter in effect). (ii) No insured institution may use or permit the use of any public advertising in connection with the offer, sale, or issuance of any subordinated debt securities. However, this provision shall not prohibit the use of "tombstone" advertisements to announce a private placement of such securities after such placement has been completed.

(4) *Limitations on sale to certain institutions.* No insured institution may sell any subordinated debt securities to a Federal Home Loan Bank or, except with the prior written approval of the Board in a supervisory situation, to the Corporation.

(5) *False or misleading statements.* No insured situation shall, directly or indirectly, in connection with the offer, sale, or issuance of any subordinated debt securities, make any statement (i) that is false or misleading with respect to any material fact or (ii) taht omits to state any material fact (*a*) necessary in order to make the statements made, in light of the circumstances in which they were made, not false or misleading or (*b*) necessary to correct any earlier statement that has subsequently become false or misleading.

(e) *Filing of application.* The application for approval of the issuance of subordinated debt securities is filed with the Corporation by transmitting the original and three copies of the application and all supporting documents to the Supervisory Agent. As used in this section, the term "Supervisory Agent" means the President of the Federal Home Loan Bank of the district in which the applicant is located or any other officer or employee of such bank designated by the Board as agent of the Corporation, as provided by § 501.10 or § 501.11 of this chapter.

(f) *Supervisory objection.* No application for approval of the issuance of subordinated debt securities shall be approved if, in the opinion of the Corporation, the policies, condition, or operation of the applicant afford a basis for supervisory objection to the application.

(g) *Disclosure and other requirements.* In approving an application for approval of the issuance of subordinated debt securities, the Corporation will require, as a condition to be met by the applicant prior to the issuance of such securities, such disclosure of information as it may deem necessary or desirable for the protection of the prospective purchasers of such securities. As a minimum, such disclosure shall include the applicant's latest audited annual statement of condition and audited statement of operations for each of its last 3 years. In addition, the Corporation may impose on the applicant such other requirements or conditions with regard to the securities or the issuance thereof as it may deem necessary or desirable for the protection of such purchasers, the applicant, or the Corporation.

(h) *Limitation on offering period.* Following the date of the approval of the application by the Corporation, the institution shall have an offering period of not more than 1 year in which to complete the sale of the subordinated debt securities. The Corporation may in its discretion extend such offering period if a written request showing good cause for such extension is filed with it not later than 30 days before the expiration of such offering period or any previous extension thereof.

(i) *Reports.* Upon completion of the sale of the securities, the institution shall transmit a written report to the Supervisory Agent stating the number and amount of securities sold and the amount of net proceeds received by the institution.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.72-21252 Filed 12-8-72;8:45 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 58]

NONFAT DRY MILK, SPRAY PROCESS AND ROLLER PROCESS

Proposed Standards for Grades; Grade Not Assignable; Correction

In F.R. Doc. 72-20511 appearing on page 25238 of the issue for Wednesday, November 29, 1972, the following change should be made: The effective date should read "It is proposed that these amendments shall become effective April 1, 1973."

Dated: December 5, 1972.

JOHN C. BLUM,
Acting Administrator.

[FR Doc.72-21253 Filed 12-8-72;8:45 am]

[7 CFR Part 909]

GRAPEFRUIT GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Expenses and Assessment Rate for Fiscal 1972-73

Notice is hereby given that the Department is giving consideration to the proposal set forth herein submitted by the Grapefruit Administrative Committee, established under Order No. 909, as amended (7 CFR Part 909), regulating the handling of grapefruit grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer the terms and provisions thereof. The committee now estimates that due to increased expenses to be caused principally by the addition of inspection as a result of grade and size regulation, effective beginning January 1, 1973, the currently approved expenses and rate of assessment are not sufficient to meet the expenses of the committee.

The proposal is that the provisions of paragraphs (a) *Expenses* and (b) *Rate of assessment* of § 909.211 (37 F.R. 23819) be amended to read as follows:

§ 909.211 Expenses, rate of assessment, and carryover of unexpended funds.

(a) *Expenses.* The expenses that are reasonable and likely to be incurred by the Administrative Committee during the period September 1, 1972, through August 31, 1973, will amount to $135,000.

(b) *Rate of assessment.* The rate of assessment for such period, payable by each handler in accordance with § 909.41, is hereby fixed at three cents ($0.03) per carton, or equivalent quantity of grapefruit.

* * * * *

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, no 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: December 5, 1972.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-21209 Filed 12-8-72;8:49 am]

[7 CFR Parts 1040, 1043]

[Dockets Nos. AO-225-A25, AO-247-A18]

MILK IN SOUTHERN MICHIGAN AND UPSTATE MICHIGAN MARKETING AREAS

Notice of Recommended Decision and Comment Period on Proposed Amendments to Tentative Agreement and Order

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Southern Michigan and Upstate Michigan 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 15th 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 orders as amended, were formulated, was conducted at Lansing, Mich., on May 4-5, 1972, pursuant to notice thereof which was issued on April 7, 1972 (37 F.R. 7338).

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

1. Diversion limitations under the Southern Michigan and Upstate Michigan orders.

2. Whether the marketing areas of Southern Michigan and Upstate Michigan orders should be included under one order.

(a) Merger of orders.

(b) Interstate commerce.

3. If an order is issued for one milk marketing area in the manner proposed, what its provisions should be.

(a) Application of the provisions of the Southern Michigan order to the combined marketing areas.

(b) Revision of provisions with respect to:

(i) Classification of skim milk and butterfat;

(ii) Class prices and location adjustments;

(iii) Distribution of proceeds to producers; and

(iv) Administrative provisions.

The decision deals with all the issues listed above except Issue No. 1, which was considered previously in a decision issued by the Assistant Secretary on September 15, 1972 (37 F.R. 19639).

FINDINGS AND CONCLUSIONS

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

2. *Whether the marketing areas of Southern Michigan and Upstate Michigan orders should be included under one order.*—(a) *Merger of orders.* Order No. 43, regulating the handling of milk in the Upstate Michigan marketing area, and Order No. 40, regulating the handling of milk in the Southern Michigan marketing area, should be merged into a single regulation. The surviving order would be Order No. 40.

Addition of the Upstate Michigan marketing area to the Southern Michigan marketing area was proposed by a cooperative association operating in the two markets. Proponent testified that Southern Michigan handlers have extended their supply and sales routes in the Upstate Michigan marketing area to the point that a separate market for Upstate Michigan producers no longer can be distinguished. Merger of the orders was not opposed.

Southern Michigan is the larger of the two marketing areas proposed for merger. The Southern Michigan marketing area includes most of the Lower Peninsula of Michigan, except one tier of southern counties, two western counties adjoining such tier, and the marketing area of Upstate Michigan consisting of 13 northwestern counties.

In 1955, when the Upstate Michigan order was promulgated, there were 486 producers supplying 24 plants operated by handlers regulated under the order. In January 1970 only the milk of 22 producers was pooled under the order and only three distributing plants were regulated. At the time of the hearing only 19 producers were left on the market, compared to 8,247 producers on the Southern Michigan market. Most of the producers who were on the Upstate Michigan market shifted to Southern Michigan order pool plants. Also, the fluid milk sales business within the marketing area has been shifting to Southern Michigan handlers.

Most of the sales in the Upstate marketing area consequently are now made by handlers regulated by the Southern Michigan order. Transfers to Upstate Michigan pool plants and route sales in the Upstate Michigan marketing area by Southern Michigan handlers have increased from approximately 20 million pounds in 1965 to 65 million pounds in 1971. In comparison, the total producer receipts by Upstate Michigan handlers during 1971 amounted to only 9 million pounds.

Since the fluid milk sales business within the Upstate marketing area is held primarily by Southern Michigan handlers, such territory is now an integral part of the larger Southern Michigan marketing area. Therefore such territory should be added to the Southern Michigan marketing area and the Upstate Michigan order shoud be revoked.

The marketing area set forth herein is identical with that contained in the separate orders. It includes all the territory within the Michigan counties of Alcona, Allegan (Dorr, Gunplain, Hopkins, Leighton, Martin, Otsego, Watson, and Wayland Townships only), Alpena, Antrim, Arenac, Barry, Bay, Benzie, Calhoun, Charlevoix, Cheboygan, Clare, Clinton, Crawford, Eaton, Emmett, Genesee, Gladwin, Grand Traverse, Gratiot, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Livingston, Macomb, Manistee, Mason, Mecosta, Midland, Missaukee, Monroe (Ash and Berlin Townships only), Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, St. Clair, Sanilac, Shiawassee, Tuscola, Wastenaw, Wayne, and Wexford.

All currently regulated handlers of the separate orders will continue to be regulated under the merged order. Producers under the separate orders will continue to supply such handlers. To accomplish the merger effectively and most equitably, the assets in the custody of the market administrator in the administrative, marketing service, and producer-settlement funds under the two orders should be combined. Any liabilities of such funds under the individual orders should be paid from the new funds so created and obligations due to the funds under the separate orders should be paid to the combined funds under the merged order. To distribute such funds under one order to producers and handlers under the order would unduly burden the producers and handlers now regulated by the other order. To distribute the funds under both orders and again accumulate the necessary reserve would entail unnecessary administrative detail at considerable cost with no advantage to either handlers or producers.

(b) *Interstate commerce.* The handling of milk in the proposed merged marketing area is in the current of, and directly burdens, obstructs, or affects interstate commerce in milk or milk products.

Bulk milk from farms located in Indiana, Ohio, and Wisconsin, as well as Michigan, is received and priced at pool plants regulated by the Southern Michigan order. Bulk milk from supply plants located in Wisconsin is tranferred to pool plants located in the proposed marketing area.

Manufactured milk products made from producer milk likewise are involved in interstate commerce. Cottage cheese and yogurt from a Michigan regulated plant are sold in the adjoining State of Ohio. Yogurt is sold in the consolidated marketing area by handlers regulated under the Indiana and Ohio Valley orders.

Michigan handlers competing for sales of milk and milk products throughout the combined Southern Michigan and Upstate Michigan marketing areas are also in competition for such sales from handlers located outside the State.

3. *Order provisions for the combined marketing area*—(a) *Application of the provisions of the Southern Michigan order to the combined area.* The order provisions adopted herein continue the Southern Michigan order provisions, subject to proposed amendments considered herein. In those instances in which specific provisions of the order adopted herein are substantially different from the present Southern Michigan order, the justification therefor is set forth in the findings of this decision.

The provisions of the order for the combined marketing area will be applicable to the same categories of persons and milk plants to which provisions of the separate orders now apply. The pooling requirements for distributing plants under the Southern Michigan and Upstate Michigan orders currently specify that 50 percent of the milk receipts at the plant be disposed of on routes. Adoption of the Southern Michigan order provisions for the Upstate Michigan portion of the combined marketing area will not change the categories of persons and milk plants in such area to be regulated. Adoption of the Southern Michigan provisions relative to pooling supply plants, and "balancing" plants operated by cooperatives, likewise will not effect any change in mode of regulation for any present handler in the Upstate Michigan marketing area. Neither of such types of plants are regulated currently under that order.

(b) *Revision of provisions with respect to*—(i) *Classification of skim milk and butterfat.* Cooperative associations proposed that certain product composition standards be incorporated in the classification provisions. In addition, they proposed reclassification of skim milk and butterfat in certain specific uses, particularly cream products, eggnog, and yogurt.

The present classification provisions of the Southern Michigan order should be revised as follows:

(a) *Revision of Class I classification.* With certain exceptions noted hereinafter, Class I milk should continue to include skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or a reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, as proposed by the cooperatives, this classification should include skim milk and butterfat in milkshake mixes containing less than 20 percent total solids, in sterilized fluid milk products, and in any milk product not in Class II or Class III if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Milkshake and ice milk mixes containing less than 20 percent total solids should be included in Class I. Such mixes containing a greater percentage of solids should be Class III products.

Milkshake and ice milk mixes for commercial use are basically similar in composition and purpose to what might be considered as traditional frozen desserts, such as ice cream. It is possible, however, that a beverage product very similar in form and composition to chocolate milk could be marketed under the label of a milkshake mix for the purpose of having a lower classification apply to the product. Since such a product actually would have the same general form and purpose as other fluid milk products now classified as Class I under the order, it should be included in the Class I classification. It is necessary, though, to provide some means of distinguishing between such a product and the general category of milkshake mixes

that are being sold in market competition with frozen desserts. For this purpose, the total solids content of the product should be used. A standard of 20 percent or more total solids should encompass those milkshake and ice milk mixes intended for use as a type of frozen dessert. Mixes with less solids are quite similar in total solids to chocolate milk and other flavored fluid milk products and should be in Class I.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form are being marketed for the same beverage use. Sterilization does not change the form or use of such products. They are generally intended for use in place of their unsterilized counterparts and are thus competing for the same market uses. Classifying all such products in Class I will assure that the returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for beverage use.

With the removal of any exception to the Class I classification of milk because of sterilization, specific reference must be made in the "fluid milk product" definition to the exclusion of certain products that otherwise could be construed to fall within such definition. Such products are evaporated or condensed milk or skim milk formulas in hermetically sealed glass or all-metal containers that are especially prepared for infant feeding or dietary use, and products (such as flavored drinks in "pop" bottles) containing by weight less than 6.5 percent nonfat milk solids. These products, being sold in sterilized form, are now excluded from the Class I classification and such exclusion should be continued, notwithstanding the fact that they are sold to the public in fluid form. Evaporated milk and condensed milk sold for home use are intended primarily for cooking purposes. They are not consumed normally as a beverage. Infant and dietary formulas, which are being sold in hermetically sealed glass or all-metal containers, are specialized food products prepared for a limited use. Such formulas do not compete generally with other milk beverages consumed by the general public. Similarly, fluid products containing only a minimal amount of nonfat milk solids are not considered as being in the competitive sphere of the traditional milk beverages.

Cooperatives proposed that, in addition to naming certain milk products and excluding others, a fluid milk product be defined in terms of moisture and milk solids content of the product. As proposed by producers, a "fluid milk product" would be any product containing at least 6.5 percent nonfat milk solids and 80 percent water but less than 9 percent butterfat and 20 percent total solids. They contended that the proposed fluid milk product definition would accommodate the classification of new products or variations of the listed products when they are introduced on the market. Any product meeting the specified composition limits for a fluid milk product would be a fluid milk product regardless of the name under which the product might be marketed.

Handlers generally took the position that the fluid milk product definition should continue to list by name those products intended to be included in Class I. They believed that this procedure would result in less confusion within the industry concerning the application of this definition.

The primary concern with any fluid milk product definition is that it clearly define the products or types of products that are intended to be included in the definition. The fluid milk product definition adopted herein, which incorporates both the listing of specified products and the use of composition percentages, should meet this requirement.

For clarity the fluid milk product definition should continue to list the generic names of those products commonly sold for consumption as beverages. The products listed in the adopted definition encompass most of the forms in which milk for fluid uses is sold. Any one referring to this fluid milk product definition may easily ascertain in the case of most milk products whether or not a particular product is included in the definition.

A listing of products alone in the fluid milk product definition may not clearly indicate, however, the classification of new milk products developed for fluid consumption. With certain limited exceptions noted, the fluid milk product definition is intended to include all milk products that are distributed for use as beverages. Although a new milk beverage introduced on the market might not be encompassed within the list of named products, it should be treated as a fluid milk product, nevertheless, if its composition is similar to that of the listed products. This will be the result of the standards of product composition for fluid milk products herein adopted.

As indicated, the adopted composition standards would embrace any product not specified as a Class II or Class III product that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids. These standards are chosen so as to conform as closely as possible to the range of water, solids, and butterfat content of those products specifically listed in the fluid milk product definition that are commonly sold for use as beverages.

The 9-percent-butterfat standard coincides with the butterfat percentage adopted herein to delineate the mixtures of cream and milk or skim milk to be included in Class II. The total solids and water percentages represent a reasonable measure of the fluidity of those products that normally are consumed as beverages. The 6.5 percent nonfat milk solids standard is used to exclude from the fluid milk product definition those products that contain some milk solids but are not closely identified with the dairy industry, such as chocolate flavored drinks in "pop" bottles. In the case of the nonfat milk solids standard, it is intended that nonfat milk solids include such milk solids as lactose and the nonfat solids in dried whey.

(b) *Class II milk.* Class II milk should include skim milk and butterfat disposed of in the form of eggnog, yogurt, or a "fluid cream product", i.e., cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat. Any product containing 6 percent or more nonmilk fat (or oil) that resembles any of these products likewise should be in this class. Also, eggnog, yogurt, and fluid cream products that are in inventory at the end of the month in packaged form should be in Class II.

Included also in this classification should be skim milk and butterfat used to produce cottage cheese, lowfat cottage cheese and dry curd cottage cheese. Skim milk disposed of in any Class II product that is modified by the addition of nonfat milk solids should be Class II milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Under the current Southern Michigan order Class II milk includes only the skim milk and butterfat used to produce, or added to, cottage cheese or cottage cheese curd.

Proposals by cooperatives of products to be included in Class II differed little from that adopted herein. One cooperative proposed that skim milk and butterfat used to produce eggnog be classified as Class I milk. Another cooperative would classify skim milk and butterfat used to produce sour cream as Class III milk.

Handlers and producers agreed that fluid cream products should be removed from the fluid milk product definition and be classified as Class II. An association of milk dealers asked that cottage cheese and cream be classified as Class II. One handler suggested there be no third class of milk products. He suggested that fluid milk products remain in Class I and cream and cottage cheese be classified along with manufactured milk products in a single surplus class.

In support of their proposed Class II use categories, the several cooperatives contended that there are significant differences in the competitive position of, and demand for, milk so used compared to other uses of milk. They stated that handlers demand quality milk on a regular basis for the proposed Class II products and that alternative supplies of milk for such uses cannot be obtained for less than the Class II prices they propose for producer milk. Moreover, they claimed that products in such Class II uses should bear, along with fluid milk products, part of the cost necessary to attract an adequate market supply.

Proponent cooperatives pointed out that the present Class I classification of cream and cream mixtures has placed these products in a poor competitive position in the marketplace relative to nondairy substitutes. By shifting these products to a lower-priced class, proponents hope it will allow the industry to maintain its present small share of the cream and dessert topping market and provide it a chance to perhaps recapture some of the market that it has lost.

Class II milk should include eggnog. Currently, eggnog is a Class III product under the Southern Michigan order. One cooperative asked that it be classified as Class I. Another cooperative would classify eggnog as Class II. Handlers operating distributing plants in the Detroit area requested that eggnog be classified as Class III milk.

The sales of eggnog are limited primarily to the months of November and December. During 1971 eggnog sales in the Southern Michigan market amounted to 3,271,000 pounds. Such sales for the year amounted to less than 0.1 of 1 percent of the 3.85 billion pounds of producer milk in the market. One handler estimated that 35 to 40 percent of the eggnog products sold in the market are substitute products. In view of the limited sales of eggnog during the year total returns to producers would not be significantly enhanced if eggnog were classified as Class I milk. Furthermore, a Class I classification for eggnog would place it at a competitive disadvantage in the market relative to substitute products. Eggnog, however, should not be priced as a Class III product because a main ingredient is cream. Cream will be a Class II product. For these reasons the intermediate Class II classification of this order is appropriate for skim milk and cream in such uses.

Milk used in yogurt should be classified as Class II milk. Yogurt is a soft, nonfluid, "spoonable" product. It is not a beverage as are other products defined herein as fluid milk products.

By being suspended from the fluid milk product definition yogurt is currently a Class III use under the Southern Michigan order to price it competitively with those neighboring Federal order markets that classify yogurt in an intermediate use class.

Processors generally use regular supplies of inspected milk to produce yogurt. Although yogurt can be made from cream and nonfat dry milk, processors prefer high quality milk. Since yogurt has a relatively limited shelf life, it is made on a continuing basis, thus requiring a regular supply of milk at all times. It is not a residual use as surplus. These conditions warrant that producer milk in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk.

Sour cream or a cultured mixture of cream and milk or skim milk containing 9 percent or more butterfat should be a Class II product. The Southern Michigan order currently classifies sour cream as a Class III product.

One cooperative asked that sour cream be classified as a Class II product while another cooperative and several handlers requested that its classification as Class III be continued.

Sour cream should be placed in the same class as other cream products. Half-and-half and light cream are used by consumers principally in coffee. Aerated cream and whipping cream are used as dessert toppings. Sour cream and cultured mixtures, with or without the addition of other ingredients, are used as dips or in food preparation. Providing the same classification for such products as for other cream products will result in uniform pricing to handlers for producer milk used in all such "specialty" cream products.

Ending inventory of fluid cream products, eggnog, and yogurt when held in packaged form, should be classified as Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventory of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the following month, would be allocated in the following month directly to the handler's Class II utilization.

The order now provides that any "filled" product containing 6 percent or more nonmilk fat (or oil) shall be Class III milk. With the inclusion of fluid cream products, eggnog, and yogurt as Class II products, it is appropriate that any such filled products that resemble the proposed Class II products made with milk fat likewise be included in this class. The substitution of nonmilk fat for milk fat in a product merely changes the composition of the product and not its use. For competitive reasons, a comparable classification of products made with milk fat and their filled counterparts is necessary.

Handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products should be permitted to have such other source milk allocated directly to their Class II uses. Under the plan adopted herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products, mainly half-and-half, and to skim milk being used for the manufacture of cottage cheese. If producer supplies are short, handlers also may reconstitute nonfat dry milk for cottage cheese production. Condensed skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather than allocated first to any Class III utilization they may have.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use.

Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation to a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle in his plant any receipts of fluid other source milk with his receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty a handler would have in demonstrating that he actually used fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk in essentially the same manner as now provided by the order.

In this connection, it should be noted that under the revised classification plan the order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

Handlers may add nonfat milk solids to several of the proposed Class II products, such as half-and-half and light cream. The method of accounting for modified fluid milk products should apply in like manner to these modified Class II products. Currently these cream products are fluid milk products, and in accounting for these products the order provides that

each shall be classified as Class I in the amount of the weight of an equal volume of an unmodified product of the same nature and butterfat content. The remaining skim milk equivalent of the nonfat solids in such product is classified in the lowest class. Accordingly, under the revised classification, if eggnog, yogurt, or any fluid cream product is modified by the addition of nonfat milk solids, such product would be classified as Class II in the amount of the weight of an equal volume of an unmodified product of the same nature and butterfat content. The remaining skim milk equivalent of the nonfat milk solids in such product would be classified in Class III.

The order provides that nonfat milk solids used to fortify fluid milk products and in producing or adding to cottage cheese or cottage cheese curd shall be accounted for on the basis of the actual weight of the solids. Such accounting procedure would be changed under the order provisions provided herein to conform with the procedure used under Federal orders generally and, therefore, facilitates appropriate accounting for milk products moved among orders. The method adopted would account for all nonfat milk solids on a skim milk equivalent basis. The volume of the unmodified product that the added solids replaces would be classified in the same class as the modified product and the remaining skim milk equivalent volume of the added solids would be Class III.

(c) *Class III milk.* Class III milk should include skim milk and butterfat used to produce cheese (other than cottage cheese, lowfat cottage cheese and dry curd cottage cheese), butter, plastic cream, frozen cream, anhydrous milkfat, any milk product in powdered form, milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, custards, puddings, pancake mixes, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, evaporated or condensed milk or skim milk in plain or sweetened form that is in a consumer-type package, any concentrated milk product in bulk, fluid form, and any product containing 6 percent or more nonmilk fat (other than a Class II product). Any other product not otherwise included among Class I and Class II product also should be included in Class III.

Other Class III uses should include fluid milk products and bulk fluid cream products in inventory at the end of the month, and that portion of modified (by the addition of nonfat milk solids) fluid milk products and Class II products not included in Class I or Class II. Also, a Class III classification should apply to bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, Class III should include any fluid milk product or product listed in the Class II classification that is disposed of for animal feed, or is dumped if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition. Also, shrinkage within certain limits should be classified as Class III milk.

The items included in Class III are those currently in Class III with certain exceptions. One item, packaged fluid milk products in ending inventory, is added to the current Class III classification. Milkshake mixes containing less than 20 percent total solids and certain sterilized products packaged in hermetically sealed containers, however, would be placed in Class I, sour cream would be moved to Class II.

Cooperatives requested that milkshake mixes containing less than 20 percent total solids and packaged fluid milk products in ending inventory be classified as Class I milk. Handlers proposed that such products be classified as Class III milk.

One cooperative requested that sour cream be classified as Class II milk. Another cooperative and several handlers asked that the order continue to classify sour cream as Class III milk.

The rationale for placing certain of the current Class III products in either Class I or Class II is contained in the discussion of products to be classified as Class I or Class II milk. The following discussion concerns the Class III classification of fluid milk products, fluid cream products, eggnog, and yogurt in bulk, in ending inventory; and the classification of shrinkage.

A producer's primary concern with the classification of ending inventory is its effect on his returns. A handler is concerned with such classification as it affects his pool obligation and recordkeeping. Either a Class I classification for packaged fluid milk products in ending inventory, or a Class III classification and a reclassification as a Class I product when such product is disposed of on routes, results over the long run in essentially the same pool obligation for handlers and the same returns to producers. Classifying packaged fluid milk products in ending inventory as Class III will tend to facilitate the recordkeeping of handlers without disadvantage to producers.

Ending inventory classified as Class III milk should be reclassified in a higher class if so used during the following month. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory. This is the same reclassification procedure that now applies under the order to inventories of fluid milk products in bulk form.

Fluid cream products in bulk form that are on hand at the end of the month likewise should be classified in Class III. As in the case of bulk milk, the final use of cream being held in bulk form is not necessarily apparent from that form. The cream must be followed to its ultimate use, which may be in any class. Accordingly, it is reasonable to classify any closing inventory of bulk cream in Class III and then apply a reclassification charge should the cream, as beginning inventory the following month, be allocated to a higher class.

For the first month that the revised classification plan is effective, certain transitional provisions relating to inventory should apply. Such provisions are necessary to assure that all handlers under the order will be subject to the same pricing for milk used in packaged fluid milk products and fluid cream products whether such products enter into the month's accounting as beginning inventory or are made from current receipts of producer milk.

Under the new plan, beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new amendments, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply if a higher classification results.

A pool credit should apply on certain milk products in ending inventory in the first month that the revised classification plan is effective. Beginning inventories of fluid milk products and, for the first month, all fluid cream products would be allocated to the extent possible to Class III. This allocation assumes that such inventories were priced at the lowest class price in the preceding month. Since inventories of packaged fluid milk products and packaged fluid cream products (half-and-half, light cream and whipping cream) under the Southern Michigan order will have been priced at the preceding month's Class I price, former Southern Michigan handlers receive a credit on such packaged inventories equal to the difference between the preceding month's Class I price and the Class III price. Former Upstate Michigan handlers should receive a credit on all ending inventory of fluid milk products and cream at the difference between the preceding month's Class II and Class III price under such order since their inventories will have been priced at the preceding month's Class II price. If a higher classification results through the allocation procedures, the appropriate reclassification charge would apply.

The current order provides that skim milk dumped shall be a Class III use subject to prior notification to and inspection by the market administrator. Butterfat in dumped products likewise should be classified as Class III milk. Currently, butterfat in dumped products may be classified as Class III milk only if

there is a sufficient amount of allowable Class III shrinkage remaining to permit such classification. Otherwise, such butterfat is known as "excess shrinkage" and is classified as Class I milk. In normal plant operations there is likely to be some cases where butterfat in milk products cannot be sold or salvaged. Route returns that may be nonsalable because of dating regulations often may not be reprocessed economically into other products. Additives such as flavoring or nondiary ingredients may make reprocessing impractical. Also, in manufacturing operations, spoilage may occur, or culturing processes may break down, rendering the product nonsalable for human consumption. Such products that are dumped result in a loss to the handler. In these circumstances, butterfat dumped should be classified as Class III in order that such butterfat may be accounted for as a specific use rather than as shrinkage, an unspecified use.

The classification of shrinkage within certain limits as Class III milk as provided in the Southern Michigan order should be continued in the merged order, except that the principle of division of shrinkage between receiving and processing functions with respect to milk moved from farms to plants in tank trucks operated by a cooperative association handler should apply also in the case of milk that is transferred or diverted.

The order now provides a 2-percent maximum shrinkage allowance in Class III in the case of receipts of producer milk, milk from other order plants, and milk from unregulated supply plants. With respect to producer milk the order recognizes that shrinkage normally experienced varies with the type of handling. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler.

With respect to delivery of milk by a cooperative association handler from farms to plants in tank trucks, a Class III shrinkage allowance of 0.5 percent of such milk is provided. Any excess shrinkage over 0.5 percent is classified as Class I milk. The Class III shrinkage allowance to the processing plant receiving the milk from the cooperative is 1.5 percent. This maintains a total of 2-percent Class III shrinkage allowance for such milk from producers in the receiving and processing operations.

In the case of milk diverted from a pool plant to another plant, a shrinkage allowance in Class III of 0.5 percent should be provided the diverting handler unless the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples. In the latter case no shrinkage allowance would apply for the diverting handler. This is the same procedure applicable to cooperative bulk tank deliveries to pool plants. Similar handling is involved.

This kind of division of shrinkage allowance should be provided with respect to receipts in bulk from other pool plants and receipts in bulk from other order plants, and unregulated supply plants. One and one-half percent shrinkage allowance at the plant where such milk is processed and 0.5 percent allowance at the shipping plant will maintain a total of 2 percent Class III shrinkage allowance at processing plants with respect to receipts of milk from pool sources, other order milk, and unregulated supply plant milk.

(*d*) *Classification of milk transferred or diverted.* Certain changes should be made in the provisions that prescribe the classification of fluid milk products that are transferred or diverted from a pool plant to another plant. Several of the changes become necessary with the classification of fluid cream products as Class II. Other changes are appropriate for clarity in the classification of milk.

The order presently provides a Class III classification for cream in bulk transferred from a pool plant to a nonpool plant that is neither an other order plant nor a producer-handler plant if the handler claims Class III utilization and such nonpool plant is located in Pennsylvania, New Jersey, New York, or New England. Bulk cream transferred to nonpool plants in other States is classified as Class I milk unless certain conditions are met.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use since it is feasible to use the skim milk and butterfat in bulk cream in any of the three classes of end use. Appropriately, the classification of bulk cream should be based on its end use irrespective of the location of the plant to which it is transferred to effect its classification on the basis of use. Arrangements for verifying the utilization at most distant plants can be made easily through the facilities of the various market administrators' offices. Thus, it is necessary that fluid cream products transferred in bulk form from a pool plant to another plant be classified in a manner similar to that now used in classifying transfers of bulk fluid milk products.

The order now prescribes a procedure for classifying transfers of bulk fluid milk products from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant. To determine such classification, the nonpool plant's utilization must be assigned to its receipts of milk from each source. Some amplification of this procedure is appropriate to set forth clearly the priority for assigning the different types of plant use to the different sources of fluid milk products and bulk fluid cream products received at the nonpool plant.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the marketing area of a Federal order, and any transfers of packaged fluid milk products from the nonpool plant to plants fully regulated under such order, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under such order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned, first, to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under that order and, secondly, to any such remaining receipts from plants fully regulated under other orders.

Additional unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined

should apply also at the second nonpool plant.

Certain changes should be made in the order concerning the classification of products transferred from a pool plant to a producer-handler. Under the revised classification plan, bulk fluid cream products transferred from a pool plant to a producer-handler should be assigned to the extent possible to the latter's Class III use, and then Class II use. If the producer-handler does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

As in the case of all other fluid milk products, such transfers of cream are now classified as Class I milk. Such classification tends to assure that producers do not carry for producers-handlers the burden of maintaining reserve supplies for the Class I sales of producers-handlers. With the removal of cream from the Class I classification, as adopted herein, a mandatory Class I classification of cream transfers to producers-handlers would not be necessary for this purpose.

The order should provide that fluid milk products transferred from a pool plant to a producer-handler under another order be classified as Class I milk. This classification now applies under the order with respect to such transfers made on an intramarket basis.

The producers-handlers, in their capacity as handlers, have been exempt from the pricing and pooling provisions of the order. In consideration of this exemption, the order requires a Class I classification of all fluid milk products that are transferred from a pool plant to a producer-handler. Inasmuch as the producer-handler exemption under each order is predicated on essentially the same basis, a Class I classification of milk transferred from a pool plant regulated under one order to a producer-handler as defined under another order would be in keeping with the general basis for producer-handler exemption.

Since the advent of farm bulk tanks, the diversion of producer milk from pool plants to manufacturing plants has been a common method of handling milk not needed for the fluid market. The classification of diversions to unregulated nonpool plants is discussed hereinbefore. The classification of diversions to other order plants and to pool plants of other handlers should be specified in the order. Such diversions are provided for in the producer milk definition of the order. Currently the transfer provisions of the order are silent on the classification to be accorded such diversions.

Provision should be made for the diversion of milk to other order plants for Class II or Class III use. Such provisions will foster the efficient handling of surplus milk in the market by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk will continue to be pooled in the market from which diverted.

The transfer provisions of the order should provide for the same classification for a diversion from a pool plant to another pool plant that is applicable to a transfer between such plants.

(ii) *Class prices and location adjustments—(a) Class I price and location adjustments.* The Class I price under the combined order should be that currently provided under the Southern Michigan order, the basic formula price for the second preceding month plus a differential of $1.60. The location adjustment provisions under the Southern Michigan order should be continued under the merged order also.

Several cooperative associations proposed that the amount of the Class I differential under the Southern Michigan order be continued in the merged order. Two cooperatives, while not objecting to the proposed Class I differential, proposed to increase the effective Class I price at certain pool plants by eliminating the minus location adjustment applicable at such plants. They proposed that the location adjustment zones of −3, −5, −7, and that portion of the −9-cent zone south of the northern edge of Oceana and Newago Counties be changed to a zero zone. One of the latter cooperatives asked that the direct delivery differential zones of plus 4 and plus 8 cents remain in effect. The other cooperative expressed no position on the direct delivery differentials. Its members do not ship milk to plants located in the area where such differentials apply.

The proposal by the two cooperatives would remove the minus location adjustments effective at plants in the southern half of the Lower Peninsula of Michigan. In support of their proposal witnesses for the associations stated that all producers should receive the same price for milk delivered to plants throughout such territory. They contended that the minus location adjustments amounted to a subsidy for handlers in the central and western part of the Lower Peninsula. They stated that distributing plants in the western and central part of the State have routes extending into the Detroit area and Detroit handlers have routes extending over much of the State. For this reason they believed the same Class I price should be applied at the plants of all such handlers and requested that minus location adjustments not apply in the southern part of the Lower Peninsula of Michigan.

Handlers with plants located in or near the Detroit metropolitan area proposed that the direct-delivery differential zones of plus 4 cents and plus 8 cents be eliminated. They also proposed an increase in the Class I price differential to avoid any loss in returns to producers by elimination of the direct-delivery price zones. In addition, at the hearing, they suggested the adoption of hauling credits from pool funds for producer milk shipped in excess of 60 miles to pool distributing plants. In their brief, however, they contended that this would not be a necessary part of eliminating direct delivery zones. Handler witnesses cited the overlap of sales competition between Detroit handlers and handlers in the balance of the market as the reason for their proposal. They contend that the present price adjustments result in too wide a disparity in the cost of raw milk for competing handlers. In their view the present minus location adjustment structure under the Southern Michigan order should provide the necessary incentive to move milk to the fluid outlets in the market.

Cooperatives favoring retention of the plus 8-cent and plus 4-cent direct-delivery differentials pointed out the need for such incentive to attract milk from the production areas to the primary consumption area. They stated that 50 percent of the population of the Lower Peninsula of Michigan resides in the Detroit metropolitan area. Approximately 65 percent resides in the plus 8-cent, plus 4-cent, and zero zones. Total deliveries of milk to plants in such zones in 1971 amounts to 61 percent of the total milk marketed under the Southern Michigan order. Seventy-seven percent of the total Class I sales by Southern Michigan handlers in March 1972 was made by plants located in the Detroit area. Sixty percent of the total Class I sales is made by plants located in the plus 8-cent and plus 4-cent zones and 17 percent by handlers with plants in the zero zone.

The location adjustment rate structure under the present Southern Michigan order was last revised effective May 1968, based upon evidence adduced at a hearing held in May 1967. That revision adopted a "direct-delivery" differential of 8 cents for milk delivered to plants in Wayne County and in the townships of Royal Oak and Southfield in Oakland County, and of 4 cents for milk delivered to plants located in the remaining townships of Oakland County.

Direct-delivery differentials were first established in the Southern Michigan order in August 1965. At that time, a rate of 4 cents per hundredweight was applied to all milk received from farms at plants located in the major portion of Wayne County and in two townships of Oakland County. The general basis for the direct-delivery differential was discussed in the decision on amendments to the Southern Michigan order issued on June 15, 1965, which was based on the record of a 1964 hearing.

Institution of a plus 8-cent direct-delivery differential zone in May 1968 was based upon testimony that an additional 15 to 18 million pounds of milk were needed monthly at plants in the Detroit metropolitan area.

The direct-delivery differentials are applicable at plant locations. It is common practice in the market for each producer to pay for shipping his milk from his farm to a plant. Hauling charges tend

to increase as the distance from farm to plant increases. Accordingly, in the interest of maximizing his net return from the sale of his milk, each producer has an incentive to minimize his hauling payment by shipping to a plant close to his farm unless he is reimbursed for the added cost of shipping to a more distant plant.

The direct-delivery differentials are employed to effect reimbursement to producers for the added cost of shipping milk to plants located in the densely populated Metropolitan Detroit area compared to plants located closer to the outlying production areas wherein Detroit handlers compete with such other plant operators for producer milk supplies.

The use of such direct-delivery payment provisions tends to make producers indifferent as to whether they ship their milk to plants in and near Detroit or to outlying plants in the market, since their net return at the farm is the same in each case. Without the provisions, producers would tend to prefer to ship milk only to the plants located nearest their farms.

The record does not demonstrate that the direct-delivery differentials have resulted in handlers in the Detroit area attracting milk supplies in excess of their needs. Consequently, there is no reason to assume that any lesser price differential as between plants in the Detroit area and plants in the outlying parts of the market would provide sufficient price incentive to attract the needed milk supply to Detroit plants.

It is the combination of both the plus direct-delivery differentials applicable at plants in the Detroit metropolitan area and the minus location adjustments applicable at plants throughout the production area that induces the needed milk deliveries to plants in the Detroit metropolitan area. The elimination of either the plus or minus price adjustments would reduce the incentive to move milk to the city plants.

Both proposals would limit severely the importance of order pricing as the means of compensating for the cost of moving milk from farms to the primary consumption area. At the outset, a burden would fall on those producers supplying city plants. Consequently, such producers would tend to seek other plant outlets nearer their farms to avoid incurring the higher hauling cost to ship their milk to the city. This would tend to threaten the supply of milk available to distributing plants in and near Detroit.

The situation is avoided by the use of the present location adjustment structure in the market, since it is formulated to reflect the added transportation cost in moving milk from farms to Detroit area plants as compared to plants located nearer producers' farms.

In view of the above considerations, it is concluded that the proposals to change the location pricing structure in the market should be denied.

The location adjustments under the Southern Michigan order applicable at locations within the Upstate Michigan marketing area should be continued, as proposed by the cooperatives. Such adjustments provide for a location adjustment of minus 12 cents at any plant located in Manistee, Wexford, Crawford, Grand Traverse, or Kalkaska Counties. A minus 15-cent location adjustment is applicable at plants located in the remaining counties of the Upstate marketing area.

Such location adjustments under the Southern Michigan order would effect about the same Class I price differentials as now apply at plants under the Upstate Michigan order. Under the Upstate Michigan order, the plants at Cadillac, Charlevoix, and Cheboygan have a Class I differential of $1.49. The location adjustments adopted herein would result in a Class I price differential of $1.48 for the plant at Cadillac and a differential of $1.45 at the other two plants.

(*b*) *Class II price.* The Class II price under the merged order should be the Class III price for the month plus 15 cents. The Class III price is the lower of the basic formula price or a butter-nonfat dry milk formula price.

The Class II price adopted herein is the price currently effective under the Southern Michigan order. It also will provide the same level of Class II pricing currently effective under the Upstate Michigan order.

One cooperative proposed that the Class II price be the basic formula price plus 20 cents. Three other cooperatives proposed that the Class II price be the Class III price plus 20 cents.

Still another cooperative supplying handlers in Southern Michigan (Detroit) and the Ohio Valley (Toledo) with milk for cottage cheese asked that the Class II price not be changed.

Several handlers requested that no change be made in the Class II price effective under the Southern Michigan order. They were concerned that their principal competitors in neighboring orders would have a comparatively lower price if any of the other proposed methods of Class II pricing were adopted. These handlers noted that the Class II price for the Ohio Valley and Eastern Ohio-Western Pennsylvania order currently is the basic formula price plus 10 cents per hundredweight whereas one of the proposals would add 20 cents to the basic formula price.

It would not be appropriate at this time to establish a Class II price based upon the basic formula price plus 20 cents or the Class III price plus 20 cents in view of the lower price in neighboring markets wherein Southern Michigan handlers compete strongly for sales of Class II products. The Ohio Valley and Eastern Ohio-Western Pennsylvania orders classify as Class II most of the milk products that would be Class II under this order and price milk in such uses at the basic formula price plus 10 cents. During 1971 the Class II price of milk containing 3.5 percent butterfat averaged $4.91 in the Ohio Valley and Eastern Ohio-Western Pennsylvania orders compared to $4.92 in the Southern Michigan order.

In view of the competitive situation between Southern Michigan handlers and handlers in the Ohio Valley and Eastern Ohio-Western Pennsylvania markets, the current Class II pricing in the Southern Michigan order should be continued at this time.

(iii) *Distribution of proceeds to producers.* Marketwide pooling provisions now included in both the Southern Michigan and Upstate Michigan orders should be retained in the consolidated order. No proposals were made to change the method of pooling returns to producers under the combined order.

The base-excess plan of payments to producers under the Southern Michigan order should be continued under the merged order, subject to the changes considered below. A majority of the producers on the Upstate Michigan market belong to a cooperative that is now paying such producers on the basis of the Southern Michigan base-excess plan. Only nine producers on the Upstate market are not being paid in accordance with such base-excess plan. The record does not reveal any problem for such producers by being brought under such payment plan.

Base plan revision. Several provisions dealing with the application of bases should be modified.

Presently two or more persons with bases may combine those bases upon the formation of a bona fide partnership. The order, however, does not define a bona fide partnership. Cooperatives proposed that this provision be modified to provide that a bona fide partnership agreement must define the financial invested interest, financial and management responsibilities, division of income and expenses, and basis for sharing of profits or losses.

Such delineation of the terms of the partnership agreement should aid the market administrator in determining that the partnership agreement applies to a joint milk production business in which each partner shares in the profits (or losses), as opposed to a sales or rental arrangement under the guise of a partnership in an attempt to effect a transfer of base.

The proposed modification is appropriate since it provides guidelines for the market administrator in determining which partnerships are to be considered bona fide. Such change, likewise, will provide guidance to producers in establishing partnerships.

A base may be held jointly and be divided among the partners as specified in writing to the market administrator. Cooperatives proposed that this provision be modified to provide that a base may be held jointly through the formation of a bona fide partnership, provided such base is established by the partnership under the rules applicable to an individual producer establishing a base. This modification should be adopted since it clarifies the intent of the provision and does not represent any substantive change.

An additional modification would permit a producer to retain his base without loss for 12 months if quarantined from the market by reason of pesticide or herbicide residue in his milk supply as evidenced by Federal or State authority. This provision, proposed by cooperatives, would allow a producer to retain his base for 12 months if quarantined from the market for more than 45 days. The order now provides that a producer who does not deliver milk to any handler for 45 consecutive days may retain his base without loss for 12 months only if he suffers the complete loss of his barn, or a loss of 50 percent or more of his milk herd from brucellosis or bovine tuberculosis.

A producer who suffers the loss of either a barn or part of his herd has the capability of marketing some milk. A producer whose milk contains pesticide or herbicide residue, however, is unable to market any of his milk production. It is appropriate that producers with milk containing pesticide or herbicide residue, as well as producers suffering partial or total loss of milk production, be permitted to retain their base.

One cooperative proposed that the base rules be revised to allow a producer to hold his base for the following year if he shipped at least 80 percent of his base during the base-setting period, instead of 90 percent as now required by the order. The reason given for the proposed revision was that if a producer were required to ship only 80 percent of his base, he would not need to add cows to the herd during the fall months.

No specific reason was given on the record why a producer's production of milk from a herd of a given size should unavoidably decline more than 10 percent from one base-setting period to the next other than by causes covered by provisions discussed above. When such production decrease exceeds 10 percent, it seems likely that such decrease would be the result of a decrease in the size of the herd from one base-setting period to the next since average daily deliveries per producer are increasing in the market. In those instances in which the size of the herd has been reduced, it is appropriate to reduce the base of such producer accordingly. The current provision, which allows a producer's production to fall to 90 percent of the previous base without any reduction in the base earned, should be sufficient for normal variations in production resulting from causes other than herd reduction. For this reason, the proposal to permit a producer to retain his base if he ships only 80 percent of his base during the base-setting period is denied.

(iv) *Administrative provisions.*—(*a*) *Reload point.* A provision defining a reload point should be added to the order to distinguish between a reload point (pump-over station) and a plant.

A reload point should be defined as a location at which milk moved from a farm in a tank truck is transferred directly to another tank truck and commingled with other milk before entering a plant. If reload operation is on the premises of a plant, it should be considered a part of the plant operation.

For the last several years handlers have been bringing milk directly from the farm into the city of Detroit by using reload points. Since the current order is silent as to a specific defined distinction between a reload point and a supply plant, handlers proposed adoption of a plant definition to distinguish between a reload point and a plant for the purpose of making clear that milk is priced only at plants. They also proposed that the order should make clear that a distribution point should not be considered a plant.

Since the order now has definitions for a supply plant, a distributing plant, and route disposition the desired clarification in order language can appropriately be accommodated by adding a reload point definition and modifying the supply plant and route disposition definitions.

A distribution point is a separate facility used primarily for the transfer to vehicles of packaged fluid milk products moved there from a distributing plant. Operators of distributing plants often operate one or more distribution points in delivering fluid milk products to wholesale and retail accounts situated a substantial distance from their plants. The distribution facility is part of the delivery system and, accordingly, the route disposition definition should be modified to specifically include delivery through any distribution facility as route disposition.

Cooperatives proposed that milk moved to market through a reload point that is not a part of a supply plant operation be priced at the plant to which it is moved. If such milk is reloaded at a supply plant with storage facilities, the milk should be considered to be received at that point for pricing purposes.

Milk hauled directly from the farm to a pool plant is priced at the location of the plant where received. Since a reloading point is only a means of consolidating farm bulk tank shipments in tank trucks with greater capacity, the price applied to such milk should continue to be that applicable at the plant where received.

If the reload point, however, has storage facilities, milk from farm bulk tank trucks may be either reloaded into an over-the-road tanker or unloaded into storage facilities for later transshipment. In such instance there is no precise means of determining the ultimate destination of each producer's milk. If the milk pumped into the storage tanks at the reload point is transferred to more than one plant, there is no means of identifying which producer's milk is transshipped to each of the other plants. In addition, there is no practicable means of verifying which producer's milk is reloaded into an over-the-road tanker and which producer's milk is unloaded into a storage tank. For these reasons all milk received at a plant having storage facilities should be priced at the location of such plant.

(*b*) *Other source milk definition.* Because of the revised classification plan, certain changes in the present other source milk definition are necessary. This definition would continue to serve, however, the present function of implementing the identification of various categories of receipts at a regulated plant.

At present, fluid milk products from any source other than producers, a cooperative acting as a handler for farm bulk tank milk, and pool plants are considered as other source milk. Under the revised classification plan, however, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of the order, it is desirable, nevertheless, that fluid cream products, when in bulk form, continue to be treated in the same manner as fluid milk products for the purpose of applying the other source milk definition.

Other source milk should include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the revised classification plan.

Although no handler obligation would apply under the provisions adopted herein to these receipts of packaged Class II products, it is desirable for accounting purposes that such receipts be defined as other source milk. This accounting procedure will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest utilization as is provided in some cases for other types of other source milk.

The order now provides that manufactured products from any source that are reprocessed, or converted into, another product in the plant shall be considered as other source milk. For accounting purposes under the order, such manufactured products should include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated under the adopted provisions directly to the handler's Class II utilization. No handler obligation would apply under the order to such receipt.

Other source milk should include any disappearance of manufactured milk products for which the handler fails to establish a disposition. Although the order does not specify such disappearance as other source milk, it is reasonable that each handler be required to account fully for all milk and milk products received or processed at his plant. Otherwise, a handler with inadequate records may have an opportunity to gain a competitive advantage over his competitors

who properly account for all milk. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

(c) *Substitution of regulatory agency for health authority.* "Regulatory agency" should be substituted for "health authority" wherever it appears in those sections of the Southern Michigan order defining "producer", "distributing plant", and "supply plant". Frequently the regulatory agency approving milk for fluid consumption is not termed a health authority. Accordingly, use of "regulatory agency" provides a more useful description of such agencies having jurisdiction in this field.

(d) *Obligations relative to other source milk.* The merged order should not provide for an additional charge to a handler for other source milk received from nonpool plants if it is classified as Class I milk by this order and a Class I price already has been assessed under any Federal order.

Under the present provisions of the Southern Michigan and Upstate Michigan orders a double charge on such Class I other source milk might result under the following circumstances. If producer milk is transferred in bulk from a pool plant regulated under any Federal milk order to an unregulated nonpool plant and is used as Class I milk, the pool plant operator is charged for this transfer of milk at the Class I price.

If, during the same month, an equivalent amount of bulk milk from this unregulated nonpool plant is transferred to a pool plant under either the Southern Michigan or Upstate Michigan order and is allocated to such pool plant's Class I utilization, the operator of the pool plant would be charged the difference between the Class I price and the uniform price for such receipt of other source Class I milk.

There is a tendency for plants to specialize in the processing of certain products, or in the packaging of products in particular types of containers. It is not uncommon for milk to be transferred from a pool plant to an unregulated nonpool plant for special processing and the finished products to be moved back into the regulated market. When milk is initially priced at the Class I price the market price structure is in no way undermined if such milk, or its equivalent, is disposed of for Class I use by the nonpool plant in a regulated market. Accordingly, the merged order should provide that the operator of a pool plant will have no obligation to the pool on such other source Class I milk.

This can be achieved by revising the allocation provisions and the procedure for computing the pool obligation of a pool plant operator as follows: Receipts of packaged fluid milk products at a pool plant from an unregulated supply plant would be allocated to the pool plant's Class I utilization to the extent that an equivalent amount of skim milk or butterfat disposed of to the unregulated plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order. This allocation would be made prior to any other allocation of receipts to the plant's Class I utilization, and no other obligation would apply to the milk so allocated to Class I. In the case of fluid milk products received in bulk form from an unregulated supply plant, the provisions setting forth a handler's pool obligation would specify that no payment would apply to any such milk allocated to Class I if, as just described for packaged milk, an equivalent amount of milk received at the unregulated plant has been priced as Class I milk under some other Federal order.

In this same connection, the provisions prescribing the obligation of a partially regulated distributing plant should be changed. When such plant's obligation is computed as though it were a pool plant, proper recognition must be given to any transfers to the plant from a regulated plant to the extent that the milk already has been priced as Class I milk under some Federal order. Also, in computing a partially regulated distributing plant's pool obligation on route sales in a Federal order marketing area, recognition should be given to any receipt of milk at such plant from another unregulated plant if an equivalent amount of milk received at the latter plant already has been priced as Class I milk under an order.

The Southern Michigan and Upstate Michigan orders now impose a handler assessment for administering the orders on all other source Class I milk except that received in fluid form from another order plant. This may include milk that already has been priced as Class I milk under some Federal order as described above. With the removal of any additional charge on such milk, the merged order should not provide for any assessment on such milk for administrative expenses. Such milk would be subject to the comparable charge as applied under the order that initially priced the milk.

The merged order should provide that the Class I price for other source milk, when adjusted for location of the shipping plant, shall not be less than the Class III price.

A pool plant operator's obligation under the Southern Michigan and Upstate Michigan orders to the producer-settlement fund includes a payment on fluid milk products received from unregulated supply plants and allocated to Class I. The handler's obligation to the pool is determined by charging him at the Class I price and crediting him at the uniform price. The prices used are those applicable at the location of the unregulated supply plant, except that an adjustment to the uniform price is limited so that it may not be less than the Class III price.

No such limitation on the Class I price is provided in the two orders at present on other source milk allocated to Class I when adjusted for the location of the shipping plant. The merged order should limit the Class I price adjustment in the same way that the uniform price just mentioned is limited.

Providing that any adjusted Class I price applicable to other source milk be not less than the Class III price is appropriate under this order. Otherwise, under certain conditions a handler could receive payment from the producer-settlement fund on such milk. Such payment could result when the location differential for the distant plant is greater than the difference between the Class I and Class III prices. In this circumstance, producers under the order, in effect, would be providing the handler with a credit that reduces his cost for the distant milk below its value for manufacturing use at the point of purchase.

From the standpoint of marketing efficiency, the handler should not be provided an incentive, which would be at the expense of local producers, to import such distant milk into the local market. It is unreasonable to expect that such a handler credit should apply on the other source milk.

A similar situation now exists with respect to the obligation of the operator of a partially regulated distributing plant or an other order plant. In certain cases, the handler's obligation includes a payment to the producer-settlement fund at the difference between the Class I price applicable at his plant and either the uniform price or the Class III price. For the same reasons, the order should provide, in computing the obligation of such a handler also, that the Class I price, as adjusted for location, shall not be less than the Class III price.

(e) *Exclusion of nonreporting handler from uniform price computation.* A provision of the Southern Michigan order dealing with the computation of the pool value of milk containing 3.5 percent butterfat should be revised to provide for excluding the value of milk of any handler who has not filed hi sreport of ceipts and utilization or who has not paid for the previous month his obligation to the producer-settlement fund.

The current order provides that the market administrator shall compute the value of the pool by combining into one total the pool obligation of each handler. In the event that a handler has not filed his report the market administrator must decide whether to exclude such handler's value of milk in making the required computation or to delay the computation until a report is received. Obviously, the Market Administrator cannot delay the computation of the pool value indefinitely since he is required to announce at a prescribed time the prices to be paid producers for milk delivered during the preceding month. Accordingly, the order should be amended to provide that the value of milk of a handler who has not filed his report of receipt and utilization shall be excluded in computing the value of the pool.

The report of a handler who has not paid his obligation to the producer-settlement fund for the preceding month

should be excluded in computing the value of the pool. If a handler has not paid his obligation to such fund during the previous month, the reserve funds of the producer-settlement fund might be depleted to an extent that the market administrator cannot make full payment to those handlers due to receive money from the producer-settlement fund. In such event the order provides for the market administrator to uniformly reduce his payments to handlers.

Since handlers who have a higher utilization than the average for the market would be required to make the full payment to producers, any reduction in payments to handlers due a credit from the producer-settlement fund should be kept at a minimum so that they, too, are able to make the full payment to their producers.

These provisions excluding from the computation of the pool value the reports of handlers who have not complied with certain reporting or payment provisions of the order are identical with those in most other Federal milk orders. They are appropriate for the merged order for the reasons previously stated.

A witness for Detroit handlers suggested that a later deadline for submitting reports of receipts and utilization be established in the order. They indicated that some handlers are experiencing a delay in obtaining some of the information they need to complete their reports. Specific reference was made to sales records from distant distribution points and information from plants to which producer milk is diverted.

Cooperative associations opposed any later date for filing handler reports of receipts and utilization if it would result in setting a later date for payments to producers.

The dates fixed under the order for the announcement of the uniform prices, payments to and from the producer-settlement fund, and payments to producers are all coordinated in sequence from the date fixed for filing reports of receipts and utilization. Consequently, to provide a later date for filing reports, it also would be necessary to set a corresponding later date for payments to producers.

Cooperatives opposed to a later reporting date, are also handlers under the order and file reports of receipts and utilization for the pool plants they operate. Presumably the situation faced by such cooperatives in compiling their reports in the time period now provided is similar to that of other handlers regulated under the order.

In this circumstance it is concluded that the record does not demonstrate sufficient basis for providing more time for filing reports of receipts and utilization at the expense of further delay in the date by which producers receive payment for their deliveries of milk.

Cooperatives were concerned that excluding handlers who had not paid their previous month's obligation to the producer-settlement fund might cause wide fluctuations from month to month in the level of uniform prices. As an alternative they suggested that the interest or overdue accounts be increased from 6 percent to 18 percent per year in order to encourage prompt payments to the producer-settlement fund. The current 6 percent rate, however, should be continued. The current record does not demonstrate that handlers are delinquent in making their payments to the producer-settlement fund.

(*f*) *Equivalent price.* The merged order should contain an equivalent price provision providing that if a price or pricing constituent needed by the market administrator in administering the order is not available, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

The Southern Michigan and Upstate Michigan orders presently use both "price quotation" and "price" to describe the formula pricing constituents and prices that must be available to the market administrator monthly in order for him to determine the class prices and the butterfat differentials. These formula pricing constituents and prices are (1) the Chicago butter price, (2) the weighted average of carlot prices per pound of nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, and (3) the price per hundredweight for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota.

Although the various quotations now used in the order are specific price quotations, a different price constituent (e.g., a price index) that is reflective of one or more price quotations might under some circumstances be instituted in the order as a basis for determining class prices. Use of "price or pricing constituent" in the order language relating to use of equivalent prices will more appropriately express the intent of this provision of the order, and is therefore adopted in this decision.

(*g*) *Format of order provisions.* The format of the merged order is designed to provide a more logical positioning of provisions. The positioning of provisions within the merged order is the same as that recently incorporated in several Federal milk orders and proposed for a number of others. Such positioning is designed to achieve a uniform location of order provisions among all orders and to improve the arrangement of provisions therein.

The regrouping of provisions together with the redesignation of section numbers of the order is intended to result in a more compact order and a more precise grouping of related order provisions. In addition to redesignation of section numbers (and codified subunits), some changes have been made in section titles, introductory paragraphs and section content. In making these modifications, which conform with the format proposed generally for the various orders, no change is intended either in the intent or application of any provisions so affected.

(*h*) *Advance announcement of prices for Class II and Class III milk.* A handler proposed that order prices for Class II and Class III milk be announced at the beginning of the month rather than at the end of the month during which the prices apply. The submission of the proposal, however, was contingent upon the adoption of a similar proposal in a recommended decision on classification in 33 markets and a seven-market final decision. Since the recommended decision on the 33 markets denies an earlier announcement for Class II and Class III prices, no further consideration is given herein to such proposal.

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 the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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;

(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;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 2 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1040.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDERS

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending and consolidating the orders, as amended, regulating the handling of milk in the southern Michigan and upstate Michigan areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1040—MILK IN SOUTHERN MICHIGAN MARKETING AREA

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GENERAL PROVISIONS

§ 1040.1 General provisions.

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

DEFINITIONS

§ 1040.2 Southern Michigan marketing area.

"Southern Michigan marketing area," hereinafter referred to as the "marketing area," means all territory geographically within the places listed below, together with all piers, docks, and wharves connected therewith, and all craft moored thereat, and all territory wholly or partly therein occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments.

MICHIGAN COUNTIES

Alcona.
Allegan (Dorr, Leighton, Hopkins, Wayland, Watson, Martin, Otsego, and Gunplain Townships only).
Alpena.
Antrim.
Arenac.
Barry.
Bay.
Benzie.
Calhoun.
Charlevoix.
Cheboygan.
Clare.
Clinton.
Crawford.
Eaton.
Emmett.
Genesee.
Gladwin.
Grand Traverse.
Gratiot.
Huron.
Ingham.
Ionia.
Iosco.
Isabella.
Jackson.
Kalamazoo.
Kalkaska.
Kent.
Lake.
Lapeer.
Leelanau.
Livingston.
Macomb.
Manistee.
Mason.
Mecosta.
Midland.
Missaukee.
Monroe (Ash and Berlin Townships only).
Montcalm.
Montmorency.
Muskegon.
Newaygo
Oakland.
Oceana.
Ogemaw.
Osceola.
Oscoda.
Otsego.
Ottawa.
Presque Isle.
Roscommon.
Saginaw.
St. Clair.
Sanilac.
Shiawassee.
Tuscola.
Washtenaw.
Wayne.
Wexford.

§ 1040.3 Route disposition.

"Route disposition" means a delivery, either directly or through any distribution facility (including a delivery by a vendor or sale from a plant or plant store) of any fluid milk product classified as Class I milk to a wholesale or retail outlet other than a delivery to any milk or filled milk plant.

§ 1040.4 [Reserved]

§ 1040.5 Distributing plant.

"Distributing plant" means a plant in which milk approved by any duly constituted regulatory agency for fluid consumption in the marketing area is processed or packaged and from which there is route disposition of fluid milk products in consumer-type packages or dispenser units in the marketing area.

§ 1040.6 Supply plant.

"Supply plant" means a plant in which milk approved by any duly constituted regulatory agency for fluid consumption in the marketing area is assembled and either processed or shipped in the form of a bulk fluid milk product to another milk processing plant. Such supply plant shall be equipped with stationary holding facilities.

§ 1040.7 Pool plant.

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

(a) A distributing plant, from which total route disposition except filled milk, during the month or during either of the 2 months immediately preceding is not

less than 50 percent of receipts of producer milk and fluid milk products, except filled milk, from supply plants and cooperative associations pursuant to § 1040.9(c).

(b) A supply plant which during the month meets one of the performance requirements specified in subparagraphs (1), (2), or (3) of this paragraph and any applicable call percentage: *Provided*, That all supply plants which are operated by one handler, or all the supply plants for which a handler is responsible for meeting the performance requirements of this paragraph (b) under a marketing agreement certified to the market administrator by both parties, may be considered as a unit for the purpose of meeting the performance requirements of subparagraphs (1), (2), or (3) of this paragraph upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice and notice of any change in designation, shall be furnished on or before the fifth working day following the month to which the notice applies. In any months of April through September a unit shall not contain any plant which was not qualified under this paragraph either individually or as a member of a unit during the previous October through March.

(1) A plant from which the milk moved during the month to a distributing plant(s) qualified under paragraph (a) of this section is not less than 40 percent or the call percentage, whichever is higher, in any month October through March, and 30 percent or the call percentage, whichever is higher, in any month April through September, of the following net quantity: Subtract from the monthly receipts of Grade A milk at the plant (including receipts of a handler described in § 1040.9(c), (i) any receipts by transfer or diversion from another plant, and (ii) any milk utilized by the handler operating the plant qualifying pursuant to this paragraph for his own Class I disposition in consumer packages. If such plant has meet the required percentage during each of the months of October through March, it shall remain qualified under this subparagraph for each of the following months of April through September during which it meets any announced call percentage.

(2) A plant operated by a cooperative association which supplies distributing plants qualified under paragraph (a) of this section, either by shipment from such supply plant or by direct delivery from the farm, (i) not less than one-half of its total member producer milk in the current month, or (ii) if such plant were qualified under this subparagraph in each of the preceding 13 months, not less than one-half of its total member producers' milk for the second through the 13th preceding months, except that in either case an announced call percentage exceeding 50 percent in the current month must be met.

(3) A plant located in the marketing area operated by a cooperative association, which plant has been a pool plant for 12 consecutive months but is not otherwise qualified under this paragraph, on meeting the following conditions:

(i) The cooperative has a marketing agreement with another cooperative whose members deliver at least 50 percent of their milk during the month directly to distributing plant(s) qualified under paragraph (a) of this section; and

(ii) The aggregate monthly quantity supplied by both such cooperatives to such distributing plants either by shipment from the cooperative's plant or by direct delivery from farms is not less than 50 percent or the call percentage, whichever is higher, of the combined total of their member producer milk deliveries during the month.

(4) On written request by the handler or cooperative for the nonpool status of any plant automatically qualified as a pool plant under this paragraph April through September, made to the market administrator prior to the beginning of any month during such period, the plant shall be a nonpool plant for such month and thereafter until it requalifies under subparagraph (1) of this paragraph on the basis of actual shipments therefrom. To requalify as a pool plant under subparagraph (2) or (3) of this paragraph or on unit basis, such plant must first have met the shipping requirements of subparagraph (1) of this paragraph for 6 consecutive months.

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

(1) A producer-handler plant;

(2) An exempt plant; and

(3) A plant or facility at which during the month milk is fully subject to the classification, pricing, and payment provisions of another order issued pursuant to the Act and a greater volume of fluid milk products, except filled milk, is disposed of from such plant as route disposition in the marketing area and to pool plants regulated pursuant to such other order than is so disposed of in the Southern Michigan marketing area. A handler operating such plant shall be exempt for such month from all provisions of this part except §§ 1040.30(d), 1040.71(b), and 1000.5 of this chapter.

§ 1040.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined under this or any other Federal order issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant, a producer-handler plant nor an exempt plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a pool plant.

(e) "Exempt plant" means a plant, other than a plant described in paragraph (b) of this section, located outside the marketing area from which there is route disposition within the marketing area but from which the route disposition wholly or partly within the marketing area averages less than 600 pounds per day for the month, and from which no milk is transferred to other handlers. Only §§ 1040.32 and 1000.5 of this chapter shall apply to an exempt plant.

§ 1040.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(a) Any cooperative association with respect to producer milk diverted from a pool plant to a nonpool plant for the account of such association;

(c) Any cooperative association with respect to milk of its member producers which is delivered directly from the farm to the pool plant of another handler in a tank truck owned, operated by, or under contract to such cooperative association for the account of such cooperative association (such milk shall be considered as having been received by such cooperative association at a location identical to that of the pool plant to which it is delivered);

(d) Any person who operates a partially regulated distributing plant;

(e) Any producer-handler; and

(f) Any person in his capacity as the operator of an other order plant from which fluid milk products are distributed on routes in the marketing area or shipped to a pool plant.

§ 1040.10 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a dairy farm and a milk plant from which there is route disposition in the marketing area and who received fluid milk products only from his own production or by transfer from a pool plant and no milk products other than fluid milk products for reconstitution into fluid milk products; and

(b) Provides proof that: (1) The care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts by transfer from a pool plant); and (2) the operation of the processing business is the personal enterprise and risk of such person.

§ 1040.11 [Reserved]

§ 1040.12 Producer.

"Producer" means any person, other than a producer-handler under any Federal order, who produces milk approved by any duly constituted regulatory agency for fluid consumption in the marketing area, which is moved to a pool

plant or diverted pursuant to § 1040.13 from a pool plant to another plant. The term shall include such a person with respect to milk diverted to a pool plant from an other order plant (unless designated for Class III use) during any month in which the quantity diverted is greater than the quantity of milk physically received from such person at the plant from which diverted and such milk is exempt from the pooling provisions of the other order.

§ 1040.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk:

(a) Received from producers at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1040.9(c); and

(b) Diverted to a nonpool plant (except a producer-handler plant) by the operator of a pool plant or a cooperative association as a handler pursuant to § 1040.9 (b) subject to the following conditions:

(1) In any month that less than 6 days' production of a producer is delivered to pool plants the quantity of milk of the producer diverted during the month shall not be producer milk.

(2) In any month of October through March, the quantity of milk of any producer diverted to nonpool plants that exceeds the quantity of such producer's milk physically received at pool plants, as measured by days of production, shall not be producer milk. The days of production last diverted, which exceed the days of production received at pool plants shall not be producer milk.

(3) Milk which is subject to pooling under another Federal order, shall not be producer milk.

§ 1040.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1040.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1040.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1040.40(b)(1)) from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1040.40(b)(1)) for which the handler fails to establish disposition.

§ 1040.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk products" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1040.40 (b) or (c)(1) (i) through (viii) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1040.16 Fluid cream product.

"Fluid cream products" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1040.17 Filled milk.

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

§ 1040.18 Cooperative association.

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

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

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

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

§ 1040.19 Call percentage.

"Call percentage" means the monthly percentage computed by the market administrator as follows:

(a) Estimate the aggregate pounds of Class I milk utilization, except filled milk, for the month including an additional 15 percent thereof as an operating margin, at pool distributing plants;

(b) Subtract therefrom the estimated pounds of milk which will be received at pool distributing plants during the month directly from producers' farms and from cooperative associations pursuant to § 1040.9(c);

(c) Divide any plus balance of estimated Class I milk, except filled milk, remaining by the estimated receipts of producer milk for the month at the supply plants;

(d) The announcement of the call percentage shall be made on or before the 1st day of the month to which it applies and shall set forth the data on which the estimates of Class I utilization and producer milk supplies are based, together with appropriate explanatory comments on the computations involved; and

(e) The market administrator may reduce the call percentage at any time during the month if he determines that more milk than is needed for Class I use is being delivered to pool distributing plants. Any such reduction shall not result in a percentage requirement less than 40 in any month October through March.

§ 1040.20 Reload point.

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

Handler Reports

§ 1040.30 Reports of receipts and utilization.

On or before the fifth working day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1040.9(c);

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1040.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer

milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1040.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1040.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1040.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

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

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1040.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1040.32 Other reports.

(a) Each handler described in § 1040.9 (a), (b), and (c) shall report to the market administrator on or before the fifth working day after the end of the month, the aggregate quantities of base milk, excess milk, and milk to be paid for either at the uniform or adjusted uniform price.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1040.30 and 1040.31, each handler and each operator of an exempt plant shall report such other information as the market administrator deems necessary to verify or establish such person's obligation under the order.

(c) When a holiday prevents normal business activities on any day except Sunday during the first 15 days of the month, those of the dates specified in §§ 1040.30, 1040.62, 1040.71, 1040.72, 1040.73, 1040.76, 1040.85, and 1040.86 which follows such holiday shall be postponed by the number of days lost as a result of such holiday.

CLASSIFICATION OF MILK

§ 1040.40 Classes of utilization.

Except as provided in §1040.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1040.30 shall be classified as follows:

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

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

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

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

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milk shake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1040.41(a) to the receipts specified in § 1040.41(a)(2) and in shrinkage specified in § 1040.41 (b) and (c).

§ 1040.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1040.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1040.9(c) and in milk diverted to such plant from another pool plant, except that in either case if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by

farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from other order plants, excluding milk received by diversion and the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6) of this paragraph; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1040.9 (b) or (c) but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1040.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant except as provided in § 1040.43(d) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1040.44(a)(12) and the corresponding step of § 1040.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1040.44(a)(7) or the corresponding step of § 1040.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1040.44(a)(11) or § 1040.44(a)(12) or the corresponding steps of § 1040.44(b)), the skim milk or butterfat so transferred or diverted up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

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

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

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers, or diversions in bulk form shall be classified as Class II or Class III to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

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

(5) For the purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1040.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1040.30 for the month within which such transaction occurred; and

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

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a

plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1040.43 General classification rules.

In determining the classification of producer milk pursuant to § 1040.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1040.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1040.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1040.40, 1040.41, and 1040.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1040.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) Milk in bulk delivered by a cooperative association as a handler under § 1040.9(c) or from the pool plant of a cooperative association to a handler's pool plant shall be classified according to use or disposition by the latter handler and the value thereof at the class prices shall be included in his value of milk pursuant to § 1040.60.

§ 1040.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1040.9(a) for each of his pool plants separately and of each handler described in § 1040.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1040.41 (b);

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

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

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1040.40(b) (1) that were received in packaged form from other plants;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1040.40(b) (1) that were in inventory at the beginning of the month in packaged form;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1040.40(c)(6)), any product specified in § 1040.40(b);

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

(i) Other source milk (except that received in the form of a fluid milk product) that was not subtracted pursuant to subparagraphs (4) and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagrph (2) of this paragraph; and

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

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (7) (v), and (8) (i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made

at the other plants in sequence beginning with the plant having the least minus location adjustment.

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1040.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1040.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

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

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (7)(v) and (8) (i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraphs (7)(vi) and (8)(iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1040.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to either subdivision (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1040.42 (a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received pursuant to § 1040.43 (d), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1040.44(a)(14) and the corresponding step of § 1040.44(b).

§ 1040.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1040.44(a)(12) and the corresponding step of § 1040.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1040.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

Class Prices

§ 1040.50 Class prices.

Subject to the provisions of § 1040.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.60.

(b) *Class II price.* The Class II price shall be the Class III price plus 15 cents.

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

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

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

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

§ 1040.51 Basic formula price.

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

§ 1040.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant and classified as Class I milk without movement to another pool plant and for which a location adjustment is applicable, the Class I price computed pursuant to § 1040.50(a) shall be reduced pursuant to subparagraph (1) or (2) of this paragraph on the basis of the applicable rate per hundredweight for the location of such plant.

(1) *Zone rates.* For a plant located within the following described territory, including the cities located therein, the applicable zone rates shall be as follows:

MICHIGAN COUNTIES

ZONE I—NO ADJUSTMENTS

Genesee.	Monroe.
Lenawee.	Oakland.
Macomb.	Wayne.

Bay (except Gibson, Mount Forest, Pinconning, Garfield, and Fraser Townships).

Saginaw (except Jonesfield, Richland, Lakefield, Fremont, Marion, Brant, Chapin, Brady, Chesaning, and Maple Grove Townships).

St. Clair (except Berlin, Riley, Mussey, Emmett, Lynn, Brockway, Greenwood, Grant, and Burtchville Townships).

Washtenaw (except Manchester, Bridgewater, Sharon, Freedom, Sylvan, Lima, Lyndon, and Dexter Townships).

ZONE II—3 CENTS

Ingham.	Livingston.
Jackson.	

Washtenaw (all the townships excluded from Zone I).

ZONE III—5 CENTS

Arenac.	Isabella.
Clinton.	Lapeer.
Eaton.	Midland.
Gladwin.	Sanilac.
Gratiot.	Shiawassee.
Huron.	Tuscola.

Bay (all the townships excluded from Zone I).

Ionia (except Otisco, Orleans, Keene, Easton, Boston, Berlin, Campbell, and Odessa Townships).

Montcalm (except Reynolds, Winfield, Cato, Belvidere, Pierson, Maple Valley, Pine, Douglass, Montcalm, Sidney, Eureka, and Fairplain Townships).

Saginaw (all the townships excluded from Zone I).

St. Clair (all the townships excluded from Zone I).

ZONE IV—7 CENTS

Barry.	Kalamazoo.
Branch.	Kent.
Calhoun.	Mecosta.
Hillsdale.	St. Joseph.

Allegan (all the townships excluded from Zone V).

Ionia (all the townships excluded from Zone III).

Montcalm (all the townships excluded from Zone III).

ZONE V—9 CENTS

Berrien.	Newaygo.
Cass.	Oceana.
Clare.	Ogemaw.
Iosco.	Osceola.
Lake.	Ottawa.
Mason.	Roscommon.
Missaukee.	Van Buren.
Muskegon.	

Allegan (except the townships of Dorr, Gunplain, Hopkins, Leighton, Martin, Otsego, Watson, and Wayland).

ZONE VI—12 CENTS

Alcona.	Manistee.
Crawford.	Oscoda.
Grand Traverse.	Wexford.
Kalkaska.	

ZONE VII—15 CENTS

Alpena.	Emmet.
Antrim.	Leelanau.
Benzie.	Montmorency.
Charlevoix.	Otsego.
Cheboygan.	Presque Isle.

(2) *Mileage rate.* For any plant at a location outside the territory specified in the preceding subparagraph (1) of this paragraph, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest point in such territory as determined by the market administrator, and shall be the amount of the zone differential applicable at such point plus 1 cent for each 10 miles or fraction thereof from such point.

(b) For fluid milk products transferred in bulk from a pool plant to a pool plant described in § 1040.7(a), the operator of the transferee-plant shall receive credit at the applicable zone or mileage rate, based on the location of the transferor-plant. The total volume on which such credit is computed shall be limited to the amount by which 108 percent of Class I disposition at the transferee-plant is in excess of the sum of receipts at such plant: (1) From producers, (2) from cooperative associations pursuant to § 1040.9(c), and (3) from other order plants and unregulated supply plants which are assigned in Class I, such assignment of receipts from the transferor-plant to be pro rata to receipts of fluid milk products from all transferor pool plants.

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

§ 1040.53 Announcement of class prices.

The market administrator shall announce publicly on or before the 5th day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1040.54 Equivalent price.

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

UNIFORM PRICE

§ 1040.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1040.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk and milk received pursuant to § 1040.43(d) in each class as determined pursuant to § 1040.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1040.44(a)(14) and the corresponding step of § 1040.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1040.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1040.44(a)(9) and the corresponding step of § 1040.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and

butterfat subtracted from Class I pursuant to § 1040.44(a)(7) (i) through (iv) and the corresponding step of § 1040.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(7) (v) and (vi) and the corresponding step of § 1040.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(11) and the corresponding step of § 1040.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the 1st month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price for the preceding month applicable at the location of the pool plant and the Class III price for the current month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1040.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1040.61 Computation of uniform prices for base milk and excess milk (including uniform price and adjusted uniform price).

For each month the market administrator shall compute:

(a) The 3.5-percent value of all milk by:

(1) Combining into one total the values computed pursuant to § 1040.60 for all handlers who filed the reports prescribed by § 1040.30 for the month and who made the payments pursuant to § 1040.71 for the preceding month;

(2) Adding the aggregate of the values of the applicable location adjustments pursuant to § 1040.75(a)(1); and

(3) Adding not less than one-half of the unobligated balance in the producer-settlement fund.

(b) A uniform price as follows:

(1) Divide the aggregate value computed pursuant to paragraph (a) of this section by the sum of the following:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1040.60(f); and

(2) Subtract not less than six nor more than 7 cents from the price computed pursuant to paragraph (a) of this section.

(c) An adjusted uniform price for the purpose of payments pursuant to § 1040.92(c) by deducting from the uniform price computed pursuant to paragraph (b) of this section 25 percent of the difference between the uniform price and the excess milk price, rounded to the nearest cent.

(d) The excess milk price which shall be the Class III price pursuant to § 1040.50(c).

(e) A uniform price for base milk as follows:

(1) Multiply the total pounds of excess milk for the month by the excess milk price;

(2) Multiply the total amount of milk to be paid for at the uniform price pursuant to § 1040.92 (d) and (e)(2) by the uniform price for the month;

(3) Multiply the total amount of milk to be paid for at the adjusted uniform price pursuant to § 1040.92(c) by the adjusted uniform price for the month;

(4) Subtract the total values arrived at in subparagraphs (1), (2), and (3) of this paragraph and § 1040.71(a)(2)(ii) from the total 3.5-percent value of all producer milk arrived at in paragraph (a) of this section;

(5) Divide the resultant value by the total hundredweight of base milk; and

(6) Subtract not less than 6 cents nor more than 7 cents. The resultant hundredweight price shall be the uniform price of base milk of 3.5-percent butterfat content.

§ 1040.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price, the adjusted uniform price, the price for base milk, and the price for excess milk.

PAYMENTS FOR MILK

§ 1040.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1040.71, 1040.76, and 1040.77 and out of which he shall make all payments due handlers pursuant to §§ 1040.72 and 1040.77.

§ 1040.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in subparagraph (1) of this paragraph exceeds the amount specified in subparagraph (2) of this paragraph:

(1)(i) The total value of milk of the handler for such month as determined pursuant to § 1040.60; or

(ii) In the case of a cooperative association which is a handler, the value, at the uniform price for base milk, of milk delivered to other handlers pursuant to § 1040.43(d).

(2) The sum of:

(i) The value of such handler's receipts of producer milk as specified in § 1040.73 excluding any applicable location adjustment pursuant to § 1040.75(a)(2) and (3); and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1040.60(f).

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

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

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

§ 1040.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1040.71(a)(2) exceeds the amount computed pursuant to § 1040.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments to all handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1040.73 Payments to producers and to cooperative associations.

(a) Except as provided by paragraph (b) of this section, on or before the 15th day of each month, each handler (except a cooperative association) shall pay each producer for milk received from him during the preceding month, not less than an amount of money computed by multiplying the total pounds of such milk by the applicable uniform prices computed pursuant to § 1040.61 adjusted by the location and butterfat differentials pursuant to §§ 1040.75 and 1040.74, respectively, less the payment made pursuant to paragraph (d) of this section and any proper deductions authorized by the producer.

If by such date such handler has not received full payment for such month pursuant to § 1040.72 he may reduce such payments uniformly per hundredweight for all producers, by an amount not in excess of the per hundredweight reduction in payment from the market administrator; however, the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(b) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall pay to the cooperative association on or before the second day prior to the end of the month an amount equal to the payments authorized pursuant to paragraph (d) of this section, and on or before the 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all such milk received from certified members, less amounts owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer.

(1) Each handler shall submit to the cooperative association written information on or before the sixth working day of each month which shows for each such member-producer:

(i) The total pounds of milk received from him during the preceding month;

(ii) The total pounds of butterfat contained in such milk;

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

(iv) The amounts withheld by the handler in payment for supplies sold;

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

(3) The foregoing payment and the submission of information pursuant to subparagraph (1) of this paragraph, shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(c) On or before the 13th day after the end of each month, each handler shall pay a cooperative association, which is a handler with respect to milk received by him from a pool plant operated by such cooperative association, or by bulk tank delivery pursuant to § 1040.9(c), not less than an amount computed by multiplying the uniform price for base milk subject to the location adjustment, if any, applicable at the transferee-plant as provided by § 1040.75 and the butterfat differential provided by § 1040.74 by the total hundredweight of milk received by such handler from the cooperative association.

(d) On or before the last day of each month for producer milk received during the first 15 days of the month at not less than the Class III milk price for the preceding month.

§ 1040.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the base price and excess price or the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.113 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1040.75 Plant location adjustments for producers and on nonpool milk.

(a) Subject to the conditions of paragraph (b) of this section, in making payments to producers or cooperative associations pursuant to § 1040.73 each handler:

(1) May deduct for base milk and milk to be paid for at the uniform price or adjusted uniform price the rate per hundredweight applicable pursuant to § 1040.52(a) (1) or (2) for the location of the plant at which the milk was first physically received.

(2) Shall add not less than 4 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located in those townships, including the cities located therein, of Oakland County other than Royal Oak and Southfield, all in the State of Michigan.

(3) Shall add not less than 8 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located within Wayne County and the townships of Royal Oak and Southfield including the cities located therein, in Oakland County, all in the State of Michigan.

(b) When milk of an individual producer is physically received at more than one location (including any nonpool plant) during the month, the location adjustment rate shall be the weighted average (rounded to the nearest one-half cent) of the amounts computed for the respective locations, except that if 65 percent or more of such producer's milk is delivered to a plant or plants at which the same rate is applicable, such rate shall be applicable to all deliveries of such producer during the month regardless of point of delivery.

(c) For purposes of computation pursuant to §§ 1040.71 and 1040.72, the uniform price shall be adjusted at the rates set forth in § 1040.52 applicable at the location of the nonpool plant from which the other source milk was received except that the uniform price by such adjustment shall not be less than the Class III price.

§ 1040.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1040.30(b) and 1040.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

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

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

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to

§ 1040.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to subdivision (i) of this subparagraph. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1040.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1040.60 for such handler shall include, in lieu of the value of other source milk specified in § 1040.60(f) less the value of such other source milk specified in § 1040.71(a)(2)(ii), a value of milk determined pursuant to § 1040.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1040.7(b)(1), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1040.30 (b) and 1040.31(b) similar reports for each such nonpool supply plant;

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

(c) The value of milk determined pursuant to § 1040.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If subparagraph (1)(iii) of this paragraph applies, the gross payments by the operator of such nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if subparagraph (1)(iii) of this paragraph applies.

§ 1040.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in moneys due:

(a) To the market administrator from such handler;

(b) To such handler from the market administrator; or

(c) To any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred, following the fifth day after such notice.

§ 1040.78 Charges on overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1040.71, 1040.77, 1040.85, and 1040.86, shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

Administrative Assessment and Marketing Service Deduction

§ 1040.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler (excluding a handler described in § 1040.9(c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 13th day after the end of the month 2 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

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

(b) Other source milk allocated to Class I pursuant to § 1040.44(a) (7) and (11) and the corresponding steps of § 1040.44(b), except such other source milk that is excluded from the computation pursuant to § 1040.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1040.76(a)(2).

§ 1040.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 1040.73(a) for milk received from each producer (including milk of such handler's own production) at a plant not operated by a cooperative association of which such producer is a member, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, and, on or before the 13th day after the end of each month, shall pay such deductions to the market administrator. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him;

(b) In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members, for which payment is not made pursuant to § 1040.73(b) or (c), and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 1040.73 as may be authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services of which such producers are members.

Base-Excess Plan

§ 1040.90 Base milk.

"Base milk" means the amount of milk delivered by a producer each month which is not in excess of his base computed pursuant to § 1040.92 multiplied by the number of days for which his milk production is delivered during the month.

§ 1040.91 Excess milk.

"Excess milk" means milk delivered by a producer each month in excess of his base milk.

§ 1040.92 Determination of base.

(a) A producer who delivered milk on at least 122 days during the period August 1 through December 31, inclusive, of any year shall have a base computed by the market administrator to be applicable, subject to § 1040.94, for the 12-month period beginning the following February 1, equal to his daily average milk deliveries from the date on which milk was first delivered in the period to the end of such August 1–December 31

period: *Provided*, That a producer who had a base on December 1 and whose average of daily deliveries for the August 1–December 31 period is less than such base shall have a base computed by subtracting from his previous base any amount by which 90 percent of his previous base exceeds such average of daily deliveries;

(b) A producer with an established base who does not forfeit his base pursuant to § 1040.93(c) but who fails to deliver milk on at least 122 days of the August 1 through December 31 period shall have his base for the 12 months beginning the following February 1 computed by dividing the total pounds shipped during the period by 122;

(c) Except as provided in paragraphs (d) and (e) of this section a producer who has no base shall be paid until February 1 following the August–December period within which he establishes a base pursuant to paragraph (a) of this section at not less than the adjusted uniform price computed pursuant to § 1040.61(c);

(d) Whenever total receipts of producer milk by all handlers during the month are less than 112.5 percent of the total Class I utilization of all milk by handlers during such month, all producers and cooperative associations shall be paid not less than the uniform price for all milk delivered; and

(e) When a plant first becomes a pool plant any producer delivering to such plant may:

(1) Establish a base on deliveries of milk to such plant for the preceding August–December period certified by submission of delivery receipts or other evidence satisfactory to the market administrator; or

(2) Elect payment at not less than the uniform price computed pursuant to § 1040.61(b) until the second February 1, after such plant first became a pool plant. Such election must be made on or before the end of the first month for which it is effective.

§ 1040.93 Application of bases.

(a) A base shall apply to deliveries of milk by the producer for whose account milk was delivered during the base period, and upon death may be transferred to a member or members of the deceased producer's immediate family;

(b) Bases may be transferred under the following conditions upon written notice by the holder of the base to the market administrator on or before the last day of the month that such base is to be transferred:

(1) Upon retirement or entry into military service of a producer, the entire base may be transferred to a member or members of his immediate family;

(2) Two or more producers with bases may combine those bases upon the formation of a bona fide partnership which must define the financial invested interest, financial and management responsibility, division of income and expenses, and sharing of profits or losses; and

(3) Bases may be held jointly through the formation of a bona fide partnership provided such base was established by the partnership in accordance with § 1040.92 and if such partnership is terminated the base may be divided among the partners as specified in writing to the market administrator; and

(c) A producer who does not deliver milk to any handler for 45 consecutive days shall forfeit his base except that the following producers may retain their bases without loss for 12 months:

(1) A producer who suffers the complete loss of his barn as a result of fire or windstorm;

(2) A producer for whom loss of 50 percent or more of the milk herd from brucellosis or bovine tuberculosis, is shown by evidence issued under State or Federal authority; or

(3) A producer who is quarantined from the market by evidence of pesticide or herbicide residue in his milk supply as evidenced by Federal or State authority.

§ 1040.94 Relinquishing a base.

A producer notifying the market administrator that he relinquishes his established base shall be paid pursuant to the provisions of § 1040.92(c) beginning with the first day of the month in which such notification is received by the market administrator until the next February 1.

§ 1040.95 Computation of base.

The market administrator shall calculate a base for each producer in accordance with § 1040.92 and advise the producer and the handler receiving the milk of such base.

Signed at Washington, D.C., on December 5, 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.72-21212 Filed 12-8-72;8:49 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 10]

DEFINITIONS AND STANDARDS OF IDENTITY FOR FOOD

Proposal To Amend Regulations Regarding Temporary Permits for Market Testing

In recent years many applications for temporary permits have been made pursuant to § 10.5 (21 CFR 10.5) of the food standard regulations. Most of these requests were granted because the applicant demonstrated that the proposed variation from the applicable food standard could be a potential advance in food technology and that the interest of consumers would be adequately safeguarded during the market test. However, very few holders of temporary marketing permits have submitted, prior to the expiration of the market testing period, a petition to amend the food standard involved to provide for the variation from the food standard that was being tested. Instead, a number of permit holders have applied for one or more extensions of the time period for market testing without submitting any indication of when a petition to amend the standard would be forthcoming. The Commissioner has concluded that this practice does not conform to the original intent of 21 CFR 10.5, that it is not in the best interest of consumers, and that it presents a potential for unfair competition with respect to other manufacturers who do not hold temporary permits for the same or similar products.

Accordingly, the Commissioner proposes to amend § 10.5 (21 CFR 10.5) as set forth below to incorporate additional safeguards in the interest of consumers and manufacturers alike. Most significantly, these additional safeguards would: (1) Emphasize the fact that temporary permits are to be granted for the sole purpose of enabling manufacturers to obtain data necessary to support petitions to amend food standards, (2) limit the initial permit to a period of 1 year calculated from the date the food covered by the permit is introduced or delivered for introduction into interstate commerce (3) require that a request for an extension of a permit be filed not later than 3 months prior to the expiration date of the permit and be accompanied by a petition to amend the applicable food standard, and (4) provide that, if the Commissioner concludes that it will be in the interest of consumers to issue an extension of a permit, the published notice of the issuance of the extension to the applicant will include an invitation to all interested persons to participate in the market test under the same conditions that applied to the initial permit holder, including labeling and the amount to be distributed, except that the designated area of distribution shall not apply.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–56 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that § 10.5 be revised to read as follows:

§ 10.5 Temporary permits for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity.

(a) The Food and Drug Administration recognizes that before petitions to amend food standards can be submitted, appropriate investigations of potential advances in food technology sometimes require tests in interstate markets of the advantages to and acceptance by consumers of experimental packs of food varying from applicable definitions and standards of identity prescribed under section 401 of the act.

(b) It is the purpose of the Administration to permit such tests when it can

be ascertained that the sole purpose of the tests is to obtain data necessary for reasonable grounds in support of a petition to amend food standards, that the tests are necessary to the completion or conclusiveness of an otherwise adequate investigation, and that the interests of consumers are adequately safeguarded; permits for such tests shall be for a period not to exceed 1 year. The Administration will therefore refrain from recommending regulatory proceedings under the act on the charge that a food does not conform to an applicable standard, if the person who introduces or causes the introduction of the food into interstate commerce holds an effective permit from the Commissioner providing specifically for those variations in respect to which the food fails to conform to the applicable definition and standard of identity. The 1-year period will begin on the date the person holding an effective permit from the Commissioner introduces or causes the introduction of the food covered by the permit into interstate commerce but not later than 3 months after notice of the issuance of the permit is published in the FEDERAL REGISTER. The Commissioner shall be notified in writing of the date on which the 1-year period begins as soon as it is determined.

(c) Any person desiring a permit may file with the Commissioner a written application in triplicate containing as part thereof the following:

(1) Name and address of the applicant.

(2) A statement of whether or not the applicant is regularly engaged in producing the food involved.

(3) A reference to the applicable definition and standard of identity (citing applicable section of regulations).

(4) A full description of the proposed variation from the standard.

(5) The basis upon which the food so varying is believed to be wholesome and nondeleterious.

(6) The amount of any new ingredient to be added; the amount of any ingredient, required by the standard, to be eliminated; any change of concentration not contemplated by the standard; or any change in name that would more appropriately describe the new product under test. If such new ingredient is not a commonly known food ingredient, a description of its properties and basis for concluding that it is not a deleterious substance.

(7) The purpose of effecting the variation.

(8) A statement of how the variation is of potential advantage to consumers. The statement shall include the reasons why the applicant does not consider the data obtained in any prior investigations which may have been conducted sufficient to support a petition to amend the standard.

(9) The proposed label (or an accurate draft) to be used on the food to be market tested. The label shall conform in all respects to the general requirements of the act and shall provide a means whereby the consumer can distinguish between the food being tested and such food complying with the standard.

(10) The period during which the applicant desires to introduce such food into interstate commerce, with a statement of the reasons supporting the need for such period.

(11) The probable amount of such food that will be distributed. The amount distributed should be limited to the smallest number of retail units reasonably required for a bona fide market test. Justification for the amount requested shall be included.

(12) The areas of distribution.

(13) The address at which such food will be manufactured.

(14) A statement of whether or not such food has been or is to be distributed in the State in which it was manutured.

(15) If it has not been or is not to be so distributed, a statement showing why.

(16) If it has been or is to be so distributed, a statement of why it is deemed necessary to distribute such food in other States.

(d) The Commissioner may require the applicant to furnish samples of the food varying from the standard and to furnish such additional information as may be deemed necessary for action on the application.

(e) If the Commissioner concludes that the variation may be advantageous to consumers and will not result in failure of the food to conform to any provision of the act except section 403(g), a permit shall be issued to the applicant for interstate shipment of such food. The terms and conditions of the permit shall be those set forth in the application with such modifications, restrictions, or qualifications as the Commissioner may deem necessary and state in the permit.

(f) The terms and conditions of the permit may be modified at the discretion of the Commissioner or upon application of the permittee during the effective period of the permit.

(g) The Commissioner may revoke a permit for cause, which shall include but not be limited to the following:

(1) That the permittee has introduced a food into interstate commerce contrary to the terms and conditions of the permit.

(2) That the application for a permit contains an untrue statement of a material fact.

(3) The the need therefor no longer exists.

(h) During the period within which any permit is effective, it shall be deemed to be included within the terms of any guaranty or undertaking otherwise effective pursuant to the provisions of section 303(c) of the act.

(i) If an application is made for an extension of the permit, it shall be accompanied by a description of experiments conducted under the permit, tentative conclusions reached, and reasons why further experimental shipments are considered necessary. The application for an extension shall be filed not later than 3 months prior to the expiration date of the permit and shall be accompanied by a petition to amend the affected food standard. If the Commissioner concludes that it will be in the interest of consumers to issue an extension of the time period for the market test, a notice will be published in the FEDERAL REGISTER stating that fact. The notice will include an invitation to all interested persons to participate in the market test under the same conditions that applied to the initial permit holder, including labeling and the amount to be distributed, except that the designated area of distribution shall not apply. The extended market test period shall not begin prior to the publication of a notice in the FEDERAL REGISTER setting forth a proposal to amend the affected standard and shall terminate either on the effective date of an affirmative order ruling on the proposal or 30 days after a negative order ruling on the proposal, whichever the case may be. Any interested person who accepts the invitation to participate in the extended market test shall notify the Commissioner in writing of that fact, the amount to be distributed, and the area of distribution; and along with such notification, he shall submit the labeling under which the food is to be distributed.

(j) Notice of the granting or revocation of any permit shall be published in the FEDERAL REGISTER.

(k) All applications for a temporary permit and correspondence between applicants and the Food and Drug Administration are available for public disclosure after a permit is granted.

Interested persons are invited to submit their views in writing (preferably in quintuplicate) regarding this proposal within 60 days after its date of publication in the FEDERAL REGISTER. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, and may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: December 4, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-21193 Filed 12-8-72;8:46 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-NE-20]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181

of Part 71 of the Federal Aviation Regulations so as to alter the Claremont, N.H., Transition Area (37 F.R. 2171).

The standard instrument approach procedure for Claremont Municipal Airport, Claremont, N.H., has been revised in accordance with the U.S. Standard for Terminal Instrument Procedures. This revised procedure will require alteration of the Claremont, N.H., 700-foot transition area in order to provide controlled airspace protection for aircraft executing this procedure.

Interested persons may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, New England Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, 154 Middlesex Street, Burlington, MA 01803. All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Operations, Procedures and Airspace Branch, New England Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of Regional Counsel, Federal Aviation Administration, 154 Middlesex Street, Burlington, MA.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Claremont, N.H., proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Claremont, N.H., 700-foot Transition Area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Claremont Municipal Airport (43°22'-15'' N., 72°22'00'' W.); within 6.5 miles south and 4.5 miles north of the Claremont NDB (43°21'50'' N., 72°17'57'' W.), 097° and 277° bearings from the NDB, extending from 12 miles east to 6 miles west of the NDB, excluding that portion within the Lebanon, N.H., and Springfield, Vt., transition areas.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Burlington, Mass., on November 29, 1972.

W. E. CROSBY,
Deputy Director,
New England Region.

[FR Doc.72-21185 Filed 12-8-72;8:49 am]

[14 CFR Part 71]

[Airspace Docket No. 72-GL-63]

VOR FEDERAL AIRWAY SEGMENT

Proposed Alteration, Designation, Revocation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would:

1. Realign V-47 from Salem, Mich., to Hunter, Mich. INT.
2. Extend V-493 from Livingston, Mich., INT to Mount Pleasant, Mich.
3. Designate a new airway from Jackson, Mich., to Flint, Mich.
4. Revoke V-42E from Windsor, Ontario, to Flint, Mich.
5. Revoke V-493 from Livingston, Mich. INT to Flint, Mich.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, IL 60018. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The airspace action proposed in this docket would realign V-47 from Salem, Mich., to Hunter, Mich. INT via the Salem 024° M(021° T) radial; extend V-493 from the Livingston, Mich. INT via the Owosso, Mich. INT; thence via the Mt. Pleasant, Mich., 144° M(142° T) radial Mt. Pleasant; designate new VOR Federal Airway, V-353, from Jackson, Mich., to Flint, Mich., via INT Jackson 031° M(029° T) and Flint 231° M(228° T) radials to Flint. Additionally, the FAA proposes to revoke V-42E from Windsor, Ontario, to Flint, Mich., and revoke V-493 from Livingston INT to Flint, Mich. The airways proposed for revocation are not used and conflict with traffic flow.

The airway segments proposed herein are being utilized as direct routes at this time. Their designation would simplify flight planning for the pilot and the controller.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 4, 1972.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-21189 Filed 12-8-72;8:49 am]

[14 CFR Part 71]

[Airspace Docket No. 72-WE-46]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would establish a new 700-foot transition area for Linds Airport, Lodi, Calif.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Procedures Branch, Federal Aviation Administration, 5651 West Manchester Boulevard, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Boulevard, Los Angeles, CA 90045.

A new VOR instrument approach procedure is proposed for Linds Airport, Lodi, Calif. The final approach fix will be the intersection of the Linden, Calif. VORTAC 303° T (286° M) and the Stockton, Calif. VORTAC 002° T (345° M) radials. The final approach course will be the Linden VORTAC 303° T (286° M) radials.

In order to provide controlled airspace protection for aircraft executing the instrument approach, missed approach and departure procedures while operating between 700 feet and 1,500 feet above the surface, a 700 foot transition area is proposed.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (37 F.R. 2143) the following transition area is added:

LODI, CALIF.

That airspace extending upward from 700 feet above the surface within a 3-mile radius

of Linds Airport, Calif. (latitude 38°12'11" N., longitude 121°16'03" W.) and with 2.5 miles each side of the Linden, Calif. VORTAC 308° radial extending from the 3-mile radius area to 10.5 miles NW. of the VORTAC.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, Calif., on November 30, 1972.

ROBERT O. BLANCHARD,
Acting Director, Western Region.

[FR Doc.72-21190 Filed 12-8-72;8:50 am]

[14 CFR Part 71]

[Airspace Docket No. 72-NW-23]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Mountain Home Idaho Transition Area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Operations, Procedures and Airspace Branch, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108.

A review of the airspace requirements of the Mountain Home AFB RAPCON disclosed that additional Transition Area Airspace would be required to provide controlled airspace protection to IFR operations being radar vectored below 1,500 feet above the surface. The review also disclosed that the two areas south of Mountain Home AFB extending upwards from 10,500 MSL are no longer required.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (37 F.R. 2143) the description of the Mountain Home Transition Area is amended to read to follows:

MOUNTAIN HOME, IDAHO

That airspace extending upward from 700 feet above the surface within 10 miles northeast and 9 miles southwest of the Mountain Home AFB TACAN (latitude 43°02'26" N., longitude 115°52'22" W.) 135° and 315° radials, extending from 18 miles southeast to 18 miles northwest of the TACAN; that airspace extending upward from 1,200 feet above the surface bounded on the north and northeast by the southwest edge of V-253 on southeast, south and west by the arc of a 46-mile radius circle centered on Mountain Home AFB (latitude 43°02'35" N., longitude 115°52'05" W.), on the northwest by the southeast edge of V-113; that airspace southeast of Mountain Home AFB extending upward from 6,500 feet MSL, bounded on the northwest by the 46-mile arc, on the northeast by the southwest edge of V-253, on the south by latitude 42°24'00" N. to the 46-mile arc.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Seattle, Wash., on December 1, 1972.

C. B. WALK, JR.,
Director, Northwest Region.

[FR Doc.72-21187 Filed 12-8-72;8:49 am]

[14 CFR Part 71]

[Airspace Docket No. 72-NE-19]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the North Conway, N.H., Transition Areas (37 F.R. 2253).

The Standard Instrument Approach Procedure for White Mountain Airport, North Conway, N.H., has been revised in accordance with the U.S. Standard for Terminal Instrument Procedures. This revised procedure will require alteration of the North Conway, N.H., 700-foot and 1,200-foot transition areas in order to provide controlled airspace protection for aircraft executing this procedure.

Interested persons may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, New England Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, 154 Middlesex Street, Burlington, MA 01803. All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Operations, Procedures and Airspace Branch, New England Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of Regional Counsel, Federal Aviation Administration, 154 Middlesex Street, Burlington, MA.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of North Conway, N.H., proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the North Conway, N.H., 700-foot and 1,200-foot transition areas and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center, latitude 44°01'30" N., longitude 71°06'45" W., of White Mountain Airport, North Conway, N.H.; within 4.5 miles northeast and 6.5 miles southwest of the 128° bearing and the 308° bearing from the North Conway NDB, latitude 44°01'26" N., longitude 71°06'59" W., extending from 6 miles northwest of the NDB to 12 miles southeast of the NDB; and within 4.5 miles northeast and 9.5 miles southwest of the 128° bearing from the North Conway NDB extending 18.5 miles southeast of the NDB.

That airspace extending upward from 1,200 feet above the surface within 5 miles northeast and 8 miles southwest of a 128° bearing from the North Conway, N.H., NDB extending from the NDB to 12 miles southeast of the NDB; within 5 miles each side of a direct line extending from the Dalton, N.H., NDB, latitude 44°21'44" N., longitude 71°41'08" W., to the North Conway, N.H., NDB; within 5 miles each side of a direct line extending from the Montpelier, Vt., VOR to the North Conway, N.H., NDB; within 5 miles each side of a direct line extending from the Lebanon, N.H., VOR to the North Conway, N.H., NDB and within 5 miles each side of a line bearing 115° from the North Conway, N.H., NDB extending from the NDB to the northwest boundary of the Portland, Maine, 1,200-foot transition area, excluding those portions that coincide with the Berlin, N.H., Lebanon, N.H., and Burlington, Vt., 1,200-foot transition areas. This transition area is effective from sunrise to sunset daily.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 [72 Stat. 749; 49 U.S.C. 1348] and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Burlington, Mass., on November 29, 1972.

W. E. CROSBY,
Deputy Director,
New England Region.

[FR Doc.72-21186 Filed 12-8-72;8:49 am]

[14 CFR Part 73]

[Airspace Docket No. 72-GL-67]

RESTRICTED AREA

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 73 of the Federal Aviation Regulations that would alter Restricted Area R-4201, Camp Grayling, Mich., by modifying its boundaries and dividing it into two subareas authorized for continuous

use. The designated controlling agency would also be changed.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, IL 60018.

All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue, SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would alter Restricted Area R–4201, Camp Grayling, Mich., by deleting its present description and substituting the following therefor:

R–4201 CAMP GRAYLING, MICH.

a. Subarea A.

Boundaries: Beginning at latitude 44°56'00'' N., longitude 84°29'00'' W.; to latitude 44°47'00'' N., longitude 84°29'00'' W.; to latitude 44°47'00'' N., longitude 84°39'00'' W.; to latitude 44°56'00'' N., longitude 84°39'00'' W.; to point of beginning.

Designated altitudes. Surface to 29,000 feet MSL.

Time of designation. Continuous.

Controlling agency. Federal Aviation Administration, Minneapolis ARTC Center.

Using agency. Adjutant General, State of Michigan, Lansing, Mich.

b. Subarea B.

Boundaries: Beginning at latitude 44°47'00'' N., longitude 84°29'00'' W.; to latitude 44°41'00'' N., longitude 84°29'00'' W.; to latitude 44°41'00'' N., longitude 84°40'00'' W.; to latitude 44°43'00'' N., longitude 84°40'00 W.; to latitude 44°43'00'' N.; longtitude 84°38'00'' W.; to latitude 44°47'00'' N., longitude 84°38'00'' W.; to point of beginning.

Designated altitudes. Surface to 9,000 feet MSL.

Time of designation. Continuous.

Controlling agency. Federal Aviation Administration, Minneapolis ARTC Center.

Using agency. Adjutant General, State of Michigan, Lansing, Mich.

This proposal would designate additional airspace in the northern portion of the restricted area to provide a more flexible and realistic environment for military air and surface training exercises. The change from segmented to continuous hours of operation would not only accommodate an increased number of training requirements but also would permit night training operations throughout the year.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 4, 1972.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-21188 Filed 12-8-72;8:49 am]

[14 CFR Part 93]

[Docket No. 12425; Notice No. 72-32]

ANCHORAGE, ALASKA, TERMINAL AREA

Proposed Revision

The Federal Aviation Administration is considering amending Part 93 of the Federal Aviation Regulations to revise the Anchorage Area Special Terminal Rule.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC–24, 800 Independence Avenue SW., Washington, DC 20591. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered by the Administrator before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

The existing Anchorage special rules were adopted in 1963 primarily to resolve a communications problem resulting from five overlapping airport traffic areas and to segregate small aircraft and high performance aircraft. In 1970, the FAA proposed a major modification to these rules based on an increase in control capability in the Anchorage area. However, there was general opposition to the proposed modification and in response to the strong criticism of that proposal the FAA invited representative users to participate in a working group to determine what changes, if any, should be made to the Anchorage, Alaska Terminal Area rules. Based on the findings of this working group, it now appears that, in general, the current rules are adequate; pilots are accustomed to the system; and a major modification is unnecessary. However, it does appear that there are certain minor modifications to the airspace designations and the operating rules that should be made. These proposed changes are discussed in some detail hereinafter.

Initially, it is proposed to revise the boundary separating the Lake Hood and Merrill segments to provide additional airspace for Merrill traffic in an area of minimal use by Lake Hood traffic.

Current § 93.53(c) provides, in effect, "free" airspace below 300 feet over the water area lying generally along the west side of the airport traffic area to accommodate float-planes traversing the Anchorage Terminal Area without radio. This operation, however, sets up a potential conflict with aircraft on ILS approaches to Anchorage International. The ILS serves a recently completed runway and the glide-slope elevation at the shoreline west of the airport is approximately 300 feet. It is, therefore, proposed to delete paragraph (c) of § 93.53. The effect on float-plane operators will be that they will have to follow the west shoreline of KNIK ARM for a distance of 5 or 6 miles instead of proceeding directly over the channel.

In addition to the foregoing, the upper limit of the airport traffic area, presently 2,700 feet MSL (mean sea level), would be raised to 3,000 feet MSL for consistency with the standard ceiling of airport traffic areas. Although the standard ceiling is 3,000 feet measured above airport elevation, it is preferable to use the MSL in this rule because of the differing elevations at the five airports involved.

It is also proposed to amend § 93.53 to exclude the Merrill and Lake Hood segments from the Anchorage Airport traffic area when the control towers for those segments are not in operation. This proposal is similar to the current rule in § 93.53(d) covering the Bryant segment.

At present under §§ 93.61(c) and 91.63(d), each person piloting an aircraft within the Lake Hood and Merrill segments is required to maintain two-way radio communication with the Anchorage International Airport control tower when either the Lake Hood or the Merrill control tower is not operating. However, the FAA does not believe that the Anchorage tower is able to provide a service to those pilots that is of sufficient value to justify this requirement. Therefore, it is proposed to delete §§ 93.61(c) and 93.63(d). This should have no adverse effect on safety since the necessary segregation of the Lake Hood and Merrill traffic from aircraft operating along the ILS course to Elmendorf AFB is currently provided by the altitude restriction requirements set forth in §§ 93.61(a) and 93.63(a).

It is also proposed to revoke § 93.67(b) as a redundant rule regarding compliance with the traffic pattern for Bryant Airport. It is believed that the Bryant pattern requirements are adequately covered by §§ 93.57(b) and 93.67(a).

In consideration of the foregoing, it is proposed to amend Subpart D, Part 93, of the Federal Aviation Regulations as follows:

1. Section 93.53 would be amended by deleting from the first sentence "2,700 feet MSL" and substituting "3,000 feet MSL" in place thereof, and by deleting present paragraph (c) and adding new paragraphs (c) and (e) to read as follows:

§ 93.53 Description of area.

* * * * *

(c) That airspace described as the "Merrill segment" in § 93.55(b), when the Merrill control tower is not in operation.

* * * * *

(e) That airspace described as the "Lake Hood segment" in § 93.55(c), when the Lake Hood control tower is not in operation.

2. Section 93.55(b) would be amended to read as follows:

§ 93.55 Subdivision of area.

* * * * *

(b) *Merrill segment.* That area lying within a line beginning at Point MacKenzie extending directly to the mouth of Fish Creek; thence along Fish Creek to Northern Lights Boulevard; thence direct to the intersection of Tudor Road and the new Seward Highway; thence east and north along the airport traffic area boundary to a point directly east of Mile 4, Palmer Highway; then due west on a direct line through Mile 4, Palmer Highway to Ship Creek; thence along Ship Creek to its mouth; thence on a direct line toward the center of Lake Lorraine to the airport traffic area boundary; thence counterclockwise along the airport traffic area boundary to the point of beginning.

* * * * *

§ 93.61 [Amended]

3. Section 93.61 would be amended by deleting paragraph (c) thereof.

§ 93.63 [Amended]

4. Section 93.63 would be amended by deleting paragraph (d) thereof.

§ 93.67 [Amended]

5. Section 93.67 would be amended by deleting paragraph (b) thereof.

These amendments are proposed under the authority of sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 4, 1972.

WILLIAM M. FLENER,
Director, Air Traffic Service.

[FR Doc.72-21180 Filed 12-8-72;8:50 am]

ATOMIC ENERGY COMMISSION

[10 CFR Part 25]

PERMITS FOR ACCESS TO RESTRICTED DATA

Data Concerning the Separation of Uranium Isotopes

The Atomic Energy Commission has under consideration amendments to its regulation, "Permits for Access to Restricted Data," 10 CFR Part 25, which would provide access to the Government's technology concerning the gaseous diffusion and centrifuge processes for the separation of isotopes of uranium. The purpose of the proposed amendments is to encourage and further assist private enterprise to assume the responsibility for assuring an adequate supply of uranium enrichment capacity to meet the rapidly growing requirements of the nuclear energy industry, both domestic and overseas.

In 1971, the Commission initiated a Domestic Access Program, designed to give qualified companies access to the Government's gaseous diffusion and gas centrifuge technology for the purpose of conducting privately sponsored research and development programs on uranium enrichment with the objective of their ultimately entering into the business of providing uranium enrichment services and equipment. The proposed amendments will supplement the 1971 Domestic Access Program by making the Government's technology available to private industry for use in the design, construction and operation of facilities for the provision of enrichment services and related equipment.

Consistent with the objective that provision of enrichment services should ultimately reside in the private sector, the Commission believes that private enterprise should assume the responsibility for construction and operation of the new enrichment plants beyond the Cascade Improvement Program and the Cascade Uprating Program that will be needed in the early 1980's and beyond.

Accordingly, it is not the intention of the Commission to construct new enrichment plants to meet such requirements since it believes that the private sector can undertake to provide the required capacity on a timely basis. The Government will, however, remain in a position to furnish enrichment services to the private sector to the extent of its available capacity.

Uranium enrichment is currently performed in three Commission gaseous diffusion plants in Tennessee, Kentucky, and Ohio, and is the only part of the U.S. civilian nuclear power industry not yet in private hands.

The proposed amendments would make the Government's technology available under conditions intended to assure and protect the common defense and security and the economic interests of the United States.

Among other matters, access permittees would be precluded from disseminating to persons not granted access permits by the Commission, data and information made available by the Commission, or data and information developed by the permittee, his employees, or others engaged by him in the course of his activities in uranium enrichment. Permittees would be required to grant to others nonexclusive licenses and rights at reasonable royalties to use inventions, discoveries and technical information or data of a proprietary nature made, conceived or developed by the permittee, his employees, or others engaged by him in the course of his work under the access permit or as a result of access to data and information made available by the Commission. The Government would obtain a nonexclusive royalty free license and right to use such material in the event enrichment services are provided by private industry. The Commission would also reserve the right to establish such further controls on private uranium enrichment activities as it determines to be appropriate to preclude the creation or maintenance of situations inconsistent with the antitrust laws or to foster the development and continuance of a viable competitive nuclear industry.

The Government's data and information concerning the gaseous diffusion and centrifuge processes for the separation of uranium isotopes would be divided into two categories. Subcategory A would consist of data and information in summary form concerning the status and potential of the alternative processes to enable a permittee to determine his interest in engaging in uranium enrichment activities. Subcategory B would consist of such data and information as would be necessary to evaluate alternative processes, develop, design, build, and operate facilities for uranium enrichment or the manufacture of related equipment.

Permittees would be required to pay $25,000 for a permit authorizing access to data and information in subcategory B and to agree to pay such reasonable compensation as the Commission may charge for the commercial use of its technology.

The proposed amendments would supersede the proposed amendments to Part 25, and the related material in Parts 26 and 95, which were published December 28, 1967 (32 F.R. 20868). The principal processes of interest in the isotope separation field (gaseous diffusion and centrifuge) are covered by this issuance. The subject of private work on novel methods of isotope separation is covered in the Commission's announcement of July 25, 1972 (37 F.R. 15393) regarding procedures for reporting on research. The subject of private work involving classified aspects of the laser-fusion field was treated in the Commission's press release of February 4, 1971, copies of which are available on request. In the event the Commission receives indications of private interest in pursuing work in the other fields treated in the aforementioned Commission issuance of December 28, 1967, the Commission will consider the need for issuances regarding such work at that time.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act of 1946, notice is hereby given that adoption of the following amendments to 10 CFR Part 25 is contemplated. All interested persons who desire to submit written comments or suggestions in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, within 30 days after publica-

tion of this notice in the FEDERAL REGISTER. Comments received after that period will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments filed within the period specified.

1. Section 25.5 of 10 CFR Part 25 is revised to read as follows:

§ 25.5 Communications.

Communications concerning rule making, i.e., petition to change Part 25, should be addressed to Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545. Except with respect to Category C–24, all other communications concerning the regulations in this part, and applications filed under them, should be addressed to the Commission Operations Office listed in Appendix "B" of this part responsible for the geographical area in which (a) the applicant's principal place of business is located, or (b) the principal place where the applicant will use the Restricted Data is located.

§ 25.11 [Amended]

2. Paragraph (a) of § 25.11 of 10 CFR Part 25 is amended by adding the following sentence at the end thereof: "Applications for access to Restricted Data in Category C–24 Isotope Separation, should be submitted to the Oak Ridge Operations Office."

3. Paragraph (c)(7) of § 25.11 of 10 CFR Part 25 is amended by revising the last sentence thereof to read as follows: "In addition, if access to Secret Restricted Data in Category C–65, Plutonium Production, or Restricted Data in Category C–24, Isotope Separation, is requested, the application should also include sufficient information to satisfy the requirements of § 25.15(b) (2) or (3), as the case may be."

4. In § 25.15, paragraphs (a), (b)(1), and (b)(3) are amended to read as follows:

§ 25.15 Requirements for approval of applications.

(a) An application for an access permit authorizing access to Confidential Restricted Data in the categories set forth in Appendix "A" of this part (except C–91 and C–24) will be approved only if the application demonstrates that the applicant has a potential use or application for such data in his business, trade or profession and has filed a complete application form.

(b)(1) An application for an access permit authorizing access to Restricted Data in Category C–24 or Secret Restricted Data in other categories will be approved only if the application demonstrates that the applicant has a need for such data in his business, trade, or profession and has filed a complete application form.

* * * * *

(3) An application for an access permit authorizing access to Restricted Data in Category C–24, Isotope Separation—subcategory A or B—will be approved only if the application demonstrates also that the applicant:

(i) Processes qualifications demonstrating that the applicant is capable of undertaking the construction and operation of large, complex production or manufacturing facilities and offers reasonable assurance of adequacy of resources to carry on uranium enrichment on a production basis or the large scale manufacture or assembly of precision equipment systems; is not a corporation or entity owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; and

(*a*) For subcategory A, desires to determine its interest in engaging in a substantial effort to develop, design, build and operate an uranium enrichment facility or a facility for the manufacture of uranium enrichment equipment.

(*b*) For subcategory B, proposes to engage in, or is directly engaged in, a substantial effort to evaluate alternative processes, develop, design, build and operate an uranium enrichment facility or a facility for the manufacture of uranium enrichment equipment.

* * * * *

5. Paragraph (a) of § 25.22 of 10 CFR Part 25 is revised to read as follows:

§ 25.22 Scope of permit.

(a) All access permits will as a minimum authorize access, subject to the terms and conditions of the access permit to Confidential Restricted Data in all of the categories set forth in Appendix "A" to this part, except C–91 and C–24.

* * * * *

6. In § 25.23, paragraph (c)(1), the last sentence of paragraph (c)(4), and paragraph (d) are revised to read as follows:

§ 25.23 Terms and conditions of access.

* * * * *

(c) Each permittee shall:

(1) Comply with all applicable provisions of the Atomic Energy Act of 1954 and with Parts 95 and 110 of this chapter and with all other applicable rules, regulations and orders of the Commission.

* * * * *

(4) * * *

In the case of an access permit authorizing access to Restricted Data in Category C–24, Isotope Separation the agreement shall also provide for such requirements as the permittee considers necessary for purposes of fulfilling its obligations under paragraph (d) of this section.

* * * * *

(d) The following terms and conditions are applicable to an access permit authorizing access to Restricted Data in Category C–24, Isotope Separation irrespective of whether access to the Commission's Restricted Data information is desired:

(1) The permittee agrees to grant a nonexclusive license at reasonable royalties to the United States, domestic persons, and, at the request of the Commission, foreign persons, to use any U.S. patent or any U.S. patent application (otherwise in condition for allowance except for a secrecy order thereon) on any invention or discovery made or conceived by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit, or as a result of access to data or information made available by the Commission.

(2) The permittee agrees to grant to the United States, domestic persons and, at the request of the Commission, foreign persons the right at reasonable royalties to use for research, development, production, or manufacturing programs, any technical information or data of a proprietary nature, developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit, or as a result of access to data or information made available by the Commission and not covered by a U.S. patent or U.S. patent application referred to in subparagraph (1) of this paragraph. If the Commission disseminates any such proprietary technical information or data in its possession to any of its contractors for use in any Commission research, development, production, or manufacturing programs, it will do so under contractual provisions pursuant to which the contractor would undertake to use this information only for the work under the pertinent Commission contract. Notwithstanding the foregoing provisions of this subparagraph, the permittee waives any claim against the Commission for compensation or otherwise, in connection with any use or dissemination of information or data not specifically identified and claimed by the permittee as proprietary in a written notice to the Commission at the time of the furnishing of the information or data to the Commission. As used in this subparagraph, the term "technical information or data of a proprietary nature" means information or data which:

(i) Is not the property of the Government by virtue of any agreement;

(ii) Concerns the details of trade secrets or manufacturing processes which the permittee has protected from use by others; and

(iii) Is specifically identified as proprietary at the time it is made available to the Commission.

Technical information or data shall not be deemed proprietary in nature whenever substantially the same technical information is available to the Commission which has been prepared, developed or furnished as nonproprietary information by another source independently of the proprietary information and data furnished by the permittee.

(3) If the amount of reasonable royalties provided for in subparagraphs (1) and (2) of this paragraph cannot be agreed upon, the permittee agrees that such amount shall be determined by the Commission under the provisions of section 157c of the Atomic Energy Act of 1954, as amended.

(4) In the event domestic commercial uranium enriching services are provided

by persons other than an agency of the United States, the permittee agrees not to require the United States to pay the royalties provided for in subparagraphs (1) and (2) of this paragraph.

(5) The acceptance, exercise, or use of the licenses or rights provided for in subparagraphs (1) and (2) of this paragraph shall not prevent the Government, at any time, from contesting their validity, scope or enforceability.

(6) The permittee agrees to make quarterly reports to the Commission in writing, in reasonable detail, respecting all technical information or data which the permittee or the Commission considers may be of interest to the Commission, including reports of patent applications on inventions or discoveries and of technical information and data of a proprietary nature. These reports will cover the results of the permittee's work under the access permit or as a result of data or information made available by the Commission.

(7) The permittee agrees to make available to the Commission, at all reasonable times, for inspection by Commission personnel, or by mutual agreement, others on behalf of the Commission, all experimental equipment and technical data developed by the permittee, its employees, or others engaged by the permittee, in the course of the permittee's work under the access permit or as a result of data or information made available by the Commission. The foregoing provision of this subparagraph shall be subject to the provisions of subparagraphs (1) and (2) of this paragraph.

(8) The permittee agrees to pay $25,000 for an access permit authorizing access to Restricted Data in subcategory B and to pay such reasonable compensation as the Commission may elect to charge for the commercial use of its data and technology.

(9) The permittee agrees not to disseminate to persons not granted access by the Commission, Restricted Data, other data and information made available to the permittee by the Commission or data and information developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit or as a result of data or information made available by the Commission.

(10) The permittee agrees to accept such conditions concerning its use of Restricted Data, other data and information made available to the permittee by the Commission or data and information developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit or as a result of data or information made available by the Commission as the Commission may from time to time determine appropriate to establish (i) to preclude the creation or maintenance of a situation inconsistent with the antitrust laws specified in secion 105 of the Atomic Energy Act of 1954, as amended, or (ii) to assure the establishment of a viable competitive nuclear industry.

(11) The granting of an access permit does not constitute any assurance, direct or implied, that the Commission will grant the permittee a license for a production facility or any other license.

(12) In the event the permittee is engaged by the Commission to perform work for the Commission in the field of the separation of isotopes, the permittee agrees to undertake such measures as the Commission may require for the separation of its activities under the access permit from its work for the Commission.

7. Category C–24 Isotope Separation—Gas Centrifuge Method of Appendix A of 10 CFR Part 25 is revised to read as follows:

C–24. *Isotope Separation.* This category is divided into subcategories A and B.

Subcategory A includes information in summary form concerning the status and potential of the gaseous diffusion and centrifuge processes for the separation of uranium isotopes.

Subcategory B includes information on the following:

(a) Any aspect of separating one or more isotopes of uranium from a composition containing a mixture of isotopes of that element.

(b) Design, construction and operation of any plant, facility or device capable of separating one or more isotopes of uranium from a composition containing a mixture of isotopes of that element, including means and methods of transporting materials from one to another device.

Dated at Germantown, Md., this 6th day of December 1972.

GORDON M. GRANT,
Acting Secretary of the Commission.

[FR Doc.72–21113 Filed 12–8–72;9:17 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 87]

[Docket No. 19647; FCC 72–1073]

AERONAUTICAL MOBILE (R) SERVICE

Proposed Channel Spacing

In the matter of amendment of Parts 2 and 87 of the rules to provide 25 kHz channel spacing in the Aeronautical Mobile (R) VHF band 117.975–136 MHz, Docket No. 19647.

1. The Federal Aviation Administration (FAA) has requested the Commission to change the rules in Part 87 to provide additional frequencies in the Aeronautical Mobile (R) Service band 117.975–136.0 MHz by providing for channel spacing of 25 kHz in certain portions of the band rather than the presently existing 50 kHz, and to revise the Part 2 Table of Frequency Allocations as required by the change in channel spacing.

2. In Docket No. 18931, the Commission adopted a report and order released August 23, 1971, which provided for 25 kHz channel spacing for a portion of the band now being considered in this docket. That portion was the non-Government subband 128.825–132.025 MHz which is used for aircraft operational control message transmission (aeronautical enroute). The rest of the 117.975–136 MHz band is used primarily for air traffic control (ATC). The ATC frequencies were not subject to the proceeding at that time. The conditions of equipment modification and the time needed for implementation of split operational control channels were more easily determined and the effect of splitting the channels more easily analyzed as to technical and financial impact.

3. Docket No. 18931 generated responses to its notice of proposed rule making and notice of inquiry which, for the most part, treated the entire band 117.975–136 MHz in consideration of channel splitting, not just the operational control subband. Manufacturers gave indications that there was an urgent need for additional frequency channels in the entire band. This has been supplemented by the FAA request and supported by the Office of Telecommunications Policy (OTP). However, the Aircraft Owners and Pilots Association (AOPA) specifically expressed concern that such channel splitting in the operational control subband might set a precedent for the remainder of the band.

4. The FAA stated that:

> The present allocation of channels in the VHF Aeronautical Mobile Band (118.0–136.0 MHz) provides 253 frequencies spaced 50 kHz apart for air traffic control purposes. Approximately 3,800 assignments on these channels plus another 1,000 on common channels have been made within the conterminous 48 States by the FAA. In order to make this number of assignments, the level of protection against interference afforded many of the selections is substantially lower than is normally desirable. Forecasts of future air traffic trends indicate at least a 50 percent increase of the frequency requirements within the next 10 years. If action is not taken in the near future to permit transition to 25 kHz spaced channels in the ATC portion of the VHF band, the anticipated growth in air traffic will either be suppressed or accomplished at a cost of even greater derogation in the quality of communications.

5. In order to alleviate this critical situation, the FAA has concluded that implementation of 25 kHz spaced channels will be necessary. Present predictions suggest that similar congested conditions will exist 10 years from now, even with the added frequencies, if, in addition, improved techniques and technological advances are not also introduced. The FAA's decision that there is a need for 25 kHz channel spacing reflects a change in policy since 1964, at which time, the FAA responded to FCC Docket No. 14452. At that time, the FAA acknowledged that the normal growth of aviation would require communication capability in excess of that to be provided by 50 kHz channel spacing; however, the FAA represented that it planned to achieve this capability by means other than 25 kHz channel spacing. In response to the Commission's request for additional statistical and technical information used by the FAA in arriving at their conclusion concerning

this matter, FAA stated their intention to improve the utilization of air traffic control channels by exploring use of such techniques as radio trunking, ground switching necessary to assign one frequency per flight plan, time division multiplex, and digital data transmission.

6. The problem of combined system error tolerance was discussed by the respondents in Docket No. 18931 with suggestions and recommendations that the frequency stability for both the airborne and ground units be tightened to insure against interference. The FAA Statement of Requirements as revised is as follows:

> In order to operate satisfactorily in a 25 kHz environment, the total combined tolerance for the frequency stability of the transmitter and receiver should be maintained at .006 percent or 60 parts per million or less. The VHF transmitters presently in use at FAA ground stations have a frequency stability tolerance of 50 p.p.m. or 20 p.p.m., depending upon their vintage. The frequency stability tolerance required of aircraft transmitting stations is 50 p.p.m. at this time. The bandwidth of FAA 50 kHz VHF ground receivers is ±18 kHz at the −6dB points. Therefore, although an aircraft transmitter may be emitting at one extreme of its allowable tolerance and the receiver tuned to the other extreme, the signal will be received. This condition will not hold for receivers designed to operate on a 25 kHz spaced channel. The bandwidth for such receivers may be ±9 kHz or less at the −6dB points. The presently permissible frequency stability tolerance 50 p.p.m. for aircraft stations will not permit suitable operation using 25 kHz channels.
>
> At this time the FAA is investigating means of bringing its ground transmitters within a 20 p.p.m. frequency stability tolerance and expects to have this accomplished by modification of most existing transmitters and replacement of those units not capable of being satisfactorily modified. We do not believe many of the receivers can be modified and plan upon replacing them. A decision has been made within the FAA to buy 25 kHz receivers on all future procurements. It is anticipated that some new receivers will be available prior to January 1976 and that the use of 25 kHz channels can be introduced on a selective basis as the equipment becomes operational.

7. Collins Radio Co. also treated the entire band 117.975–136 MHz in their comments responding to the previous notice. Their recommendations included a requirement that all ground station transmitters, Government and non-Government, meet a frequency tolerance of 0.003 percent within 1 year. In respect of that recommendation the FAA reported that the budgeting for funds to modify the approximately 7,000 transmitters operated by FAA in the band 117.975–136 MHz has not yet been accomplished. FAA, therefore, does not anticipate it will be in a position to start a program of modification of ground based transmitters until at least fiscal year 1974.

8. In Docket No. 18931 concerning the allowable frequency tolerance, the Commission, treating only the operational control subband 128.825–132.025 MHz, determined as stated in paragraph 7:

> The concern expressed as to the suitability of our present frequency tolerances for ground and aircraft transmitters operating with 25 kHz channel spacing is noted. However, these frequency tolerances are not a factor which is decisively applicable to this proceeding or sufficient reason to deny ARINC authority to operate now with 25 kHz channel spacing. The question of the suitability of our present frequency tolerances for 25 kHz channel spacing was considered by us in 1964 in Docket No. 14452. That Docket was a Part 87 rule making proceeding to implement certain requirements of the 1959 Geneva Radio Regulations regarding frequencies, frequency stability and definitions. After exhaustive study and review of technical information and consideration of 274 comments filed in response to the notice of proposed rule making released in that proceeding, we concluded, in part: "A 0.005 percent tolerance for ground and aircraft transmitters, together with suitable receivers, will allow for an unrestricted use of 50 kc/s channel spacing and may permit use of 25 kc./s channeling"; and that, A 0.003 percent tolerance for all equipment is, of all the alternatives, the most favorable to extensive use of 25 kc./s channel spacing. [Paragraph 9 (b) and (d), second report and order, adopted July 29, 1964.] Although, as indicated above, we found the 0.003 percent tolerance for all equipment to be the most favorable to extensive use of 25 kc./s channeling, we compromised then in order to ease the economic impact on the aircraft licensee and specified in the rules a frequency tolerance of 0.003 percent for ground stations and 0.005 percent for aircraft stations taking into consideration that the 0.005 percent tolerance would also permit the use of 25 kc./s channeling. Thus, we believe tolerances contained in our rules will not prevent ARINC from instituting the 25 kHz channel operation as requested.

Notwithstanding the foregoing, FAA has stated in their request for rule amendments that the present rules are not wholly compatible with a 25 kHz system.

9. The 7th Air Navigation Conference (7 ANC) of the International Civil Aviation Organization (ICAO) recommended that additional frequencies in the 117.975–136 MHz subband be provided by implementing the 25 kHz channel. Upon regional agreement, 25 kHz assignments may be made as of July 1, 1976, however, 25 kHz spacing may be used prior to that date provided the deployment of frequencies at 25 kHz channel spacing does not cause harmful interference to users of equipment designed for 50 kHz channel spacing (Rec. 10/1, 7 ANC). The 7 ANC also made various recommendations concerning equipment performance characteristics, i.e., frequency stability. Additionally, the Radio Technical Commission for Aeronautics (RTCA) is working toward the establishment of recommendation for "U.S. National Standard for VHF A/G Communications Systems" applicable to equipment to be used in the 25 kHz channel spacing environment. RTCA SC–120 has submitted its report to the RTCA Executive Committee.

10. Preliminary discussions with representatives of ARINC, FAA, and OTP indicate that they consider the conversion to 25 kHz channelization to be a needed step forward to improve the existing system. They advocate the availability of 25 kHz channels on a permissive basis for a period of time adequate to allow for total conversion or replacement of existing equipment. Additionally, they present information which provides evidence that the utilization of the split channels will be technically and operationally improved by changing the equipment allowable frequency deviation tolerance to a total allowable error of 0.004 percent or 0.005 percent. As previously stated, the FAA is presently investigating means of bringing its ground transmitters within a 20 p.p.m. frequency tolerance and expects to have this accomplished prior to January 1976.

11. The FAA's change in policy toward 25 kHz channel spacing has also caused them to reevaluate their earlier decision as to the interference potential of equipment with the presently prescribed frequency tolerance. The FAA does not presently agree with the Commission's 1964 decision that the tolerance of 0.003 percent for ground stations and 0.005 percent for aircraft stations will permit the use of 25 kHz channel spacing without quality degradation. They do, however, believe that a mixed environment of the existing 0.008 percent and the proposed 0.005 percent total allowable frequency tolerance will be acceptable during the implementation period. Adjacent channel interference is not expected to be an insurmountable problem nor is it expected to degrade voice communications.

12. When responding to the notice of Docket No. 18931, the Aircraft Owners and Pilots Association (AOPA) did not object to 25 kHz channelization of the operational control subband but proposed the permissive use of 50 kHz equipment for a period of 5 years, asserting that this would provide a reasonable time period to accommodate smaller airlines and larger general aviation aircraft that utilize those operational control frequencies. AOPA did, however, state their concern that channel splitting of the operational control subband would be a precedent to the subsequent 25 kHz channeling of other aeronautical bands which might work a hardship on general aviation aircraft owners.

13. The increasing requirement for more frequencies dedicated to the Aeronautical Mobile (R) Service probably cannot be solved for the entire period of the coming decade simply by channel splitting. Thus, it is apparent that additional improvements must be found. The advent of data link will undoubtedly provide greatly improved efficiency in the use of the frequencies, but the development and implementation of such improved methods of communication are beyond the scope of this Docket. It does appear that the only immediate method of improving the capacity of the existing frequency band is to introduce 25 kHz channel spacing in order that conversion to the narrow channels can proceed and to provide for the permissive use of 13A9 emission in order that data link development and implementation can go forward. It appears this may be the time to change the rules to provide permissible access to the additional channels.

14. With respect to AOPA's stated concern that the previous channel splitting might prove a precedent to additional channel splitting possibly causing a harmful requirement to be imposed on general aviation, we are not convinced that the financial burden imposed will overbalance the value gained by improved communications. It is possible

that a program of implementation which will provide 25 kHz capable equipment can, if permissive for a reasonable length of time, improve the system at a cost acceptable to the entire aeronautical community. This notice of proposed rule making will afford the opportunity to AOPA to present to the Commission information and data in regard to the expected financial burden and their analysis as to the relative cost benefit of a program to fully implement 25 kHz channel spacing utilizing equipment with tighter frequency tolerances.

15. Regarding the previous decision that the existing frequency tolerance regulations are satisfactory for use in a 25 kHz system we now consider the time appropriate to review our position. Information received in response to this notice may provide an adequate basis for a decision regarding the required tolerance, time to full implementation and cost effectiveness. It appears from the information received that there is a need for improved frequency tolerances. Preliminary investigations give indications that approximately 4 years will be required by the air carriers to modify the audio filters, the offset carriers (Climax) networks, and the receiver IF filters. Accordingly, it would appear that general aviation aircraft can reasonably be expected to be fully implemented within a slightly longer period of time.

16. In order to effect the implementation of 25 kHz channel spacing in a timely and reasonable manner, we propose to amend Parts 2 and 87 of the rules as appropriate to provide for:

a. Changes to the appropriate Table to indicate the available frequencies including those to be provided by the channel splitting;

b. New frequency tolerance for land transmitters from 0.003 percent to 0.002 percent applicable to those first installed after January 1, 1973, and to all after January 1, 1976;

c. New frequency tolerance for airborne transmitters from 0.005 percent to 0.003 percent for those installed after January 1, 1973. Airborne transmitters installed prior to January 1, 1973, will be permitted to continue in operation, if authorized, until January 1, 1979, with the presently prescribed 0.005 percent frequency tolerance pending the full implementation of the improved stability Land Station transmitters but subject to review. If the FAA, after substantial implementation of 25 kHz spacing throughout the country, informs the Commission that 0.005 percent transmitters are causing disruptive interference and because of this there is a condition incompatible with aviation safety, the Commission will modify the rules to eliminate the interference by providing an earlier transition period to replace all remaining 0.005 percent airborne equipment;

d. Change of type acceptance measurement of frequency stability over ambient temperature ranges from a range of −30° C. to +50° C. to a range of −20° C. to +50° C. This change is intended to reflect a range of test conditions which is more representative of operating temperatures experienced in the Aviation Services.

17. The proposed amendment to the rules, as set forth below, is issued pursuant to authority contained in sections 4(i) and 303 (e), (f), (g), and (4) of the Communications Act of 1934, as amended.

18. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested parties may file comments on or before January 12, 1973, and reply comments on or before January 22, 1973. All relative and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

19. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: November 29, 1972.

Released: December 4, 1972.

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

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. Section 2.106 is amended by changing the footnote reference in column 10 for the frequency bands 118 through 135.975 MHz from NG34 to NG67 and to change columns 7, 10, and 11 to read as follows:

7	10	11
• • •	• • •	• • •
117.975-121.9625	118.0-121.400 (NG67)	AERONAUTICAL MOBILE.
	121.5	AERONAUTICAL MOBILE (Emergency).
	121.600-121.925	Aeronautical utility mobile.
	(NG67)	Aeronautical utility land.
	121.950 (NG67)	Flight test (FAT).
121.9625-123.0875	121.975-123.075 (NG67)	Private aircraft.
123.0875-123.5875	123.100	Aero SAR.
	123.125-123.275	Flight test.
	123.300	FAT, Aviation Instructional (FAS).
	123.325-123.475	FAT.
	123.500	FAT, FAS.
	123.525-123.575 (NG67)	FAT.
123.5875-128.8125	123.600-128.800 (NG67)	AERONAUTICAL MOBILE.
128.8125-132.0125	128.825-132.000 (NG67)	AERONAUTICAL MOBILE.
132.0125-136	132.025-135.975 (NG67)	AERONAUTICAL MOBILE.
• • •	• • •	• • •

[1] Commissioner Johnson concurring in the result.

PART 87—AVIATION SERVICES

2. Section 87.65(a)(5) and footnote 1 are amended and new footnote 2 is added to read as follows:

§ 87.65 Frequency stability.

(a) • • •

(5) Band—100 to 136 MHz:

Land stations	[1] 0.002
Mobile stations:	
Survival craft stations	[2] 0.005
Aircraft and all other mobile stations	[2] 0.003
Radio navigation stations	[4] 0.005

• • • • •

[1] The tolerance shown is applicable to all transmitters first authorized after Jan. 1, 1973, except those transmitters meeting a tolerance of 0.005 percent which were licensed before Jan. 1, 1966, and those transmitters meeting a tolerance of 0.003 percent first authorized during the period Jan. 1, 1966 to Jan. 1, 1973. On and after Jan. 1, 1976 all transmitters will meet the tolerance shown in the table.

[2] The tolerance shown in the table is applicable to all types of transmitters first authorized after Jan. 1, 1973. No applications for type acceptance of transmitters which fail to meet this requirement will be accepted after Jan. 1, 1973. A tolerance of 0.005 percent is applicable to transmitters installed prior to Jan. 1, 1973, and to all transmitters after Jan. 1, 1979.

• • • • •

3. Section 87.67(b)(1) footnotes 5 and 6 are amended to read as follows:

§ 87.67 Types of emissions.

(b) • • •

(1) • • •

• • • • •

[5] In the band 117.975–136 MHz, wherever footnote NG 67 applies, the authorized bandwidth is 25 kHz Jan. 1, 1973, for all transmitters type accepted after that date. Transmitters type accepted before that date which operate at 50 kHz bandwidth may continue to be used until Jan. 1, 1979, unless interference is experienced in the National Airspace System.

[6] This emission is authorized only for audio phase and frequency shift keying and carrier phase and frequency shift keying for digital data link purposes in the band 117.975–136 MHz when the channel on which the signal is transmitted is not used for voice communications, or if the channel is used for voice communication the emission is authorized as specified herein, provided it is multiplexed on the voice carrier without derogation to voice signals.

• • • • •

4. Section 87.79(a) is amended to read as follows:

§ 87.79 Type acceptance of equipment.

(a) A manufacturer of a type of transmitter intended for use in these services may request type acceptance for such transmitter by following the type acceptance procedure set forth in Part 2, Subpart F, of this chapter. (Airborne transmitters intended for use in these services shall be tested with ambient temperature variation from −20° to +50° centigrade.)

• • • • •

5. Section 87.183(i) and footnotes are amended to read as follows:

§ 87.183 Frequencies available.

* * * * *

(i) These frequencies are available for air traffic control operations:

MHz	MHz	MHz	MHz
118.000	120.050	123.925	125.975
118.025	120.075	123.950	126.000
118.050	120.100	123.975	126.025
118.075	120.125	124.000	126.050
118.100	120.150	124.025	126.075
118.125	120.175	124.050	126.100
118.150	120.200	124.075	126.125
118.175	120.225	124.100	126.150
118.200	120.250	124.125	126.175
118.225	120.275	124.150	126.200
118.250	120.300	124.175	126.225
118.275	120.325	124.200	126.250
118.300	120.350	124.225	126.275
118.325	120.375	124.250	126.300
118.350	120.400	124.275	126.325
118.375	120.425	124.300	126.350
118.400	120.450	124.325	126.375
118.425	120.475	124.350	126.400
118.450	120.500	124.375	126.425
118.475	120.525	124.400	126.450
118.500	120.550	124.425	126.475
118.525	120.575	124.450	126.500
118.550	120.600	124.475	126.525
118.575	120.625	124.500	126.550
118.600	120.650	124.525	126.575
118.625	120.675	124.550	126.600
118.650	120.700	124.575	126.625
118.675	120.725	124.600	126.650
118.700	120.750	124.625	126.675
118.725	120.775	124.650	126.700
118.750	120.800	124.675	126.725
118.775	120.825	124.700	126.750
118.800	120.850	124.725	126.775
118.825	120.875	124.750	126.800
118.850	120.900	124.775	126.825
118.875	120.925	124.800	126.850
118.900	120.950	124.825	126.875
118.925	120.975	124.850	126.900
118.950	121.000	124.875	126.925
118.975	121.025	124.900	126.950
119.000	121.050	124.925	126.975
119.025	121.075	124.950	127.000
119.050	121.100	124.975	127.025
119.075	121.125	125.000	127.050
119.100	121.150	125.025	127.075
119.125	121.175	125.050	127.100
119.150	121.200	125.075	127.125
119.175	121.225	125.100	127.150
119.200	121.250	125.125	127.175
119.225	121.275	125.150	127.200
119.250	121.300	125.175	127.225
119.275	121.325	125.200	127.250
119.300	121.350	125.225	127.275
119.325	121.375	125.250	127.300
119.350	121.400	125.275	127.325
119.375	121.600A	125.300	127.350
119.400	121.625A	125.325	127.375
119.425	121.650A	125.350	127.400
119.450	121.675A	125.375	127.425
119.475	121.700A	125.400	127.450
119.500	121.725A	125.425	127.475
119.525	121.750A	125.450	127.500
119.550	121.775A	125.475	127.525
119.575	121.800A	125.500	127.550
119.600	121.825A	125.525	127.575
119.625	121.850A	125.550	127.600
119.650	121.875A	125.575	127.625
119.675	121.900A	125.600	127.650
119.700	121.925A	125.625	127.675
119.725	123.600	125.650	127.700
119.750	123.625	125.675	127.725
119.775	123.650	125.700	127.750
119.800	123.675	125.725	127.775
119.825	123.700	125.750	127.800
119.850	123.725	125.775	127.825
119.875	123.750	125.800	127.850
119.900	123.775	125.825	127.875
119.925	123.800	125.850	127.900
119.950	123.825	125.875	127.925
119.975	123.850	125.900	127.950
120.000	123.875	125.925	127.975
120.025	123.900	125.950	128.000

MHz	MHz	MHz	MHz
128.025	132.450	133.650	134.850
128.050	132.475	133.675	134.875
128.075	132.500	133.700	134.900
128.100	132.525	133.725	134.925
128.125	132.550	133.750	134.950
128.150	132.575	133.775	134.975
128.175	132.600	133.800	135.000
128.200	132.625	133.825	135.025
128.225	132.650	133.850	135.050
128.250	132.675	133.875	135.075
128.275	132.700	133.900	135.100
128.300	132.725	133.925	135.125
128.325	132.750	133.950	135.150
128.350	132.775	133.975	135.175
128.375	132.800	134.000	135.200
128.400	132.825	134.025	135.225
128.425	132.850	134.050	135.250
128.450	132.875	134.075	135.275
128.475	132.900	134.100	135.300
128.500	132.925	134.125	135.325
128.525	132.950	134.150	135.350
128.550	132.975	134.175	135.375
128.575	133.000	134.200	135.400
128.600	133.025	134.225	135.425
128.625	133.050	134.250	135.450
128.650	133.075	134.275	135.475
128.675	133.100	134.300	135.500
128.700	133.125	134.325	135.525
128.725	133.150	134.350	135.550
128.750	133.175	134.375	135.575
128.775	133.200	134.400	135.600
132.025	133.225	134.425	135.625
132.050	133.250	134.450	135.650
132.075	133.275	134.475	135.675
132.100	133.300	134.500	135.700
132.125	133.325	134.525	135.725
132.150	133.350	134.550	135.750
132.175	133.375	134.575	135.775
132.200	133.400	134.600	135.800
132.225	133.425	134.625	135.825
132.250	133.450	134.650	135.850
132.275	133.475	134.675	135.875
132.300	133.500	134.700	135.900
132.325	133.525	134.725	135.925
132.350	133.550	134.750	135.950
132.375	133.575	134.775	135.975
132.400	133.600	134.800	
132.425	133.625	134.825	

A—Available on a secondary basis to its primary use as an Airport Utility Frequency.
B—[Delete]
C—[Delete]
D—[Delete]

* * * * *

6. Section 87.201(b) is amended to read as follows:

§ 87.201 Frequencies available.

* * * * *

(b) These frequencies are available to private aircraft for air traffic control operations:

MHz	MHz	MHz	MHz
121.975	122.225	122.475	122.725
122.000	122.250	122.500	122.750
122.025	122.275	122.525	122.775
122.050	122.300	122.550	122.825
122.075	122.325	122.575	122.875
122.100	122.350	122.600	122.925
122.125	122.375	122.625	122.975
122.150	122.400	122.650	123.025
122.175	122.425	122.675	123.075
122.200	122.450	122.700	

* * * * *

§ 87.295 [Amended]

7. Section 87.295(b) is amended by adding the frequency 128.825 MHz to the beginning of the frequency list.

8. In § 87.331, the list of frequencies in paragraph (a) is amended to read as fololws; paragraph (b) is deleted and paragraph (c) redesignated as paragraph (b):

§ 87.331 Frequencies available.

(a) * * *

3281 kHz[1]	123.350 MHz
121.950 MHz[3]	123.375 MHz
123.125 MHz	123.400 MHz
123.150 MHz	123.425 MHz
123.175 MHz	123.450 MHz
123.200 MHz	123.475 MHz
123.225 MHz	123.500 MHz[3]
123.250 MHz	123.525 MHz
123.275 MHz	123.550 MHz
123.300 MHz[2]	123.575 MHz
123.325 MHz	

* * * * *

9. Section 87.401, paragraph (a) and footnotes, and paragraph (c) are amended to read as follows:

§ 87.401 Frequencies available.

(a) * * *

MHz	MHz	MHz	MHz
118.000	119.600	121.200	124.625
118.025	119.625	121.225	124.650
118.050	119.650	121.250	124.675
118.075	119.675	121.275	124.700
118.100	119.700	121.300	124.725
118.125	119.725	121.325	124.750
118.150	119.750	121.350	124.775
118.175	119.775	121.375	124.800
118.200	119.800	121.400	124.825
118.225	119.825	121.600A	124.850
118.250	119.850	121.625A	124.875
118.275	119.875	121.650A	124.900
118.300	119.900	121.675A	124.925
118.325	119.925	121.700A	124.950
118.350	119.950	121.725A	124.975
118.375	119.975	121.750A	125.000
118.400	120.000	121.775A	125.025
118.425	120.025	121.800A	125.050
118.450	120.050	121.825A	125.075
118.475	120.075	121.850A	125.100
118.500	120.100	121.875A	125.125
118.525	120.125	121.900A	125.150
118.550	120.150	121.925A	125.175
118.575	120.175	123.600	125.200
118.600	120.200	123.625	125.225
118.625	120.225	123.650	125.250
118.650	120.250	123.675	125.275
118.675	120.275	123.700	125.300
118.700	120.300	123.725	125.325
118.725	120.325	123.750	125.350
118.750	120.350	123.775	125.375
118.775	120.375	123.800	125.400
118.800	120.400	123.825	125.425
118.825	120.425	123.850	125.450
118.850	120.450	123.875	125.475
118.875	120.475	123.900	125.500
118.900	120.500	123.925	125.525
118.925	120.525	123.950	125.550
118.950	120.550	123.975	125.575
118.975	120.575	124.000	125.600
119.000	120.600	124.025	125.625
119.025	120.625	124.050	125.650
119.050	120.650	124.075	125.675
119.075	120.675	124.100	125.700
119.100	120.700	124.125	125.725
119.125	120.725	124.150	125.750
119.150	120.750	124.175	125.775
119.175	120.775	124.200	125.800
119.200	120.800	124.225	125.825
119.225	120.825	124.250	125.850
119.250	120.850	124.275	125.875
119.275	120.875	124.300	125.900
119.300	120.900	124.325	125.925
119.325	120.925	124.350	125.950
119.350	120.950	124.375	125.975
119.375	120.975	124.400	126.000
119.400	121.000	124.425	126.025
119.425	121.025	124.450	126.050
119.450	121.050	124.475	126.075
119.475	121.075	124.500	126.100
119.500	121.100	124.525	126.125
119.525	121.125	124.550	126.150
119.550	121.150	124.575	126.175
119.575	121.175	124.600	126.200

MHz	MHz	MHz	MHz	MHz	MHz	MHz	MHz
126.225	127.050	127.875	128.700	132.725	133.550	134.375	135.200
126.250	127.075	127.900	128.725	132.750	133.575	134.400	135.225
126.275	127.100	127.925	128.750	132.775	133.600	134.425	135.250
126.300	127.125	127.950	128.775	132.800	133.625	134.450	135.275
126.325	127.150	127.975	128.800	132.825	133.650	134.475	135.300
126.350	127.175	128.000	132.025	132.850	133.675	134.500	135.325
126.375	127.200	128.025	132.050	132.875	133.700	134.525	135.350
126.400	127.225	128.050	132.075	132.900	133.725	134.550	135.375
126.425	127.250	128.075	132.100	132.925	133.750	134.575	135.400
126.450	127.275	128.100	132.125	132.950	133.775	134.600	135.425
126.475	127.300	128.125	132.150	132.975	133.800	134.625	135.450
126.500	127.325	128.150	132.175	133.000	133.825	134.650	135.475
126.525	127.350	128.175	132.200	133.025	133.850	134.675	135.500
126.550	127.375	128.200	132.225	133.050	133.875	134.700	135.525
126.575	127.400	128.225	132.250	133.075	133.900	134.725	135.550
126.600	127.425	128.250	132.275	133.100	133.925	134.750	135.575
126.625	127.450	128.275	132.300	133.125	133.950	134.775	135.600
126.650	127.475	128.300	132.325	133.150	133.975	134.800	135.625
126.675	127.500	128.325	132.350	133.175	134.000	134.825	135.650
126.700	127.525	128.350	132.375	133.200	134.025	134.850	135.675
126.725	127.550	128.375	132.400	133.225	134.050	134.875	135.700
126.750	127.575	128.400	132.425	133.250	134.075	134.900	135.725
126.775	127.600	128.425	132.450	133.275	134.100	134.925	135.750
126.800	127.625	128.450	132.475	133.300	134.125	134.950	135.775
126.825	127.650	128.475	132.500	133.325	134.150	134.975	135.800
126.850	127.675	128.500	132.525	133.350	134.175	135.000	135.825
126.875	127.700	128.525	132.550	133.375	134.200	135.025	135.850
126.900	127.725	128.550	132.575	133.400	134.225	135.050	135.875
126.925	127.750	128.575	132.600	133.425	134.250	135.075	135.900
126.950	127.775	128.600	132.625	133.450	134.275	135.100	135.925
126.975	127.800	128.625	132.650	133.475	134.300	135.125	135.950
127.000	127.825	128.650	132.675	133.500	134.325	135.150	135.975
127.025	127.850	128.675	132.700	133.525	134.350	135.175	

A—Available on a secondary basis to its primary use as an airport utility frequency.
B—[Delete]
C—[Delete]

(c) 121.600, 121.625, 121.650, 121.675, 121.700, 121.725, 121.750, 121.775, 121.800, 121.825, 121.850, 121.875, 121.900, 121.925 MHz; these airport utility frequencies are available to airdrome control stations for communications with ground vehicles and aircraft on the ground. The antenna heights shall be restricted to the minimum necessary to achieve the required coverage.

* * * * *

10. Section 87.431 is amended to read as follows:

§ 87.431 Frequencies available.

The frequencies 121.600, 121.625, 121.650, 121.675, 121.700, 121.725, 121.750, 121.775, 121.800, 121.825, 121.850, 121.875, 121.900, and 121.925 MHz are available for use by aeronautical utility mobile stations.

[FR Doc.72-21162 Filed 12-8-72;8:45 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

NOTICE OF GRANTING OF RELIEF

Notice is hereby given that pursuant to 18 U.S.C. 925(c) the following named persons have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding 1 year.

It has been established to my satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of relief would not be contrary to the public interest.

Aulicino, Jr., Joseph M., 1916 73d Street, Brooklyn, NY, convicted on April 3, 1952, in the Kings County Criminal Court, Brooklyn, N.Y.

Banks, Earl F., 721 Woodland Avenue, Toledo, OH, convicted on January 10, 1958, in the U.S. District Court, Toledo, Ohio; and on December 19, 1969, in the U.S. District Court for the Northern District of Ohio.

Bennett, Donald W., 314 South Broadway, No. A, Redondo Beach, CA, convicted on November 9, 1966, in the Superior Court of the State of California, County of Los Angeles, Department Southwest A.

Besancon, Henry George, 404 North Main, Milford, MI, convicted on September 5, 1941, in the Circuit Court for Oakland County, Pontiac, Mich.

Brock, Simon, 107 Walnut Street, Pineville, KY, convicted on November 11, 1964, in the U.S. District Court, Eastern District of Kentucky, London, Ky.

Bushnell, Norman W., 3237 Dewoody Lane, Grants Pass, OR, convicted on or about August 27, 1956, in the Circuit Court of the State of Oregon for Josephine County.

Cannon, Sammie Lee, 909 16th Street, North Birmingham, AL, convicted on February 21, 1958 and October 21, 1968, in the 10th Judicial Circuit Court of Alabama, Jefferson County.

Carey, Thomas Joseph, 82 Park View Boulevard, Cranston, RI, convicted on September 29, 1965, in the Kent County Superior Court, East Greenwich, R.I.

Cohen, Edward T., 15 West 139th Street, New York, NY, convicted on May 29, 1940, in the Supreme Court, New York County, N.Y.

Coombs, David L., R.F.D. No. 6, Augusta, ME, convicted on July 22, 1958, and June 16, 1960, in the Kennebec County Superior Court, Augusta, Maine.

Dagnon, Michael J., 414 East Lyon Street, Milwaukee, WI, convicted on February 9, 1970, in the U.S. District Court for the Eastern District of Wisconsin, Milwaukee, Wis.

DeVeire, Ray Van, Wood Lake, Minn., convicted on July 12, 1945, in the U.S. District Court for the Southern District, Peoria, Ill.

Duncan, Herbert A., 14633 Cherrylawn, Detroit, MI, convicted on March 22, 1946, in the U.S. District Court, Eastern Judicial District, Southern Division of Michigan.

Enlow, James W., 517 Cottonwood Street, Grand Forks, ND, convicted on December 13, 1961, in the District Court, Griggs County, N. Dak.

Garvin, Nolan E., 16806 LaSalle Boulevard, Detroit, MI, convicted on June 28, 1935, in the Recorder's Court, Detroit, Mich.; and on April 7, 1936 in the U.S. District Court, Eastern District, Michigan.

Guthrie, Edward H., Route 5, Box 23, Scottsboro, AL, convicted on October 24, 1938, in the District Court, 19th Judicial District, Washington County, Minn.

Helms, Claude D., R.F.D. No. 1, Box 16 C, Worthington, MI, convicted on October 8, 1940, in the District Court, 13th Judicial District, County of Nables, Minn.

Holston, Rinzor, 3817 Fullerton, Detroit, MI, convicted on March 27, 1946, in the Recorder's Court of the City of Detroit, Mich.; and on January 7, 1950, in the Court of Common Pleas, Shilby County, Sidney, Ohio.

Jewell, Clarence R., 2210 26th Avenue, South, Minneapolis, MI, convicted on April 20, 1964, in the 4th Judicial District, Hennepin County, Minn.

Lester, William Raymond, Route 3, Box 699, Shelton, WA, convicted on September 28, 1966, in the Superior Court of the State of Washington, in and for Pierce County.

McDonald, Edward J., 402 Second Street, Troy, NY, convicted on August 20, 1957, in the U.S. Naval Air Station, Quonset Point, R.I.; and on December 24, 1958, in the Rensselaer County Court, Troy, N.Y.

Miranda, Nelson, 1137 Teller Avenue, Apt. 9, Bronx, NY, convicted on June 15, 1954, in a U.S. Army General Court-Martial, Fort Dix, N.J.

Moon, Julia Alma, 357 Haseltine Street, Richland Center, WI, convicted on December 1, 1970, in the Federal District Court, Madison, Wis.

Mudge, Ray W., 5 Smithridge Park, Reno, NV, convicted on December 16, 1969, in the Second Judicial Court, Washoe County, Reno, Nev.

Myers, Carl L., 502 North 15th Street, Muskogee, OK, convicted on September 3, 1939, in the District Court of Muskogee County, Okla.

Noble, Leland I., Box 175, Oakville, IA, convicted on September 8, 1931, in the Pottawattamie County District Court, Iowa.

Ohlsen, Roy W., 8112 Heyden, Detroit, MI, convicted on June 29, 1965, in the Oneida County Court, Utica, N.Y.

Pence, Harry Russell, 1673 Minert Road, Concord, CA, convicted on January 11, 1949, in the Superior Court for the City and County of San Francisco, Calif.

Perkins, Mitchael W., 1423½ West 10th Street, McGregor, TX, convicted on December 31, 1969, in the 54th District Court of McLennan County, Tex.

Peters, Jessie L., R.F.D. No. 2, Ferrum, VA, convicted on December 31, 1941, in the U.S. District Court, Southern District of West Virginia; and on January 7, 1937 and May 9, 1957, in the U.S. District Court, Western District of Virginia.

Poole, Joseph B., 4772 Marion Street, Cypress, CA, convicted on March 18, 1946 and July 9, 1952, in the Peoria County, Ill., Superior Court.

Richard, Paul H., 4416 Gibson, St. Louis, MO, convicted on February 10, 1954 and November 10, 1961, in the Circuit Court of St. Louis, MO; and on March 14, 1958, by the U.S. District Court, in and for the Eastern District of Missouri.

Thoman III, Samuel, 394 Lemon Street, San Luis Obispo, CA, convicted on November 24, 1971, in the Superior Court, in and for the County of San Luis Obispo, State of California.

Woodle, Carl J., Route 1, Box 468, Hope Mills, NC, convicted on September 18, 1946, in the U.S. District Court, Eastern District of North Carolina.

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

[SEAL] REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc.72-21232 Filed 12-8-72;8:45 am]

Bureau of Customs

[T.D. 72-321; Customs Delegation Order 1 (Rev. 1) amended]

ASSISTANT COMMISSIONER OF CUSTOMS, OFFICE OF REGULATIONS AND RULINGS, ET AL.

Performance of Functions

Correction

In F.R. Doc. 72-20286 appearing on page 25060 of the issue for Saturday, November 25, 1972, the third line of paragraph B, reading "sion" and "Division of Inspection and", should read "sion" for "Division of Inspection and".

DEPARTMENT OF DEFENSE

Office of the Secretary

INDUSTRY INTEGRATED LOGISTIC SUPPORT ADVISORY COMMITTEE

Notice of Meeting

The DoD-Industry Integrated Logistic Support Advisory Committee to the Assistant Secretary of Defense (Installations & Logistics) will meet in executive session in the Pentagon, Washington, D.C., December 13, 1972.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, OASD (Comptroller).

DECEMBER 5, 1972.

[FR Doc.72-21218 Filed 12-8-72;8:48 am]

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

RESEARCH AND DEVELOPMENT ADVISORY COMMITTEE

Notice of Meeting

Pursuant to 21 U.S.C. 874, the Bureau of Narcotics and Dangerous Drugs (Bureau) will convene a meeting of its Research and Development Advisory Committee (Committee) on Monday, December 11, 1972.

In accordance with section 13(d) of Executive Order 11671 (dated June 5, 1972, released June 6, 1972), I have determined that because the activities of the Committee are analogous to those recognized in 5 U.S.C. 552(b)(7), in that they relate to the continued development of the investigative and enforcement capabilities of the Bureau, they should be withheld from disclosure. Accordingly, the meeting will not be open to the public.

Dated: December 8, 1972.

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

[FR Doc.72-21399 Filed 12-8-72;11:54 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-317]

MATSON NAVIGATION CO.

Notice of Application

Notice is hereby given that application has been filed under the Merchant Marine Act of 1936, as amended, for operating-differential subsidy with respect to bulk cargo carrying service in the U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, to expire on June 30, 1973 (unless extended only for subsidized voyages in progress on that date). Inasmuch as the below listed applicant, and/or related persons or firms, employ ships in the domestic, intercoastal or coastwise service, written permission of the Maritime Administration under section 805(a) of the Merchant Marine Act, 1936, as amended, will be required for each such applicant if its application for operating-differential subsidy is granted.

The following applicant has requested permission involving the domestic, intercoastal or coastwise services described below:

Name of applicant: Matson Navigation Co. (Matson).

Description of domestic service and vessels. The applicant, Matson, owns and operates vessels engaged in domestic service, viz: Pacific coast to Hawaii. Without prejudice to the existence of a bona fide operation as a common carrier by water in domestic trade between the U.S. Pacific coast and Hawaii in 1935 and operation since that time, Matson has requested written permission to continue its current operations in the domestic trade between the Pacific coast and Hawaii. The following vessels are owned by the applicant:

Californian.	Hawaiian Motorist.
Hawaiian.	Hawaiian Princess.
Hawaiian Citizen.	Hawaiian Progress.
Hawaiian Enterprise.	Hawaiian Queen.
Hawaiian Legislator.	Islander.
Hawaiian Monarch.	Kopaa.

Written permission is now required by the applicant, Matson, notwithstanding that a voyage in the proposed service for which subsidy is sought would not be eligible for subsidy if the vessel carried domestic commerce of the United States on that voyage.

Interested parties may inspect this application in the Office of the Secretary, Maritime Administration, Department of Commerce Building, 14th and E Streets NW., Washington, DC 20235.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in any application and desiring to be heard on issues pertinent to section 805(a) or desiring to submit comments or views concerning the application must, by close of business on December 15, 1972, file same with the Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing has been tentatively scheduled for 10 a.m., December 18, 1972, in Room 4896, Department of Commerce Building, 14th and E Streets NW., Washington, DC 20235. The purpose of the hearing will be to receive evidence under section 805(a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal services, or (b) would be prejudicial to the objects and policy of the Act.

By order of the Maritime Administration.

Dated: December 6, 1972.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.72-21255 Filed 12-8-72;8:45 am]

National Oceanic and Atmospheric Administration

EARTH RESOURCES SURVEY PROGRAM DATA

Notice of Availability

Commerce Department's list of sites open for public inspection of Earth Resources Survey Program Data appearing in the FEDERAL REGISTER of September 6, 1972 (37 F.R. 18045) is amended to read as follows:

Earth Resources Survey Program Sites Open for Public Inspection of Data:

Department	*Address*
Commerce	National Environmental Satellite Service, Environmental Sciences Group, Suite 300, 3737 Branch Avenue, Hillcrest Heights, MD 20031.
Commerce	National Ocean Survey—C3413, 6001 Executive Boulevard, Rockville, MD 20852.
Commerce	Atmospheric Sciences Library—D821, 8060 13th Street, Silver Spring, MD 20910.
Commerce	National Oceanographic Data Center—D722, Building 160, Third and Tingley Street, Washington Navy Yard. Mailing Address: 6001 Executive Boulevard, Rockville, MD 20852.
Commerce	Atlantic Oceanographic and Meteorological Laboratories, 15 Rickenbacker Causeway, Virginia Key, Miami, FL 33149.
Commerce	Atlantic Marine Center, 439 West York Street, Norfolk, VA 23510.
Commerce	National Weather Service Eastern Region, 585 Stewart Avenue, Garden City, NY 11530.
Commerce	Director, Northeast Fisheries Center, Post Office Box 6, Woods Hole, MA 02543.
Commerce	National Climatic Center, Federal Building, Asheville, N.C. 28801.
Commerce	Lake Survey Center CLx13, 630 Federal Building and U.S. Courthouse, Detroit, Mich. 48226.
Commerce	National Weather Service Central Region, 601 East 12th Street, Room 1836, Kansas City, MO 64106.
Commerce	Office of Sea Grant, University of Wisconsin, 1225 West Dayton Street, Madison, WI 53706.
Commerce	National Weather Service Southern Region, 819 Taylor Street, Room 10E09, Fort Worth, TX 76102.
Commerce	National Severe Storms Laboratory, 1616 Halley Avenue, Norman, OK 73069.
Commerce	Office of Sea Grant, Center for Marine Resources, Texas A. & M. University College Station, Tex. 77843.
Commerce	EDS Solar Terrestial Data Services Division, Radio Building No. 3, Boulder, Colo. 80302.
Commerce	National Weather Service Western Region, Box 11188, 125 South State Street, Salt Lake City, UT 84111.
Commerce	Northwest Marine Fisheries Center, 2725 Montlake Boulevard East, Seattle, WA. 98112.
Commerce	Marine Minerals Technology Center, 3150 Paradise Drive, Tiburon, CA 94920.
Commerce	Director, Southwest Fisheries Center, 8604 LaJolla Shores, LaJolla, CA 92037.
Commerce	National Weather Service Alaskan Region, 632 Sixth Avenue, Anchorage, AK 99501.

Department	Address
Commerce --	National Weather Service Pacific Region, Bethel-Paushi Building, 1149 Bethel Street, Honolulu, HI 96813.

T. P. GLEITER,
Assistant Administrator for Administration, National Oceanic and Atmospheric Administration.

[FR Doc.72-21178 Filed 12-8-72;8:50 am]

Office of Import Programs

CALIFORNIA UNIVERSITY AND SCHEIE EYE INSTITUTE OF THE PRESBYTERIAN-UNIVERSITY PENNSYLVANIA MEDICAL CENTER

Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.). (See especially § 701.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00551-33-46040. Applicant: University of California, San Diego, Post Office Box 109, La Jolla, CA 92037. Article: Electron microscope, Model JEM 100B. Manufacturer: JEOL, Ltd., Japan. Intended use of article: The article is intended to be used in the investigation of a number of different biological problems. The problems will include:

(1) The structure at nerve-nerve and nerve-muscle synapses in vertebrate nervous systems;

(2) The structure of cell membranes, and the location and distribution of specific antigens and enzymes in the membranes;

(3) The development of new techniques for visualizing specific macromolecules inside cells and tissues using frozen-sectioning methods and ferritin-antibody staining procedures;

(4) The properties of intracellular microfilament systems, and their relationship to membrane movements; and

(5) The development of sperm cells in Drosophila and related organisms, and the relationship of material transport to this development.

The article will also be used to train graduate students and postgraduate fellows in the techniques of biological electron microscopy. Application received by Commissioner of Customs: May 15, 1972. Advice submitted by Department of Health, Education, and Welfare on: November 24, 1972.

Docket No. 72-00552-33-46040. Applicant: Scheie Eye Institute of the Presbyterian-University of Pennsylvania Medical Center, Myrin Circle, 51 North 39th Street, Philadelphia, PA 19104. Article: Electron microscope, Model HU-12 and accessories. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article is intended to be used in studies of cells and organelles of cornea, ciliary body and retina. Specific projects will include the following:

(1) The interaction of vitamin A depleted-rhodopsin and vitamin A analogies will be attempted to see what role if any, hydrophobic bonding has on the configuration of these unique molecules.

(2) The pathogenesis of malignancies of the eye, such as retinoblastoma, will be studied by conventional thin-sectioning techniques and attempts to find the etiology of this malignancy will be done on cell cultures or maintain in vitro (in tissue culture).

(3) Differentiation studies on cells which make up the eye will be done following separation of cells by proteolytic enzymes, growth in tissue culture and cloning of appropriate cell aggregates as visualized by light microscopy; these aggregates will form nucleus for experimental studies of cellular organization.

(4) The effect of laser beams on retinal tissues will be done using appropriate thin-sectioning as well as electron-histochemical techniques.

(5) Electron autoradiographic studies will be done using appropriate precursor molecules, e.g. (^{3}H)-valine and (^{14}C)-choline to study the effect of herpes simplex infections on the metabolism and transport of lipid and protein molecules to membranes (and the nucleus) to allow the assembly of the viral envelope.

(6) Freeze etching studies will be done using a Denton apparatus and the specimens examined directly in the electron microscope; emphasis will be directed towards the visualization of cell-surface mediated phenomena, such as fusion and the structural rearrangements of lipid and protein molecules which make up membranes.

The article is also intended to be used by medical students, graduate students, postdoctoral fellows, and molecular biologists in carrying out various studies and/or thesis work in microbiology, pathology, anatomy, and molecular biology and for training in electron microscopy techniques. Application received by Commissioner of Customs: May 15, 1972. Advice submitted by Department of Health, Education, and Welfare on: November 24, 1972.

Comments: No comments have been received in regard to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States. Reasons: Each foreign article has a specified resolving capability of 3 Angstroms. The most closely comparable domestic instrument is the Model EMU-4C electron microscope which is manufactured by the Forgflo Corp. (Forgflo). The Model EMU-4C has a specified resolving capability of 5 Angstroms. (Resolving capability bears an inverse relationship to its numerical rating in Angstrom units, i.e., the lower the rating, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare in the respectively cited memoranda, that the additional resolving capability of the foreign articles is pertinent to the purposes for which each of the foreign articles to which the foregoing applications relate is intended to be used. We, therefore, find that the Forgflo Model EMU-4C is not of equivalent scientific value to any of the articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.72-21217 Filed 12-8-72;8:49 am]

ILLINOIS INSTITUTE OF TECHNOLOGY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 73-00118-65-86300. Applicant: Illinois Institute of Technology, 3300 South Federal, Chicago, IL 60616. Article: Viscoelastometer, Model DDV II B.Rheovibron. Manufacturer: Toyo Measuring Instruments Co., Ltd., Japan. Intended use of article: The article is intended to be used for measurement of dynamic modulus and loss modulus for fibers, plastic, elastomers, and composites over a range of frequencies and temperatures, thus allowing the determination of activation energies, since the transition temperature can be characterized as a function of frequency.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: This application is a resubmission of docket

No. 72-00140-65-86300 which was denied without prejudice to resubmission on June 30, 1972, for informational deficiencies. The foreign article provides a frequency range of 0.01 to 110 Hertz. The most closely comparable domestic instrument, the rheometrics mechanical spectrometer, manufactured by Rheometric, Inc., provides an upper frequency limit of 20 Hertz. We are advised by the National Bureau of Standards (NBS) in its memorandum dated November 1, 1972, that the wider frequency capability in the foreign article is pertinent to the applicant's intended study of activation energies. NBS also advises that it knows of no domestically manufactured instrument which is scientifically equivalent to the article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.72-21174 Filed 12-8-72;8:50 am]

NATIONAL ACCELERATOR LABORATORY

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. 72-00484-79-16095. Applicant: National Accelerator Laboratory, Universities Research Association, Inc., 2100 Pennsylvania Avenue NW., Room 828, Washington, DC 20006. Article: Cerenkov counters. Manufacturers: European Organization for Nuclear Research, Switzerland. Intended use of article: The article is intended to be used in studies of the properties of light emitted by Cerenkov radiation when the particles pass through the helium gas within the counter. These particle identification signals will be used to trigger other experimental detectors.

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 chromatically corrected differential Cerenkov counter. We are advised by the National Bureau of Standards (NBS) in its memorandum dated November 6, 1972, that this capability is pertinent to the applicant's use of the article for high resolution determination of the flux of pions and kaons in a secondary beam of an accelerator. NBS further advises that it knows of no domestic manufacturers of chromatically corrected differential Cerenkov counters nor does it know of any other method for the intended high resolution flux determination.

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.72-21175 Filed 12-8-72;8:50 am]

NORTHEASTERN ILLINOIS 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.: 73-00053-33-46040. Applicant: Northeastern Illinois University, Bryn Mawr and St. Louis Avenues, Chicago, Ill. 60625. Article: Electron microscope, Model JEM T8. Manufacturer: JEOL, Ltd., Japan. Intended use of article: The article is intended to be used in the study of lysosomes in protozoa and oocyte differentiation in Drosophila. Serial sections will be used to trace the origin of lysosomes in protozoa and to reconstruct stages in early oocyte development. The article will also be used in a laboratory electron microscopy course for advanced students covering the theory, operation, and application of electron microscopy to biological research. In addition, the article will be used by undergraduate students in the protozoology, cytology, and plant anatomy courses. 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 applicant requires an electron microscope which is suitable for instruction in the basic principles of electron microscopy. The foreign article is a relatively simple, medium resolution electron microscope designed for confident use by beginning students with a minimum of detailed programing. The most closely comparable domestic instrument is the Model EMU-4C electron microscope manufactured by the Forgflo Corp. The Model EMU-4C electron microscope is a relatively complex instrument designed for research, which requires a skilled electron microscopist for its operation. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated November 10, 1972, that the relative simplicity of design and ease of operation of the foreign article is pertinent to the applicant's educational purposes. We, therefore, find that the Model EMU-4C electron microscope 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.72-21176 Filed 12-8-72;8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-454; NADA No. 10-877V]

BEECHAM-MASSENGILL PHARMACEUTICALS

Daribiotic Injectable; Notice of Withdrawal of Approval of New Animal Drug Application

In the FEDERAL REGISTER of October 26, 1972 (37 F.R. 22891), the Commissioner of Food and Drugs published a notice proposing to withdraw approval of new animal drug application (NADA) No. 10-877V for Daribiotic Injectable; marketed by Beecham-Massengill Pharmaceuticals, Division of Beecham, Inc., Bristol, TN 37620.

Beecham-Massengill Pharmaceuticals advised the Commissioner that they elected not to avail themselves of the opportunity for a hearing.

Therefore, based on the grounds set forth in said notice and the firm's response, the Commissioner concludes that approval of said NADA should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120), approval of NADA No. 10-877V, including all amendments and supplements thereto, is hereby withdrawn effective on the

date of publication of this document (12–9–72).

Dated: December 4, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72–21192 Filed 12–8–72;8:45 am]

Food and Drug Administration

[FAP 3B2844]

GULF OIL CORP.

Notice of Filing of Petition for Food Additive

Correction

In F.R. Doc. 72–19956, appearing on page 24775, in the issue of Tuesday, November 21, 1972, the first line of the first paragraph should read "Pursuant to provisions of the Federal".

— —

[DESI 12339]

CERTAIN COMBINATION DRUGS FOR INHALATION

Drugs for Human Use; Drug Efficacy Study Implementation Follow-Up Notice

In an announcement (DESI 12339) published in the FEDERAL REGISTER of November 3, 1970 (35 F.R. 16951), the Commissioner of Food and Drugs announced his conclusions pursuant to the evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following products:

1. Bronkometer Aerosol containing isoetharine methanesulfonate, phenylephrine hydrochloride, and thenyldiamine hydrochloride; and

2. Bronkosol Solution (formerly named Bronkospray) containing isoetharine hydrochloride, phenylephrine hydrochloride, and thenyldiamine hydrochloride; Breon Laboratories, Inc., Subsidiary of Sterling Drug, Inc., 90 Park Avenue, New York, NY 10016 (NDA 12–339).

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application reviewed and are subject to this notice. See 21 CFR 130.40 (37 F.R. 23185, October 31, 1972). Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD–300), 5600 Fishers Lane, Rockville, MD 20852.

The announcement stated that there is a lack of substantial evidence that these drugs are effective as fixed combinations for their labeled claims relating to bronchopulmonary disorders. Data providing substantial evidence of effectiveness have not been received pursuant to the announcement.

Subsequent to the notice of November 3, 1970, Breon Laboratories supplemented its new-drug application to revise the formulation and labeling of these products. The revised formulation eliminated the ingredient thenyldiamine hydrochloride. To reflect this change, these products are to be called Bronkometer-2 and Bronkosol-2. The revised formulations are as follows:

1. Bronkometer-2 containing isoetharine methanesulfonate and phenylephrine hydrochloride; and

2. Bronkosol-2 containing isoetharine hydrochloride and phenylephrine hydrochloride; Breon Laboratories, Inc., 90 Park Avenue, New York, NY 10016 (NDA 12–339).

The Commissioner finds it appropriate to announce his conclusions concerning these reformulated products as follows:

The Food and Drug Administration regards isoetharine methanesulfonate with phenylephrine hydrochloride and isoetharine hydrochloride with phenylephrine hydrochloride as less than effective (probably effective) for the acute relief of bronchial asthma and other conditions in which bronchospasm is a complicating factor, such as chronic bronchitis or emphysema.

Any data submitted in response to this notice to support indications for which a drug is classified as other than effective must be previously unsubmitted and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12 (a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

Communications forwarded in response to this notice should be identified with the reference number DESI 12339, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD–100), Bureau of Drugs.

Original new drug applications: Office of Scientific Evaluation (BD–100), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD–60), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended, 21 U.S.C. 352, 355), and the Administrative Procedure Act (5 U.S.C. 554), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: November 30, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72–21310 Filed 12–8–72;8:48 am]

[DESI 7337]

COMBINATION CONTAINING OXYCODONE HYDROCHLORIDE, OXYCODONE TEREPHTHALATE, ASPIRIN, CAFFEINE, AND PHENACETIN FOR ORAL USE

Drugs for Human Use; Drug Efficacy Study Implementation Classification Amended

The Food and Drug Administration published a notice in the FEDERAL REGISTER of April 20, 1972 (37 F.R. 7827), regarding the efficacy of Percodan tablets containing oxycodone hyrochloride, oxycodone terephthalate, homatropine terephthalate, aspirin, phenacetin, and caffeine; Endo Laboratories, Inc., 1000 Stewart Ave., Garden City, Long Island, NY 11530 (NDA 7–337).

Other drugs were also included in the notice of April 20, 1972. With respect to those drugs, the conclusions and requirements described in that notice are unchanged and they will be the subject of a future follow-up notice.

The notice stated that Percodan tablets were regarded as possibly effective for moderate to moderately severe pain, and lacking substantial evidence of effectiveness as a fixed combination for antipyresis. The evaluation of possibly effective was based upon the lack of justification for the inclusion of homatropine terephthalate in the formulation and certain deficiencies in the labeling.

Subsequent to the notice of April 20, 1972, Endo Laboratories submitted a supplement to NDA 7–337 proposing revised labeling and reformulation of Percodan tablets and Percodan-Demi tablets (not submitted to the Academy for review and not included in the April 20, 1972 notice). The revised formulation eliminated homatropine terephthalate. The supplement was approved July 11, 1972.

Since the reformulation and relabeling, resulting in approval of the preparations, were a direct result of the Drug Efficacy Study Implementation, the Commissioner of Food and Drugs finds it appropriate to set forth below, his evaluation and requirements concerning oral tablets containing oxycodone hydrochloride, oxycodone terephthalate, aspirin, phenacetin, and caffeine.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new-drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. A new-drug application is required from any person marketing such drug without approval.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy's report concerning Percodan (prior to reformulation to delete homatropine terephthalate), as well as other available evidence, and concludes that combination drugs containing oxycodone hydrochloride, oxycodone terephthalate, aspirin, caffeine, and phenacetin are effective for the relief of moderate to moderately sever pain.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* Oxycodone hydrochloride, oxycodone terephthalate, aspirin, caffeine and phenacetin combination preparations are in tablet form suitable for oral administration.

2. *Labeling conditions.* a. The labels bear the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The "Indications" are as follows:

INDICATIONS

For relief of moderate to moderately severe pain.

3. *Marketing status.* Marketing of such drugs may be continued under the conditions described in the notice entitled Conditions for Marketing New Drugs Evaluated in Drug Efficacy Study, published in the FEDERAL REGISTER July 14, 1970 (35 F.R. 11273), as follows:

a. For holders of "deemed approved" new drug applications (i.e., an application which became effective on the basis of safety prior to October 10, 1962), the submission of a supplement for revised labeling and an abbreviated supplement for updating information, as described in paragraphs (a)(1) (i) and (iii) of the notice of July 14, 1970.

b. For any person who does not hold an approved or effective new drug application, the submission of an abbreviated new drug application as described in paragraph (a)(3)(i) of that notice.

c. For any distributor of the drug, the use of labeling in accord with this announcement for any such drug shipped within the jurisdiction of the Act as described in paragraph (b) of that notice.

A copy of the Academy's report has been furnished to the firm referred to above. Communications forwarded in response to this announcement should be identified with the reference number DESI 7337, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD-100), Bureau of Drugs.

Original abbreviated new drug applications (identify as such): Drug Efficacy Study Implementation Project Office (BD-60), Bureau of Drugs.

Requests for the Academy's report: Drug Efficacy Study Information Control (BD-66), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD-60), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: December 6, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-21308 Filed 12-8-72;8:48 am]

[DESI 13334; Docket No. FDC-D-569; NDA 13-334]

MERCK SHARP AND DOHME

Dexamethasone Sodium Phosphate and Lidocaine Hydrochloride Injection, Dilute; Notice of Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Application

In an announcement (DESI 13334) published in the FEDERAL REGISTER of September 23, 1970 (35 F.R. 14800), the Commissioner of Food and Drugs announced his conclusions pursuant to the evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group on the following drug:

That part of NDA 13-334 pertaining to Decadron Phosphate with Xylocaine Injection, Dilute containing dexamethasone sodium phosphate 1 mg./ml. and lidocaine hydrochloride 5 mg./ml.; Merck Sharp and Dohme, Division of Merck and Co. Inc., West Point, Pa. 19486.

The announcement stated there is a lack of substantial evidence that this fixed combination drug will have the effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling, and that the Commissioner of Food and Drugs intended to initiate proceedings to withdraw approval of the new drug application for this drug.

Interested persons were invited to submit pertinent data bearing on the proposal within 30 days following publication of the announcement. No data providing substantial evidence of effectiveness have been received.

Therefore, notice is given to the holder(s) of the new drug application(s) and to any other interested person that the Commissioner proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of pertinent parts of the listed new drug application(s) and all amendments and supplements thereto on the grounds that new information before him with respect to the drug(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug(s) will have all the effects purported or represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application(s) reviewed. See 21 CFR 130.40 (37 F.R. 23185, October 31, 1972). Any manufacturer or distributor of such an identical, related, or similar product is an interested person who may in response to this notice submit data and information, request that the new drug application(s) not be withdrawn, request a hearing, and participate as a party in any hearing. Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, MD 20852.

In accordance with the provisions of section 505 of the Act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Part 130), the Commissioner hereby gives the applicant(s) and any other interested person an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn.

Within 30 days after publication hereof in the FEDERAL REGISTER the applicant(s) and any other interested person is required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, a written appearance electing whether or not to avail himself of the opportunity for a hearing. Failure of an applicant or any other interested person to file a written appearance of election within said 30 days will constitute an election by him not to avail himself of the opportunity for a hearing.

If no person elects to avail himself of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing approval of pertinent parts of the application(s).

If an applicant or any other interested person elects to avail himself of the opportunity for a hearing, he must file, within 30 days after publication of this notice in the FEDERAL REGISTER, a written appearance requesting the hearing, giving the reasons why approval of the new drug application(s) should not be withdrawn, together with a well-organized and full-factual analysis of the clinical and other investigational data he is prepared to prove in support of his opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing (21 CFR 130.14(b)).

If review of the data submitted by an applicant or any other interested person warrants the conclusion that there exists substantial evidence demonstrating the effectiveness of the product(s) for the labeling claims involved, the Commissioner will rescind this notice of opportunity for hearing.

If review of the data in the application(s) and data submitted by the applicant(s) or any other interested person in a request for a hearing, together with the reasoning and factual analysis in a request for a hearing, warrants the

conclusion that no genuine and substantial issue of fact precludes the withdrawal of approval of the application(s), the Commissioner will enter an order of withdrawal making findings and conclusions on such data.

If, upon the request of the new drug applicant(s) or any other interested person, a hearing is justified, the issues will be defined, a hearing examiner will be named, and he shall issue, as soon as practicable after the expiration of such 30 days, a written notice of the time and place at which the hearing will commence. All persons interested in identical, related, or similar products covered by the new drug application(s) will be afforded an opportunity to appear at the hearing, file briefs, present evidence, cross-examine witnesses, submit suggested findings of fact, and otherwise participate as a party. The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in this appearance.

Requests for a hearing and/or elections not to request a hearing may be seen in the Office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–53, as amended; 21 U.S.C. 355), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: November 30, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-21309 Filed 12-8-72;8:48 am]

DEPARTMENT OF TRANSPORTATION

Hazardous Materials Regulations Board

SPECIAL PERMITS

Notice of Issuance

Pursuant to Docket No. HM-1, rule making procedures of the Hazardous Materials Regulations Board, issued May 22, 1968 (33 F.R. 8277) 49 CFR 170, following is a list of new DOT Special Permits upon which Board action was completed during November 1972:

Special permit No.	Issued to—Subject	Mode or modes of transportation
6682	Foote Mineral Company, Exton, Pa., to ship lithium metal foil on spools in hermetically sealed steel cans inside Specification 21C fiber drums.	Highway, rail.
6683	Shippers registered with this Board to ship caustic soda, liquid in DOT Specification 17E steel drums which have been reconditioned as prescribed in §173.28(m).	Highway, rail.
6684	Shippers registered with this Board to ship whiskey in non-DOT specification stainless steel portable tanks.	Highway, cargo vessel.
6685	U.S. Department of Defense, Washington, D.C., to ship a Class A explosive (cyclotetramethylene tetranitramine (HMX), wet) in DOT Specification 21C fiber drums in temperature controlled motor vehicles.	Highway.
6686	Shippers registered with this Board to ship methyl acetylene-propadiene, stabilized, in DOT Specification 39 cylinders having brazed seams.	Highway, rail.
6687	PPG Industries, Inc., Pittsburgh Pa., to ship an aerosol formulation in 20-ounce (fluid) non-refillable metal inside containers.	Passenger-carrying Aircraft.
6688	Shippers registered with this Board to ship compressed air in non-DOT specification seamless cylinders made of aluminum alloy designated 6351-T6.	Highway, rail.
6689	Shippers registered with this Board to ship a gas generator, and a argon-helium mixture in an inflator assembly patterned after DOT Specification 39.	Highway.
6693	Trojan-U.S. Powder, Allentown, Pa., to ship surplus trinitrotoluene (TNT) in non-DOT specification metal boxes.	Highway.

Following is a list of requests for special permits which were denied during November 1972:

DENIED—SUBJECT

1. Request by Exotic Metal Fabricators Co., Seattle, Wash. for a special permit to ship compressed air in non-DOT specification welded, high pressure, stainless steel cylinders.

G. ROUSSEAU,
Alternate Secretary.

[FR Doc.72-21233 Filed 12-8-72;8:45 am]

ATOMIC ENERGY COMMISSION

[License No. 05-13943-01E]

STATITROL CORP.

Notice of Issuance of Amendment of Byproduct Material License

Please take notice that the Atomic Energy Commission has, pursuant to § 32.26 of 10 CFR Part 32, issued Amendment No. 5 to License No. 05-13943-01E to Statitrol Corp., 140 South Union Boulevard, Lakewood, CO 80228, which authorizes the distribution of Model 720 ionization fire detector to persons exempt from the requirements for a license pursuant to § 30.20 of 10 CFR Part 30.

1. The devices are designed to detect incipient fires by responding to the products of combustion produced by thermal decomposition of building materials or contents prior to the appearance of visible smoke, flame, or appreciable heat. The sensitive element of the detector is an ionization chamber in which air flowing into the chamber is made conductive by alpha particles emitted by americium 241.

2. The byproduct material incorporated in the detector is americium in the oxide form contained in foils manufactured by Nuclear Radiation Developments (Model A-001) or by the Radiochemical Centre (Model AMM). The nominal activity contained in the unit is 1.0 microcurie but the maximum activity is 1.3 microcuries.

3. Each exempt unit will have a label identifying the manufacturer (Statitrol Corp.) and the byproduct material (americium 241) contained in the unit and recommending that the unit be returned to the Statitrol Corp. for repair or disposal.

A copy of the amended license and a safety evaluation containing additional information, prepared by the Directorate of Licensing, are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

For the Atomic Energy Commission.

Dated at Bethesda, Md., this 2d day of December 1972.

S. H. SMILEY,
Deputy Director, for Fuels and Materials, Directorate of Licensing.

[FR Doc.72-21234 Filed 12-8-72;8:45 am]

CIVIL AERONAUTICS BOARD

CHASE MANHATTAN BANK

Notice of Meeting

Notice is hereby given that a meeting with the above bank will be held on January 12, 1973, at 10 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., to make a presentation on the future availability of petroleum as it relates to aviation fuel.

Dated at Washington, D.C., December 5, 1972.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc. 72-21249 Filed 12-8-72;8:45 am]

[Docket No. 24897]

MILLARDAIR, LTD.

Postponement of Prehearing Conference and Hearing

Notice has been received from Millardair, Ltd., that it is unable to submit a proposed amendment to its application

for renewal of the foreign air carrier permit (Canada-United States) issued December 4, 1967, pursuant to Order E-26077, in time to go forward with the conference and hearing thereon as scheduled on December 13, 1972.

Accordingly, the conference and hearing have been postponed, and rescheduled for December 18, 1972, at 10 a.m. (local time) in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

Dated at Washington, D.C., December 5, 1972.

[SEAL] FRANK M. WHITING,
Administrative Law Judge.

[FR Doc.72-21248 Filed 12-8-72;8:45 am]

[Docket No. 24555]

MINIMUM CHARGES PER AIR FREIGHT SHIPMENT

Change in Hearing Date

Notice is hereby given that the hearing in the above entitled proceeding, now assigned for December 19, 1972 (37 F.R. 25066, November 25, 1972), is hereby reassigned to be held on December 18, 1972, at 10 a.m. (eastern standard time) in Room 911, Universal Building, 1825 Connecticut Avenue NW, Washington, DC.

Dated at Washington, D.C., December 5, 1972.

[SEAL] THOMAS P. SHEEHAN,
Administrative Law Judge.

[FR Doc.72-21247 Filed 12-8-72;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

PROPOSED MODIFICATION TO ALLOWABLE MAINTENANCE ON LIGHT DUTY VEHICLES

Notice of Public Meeting

Notice is hereby given that the Environmental Protection Agency mobile source pollution control program will conduct a meeting to provide interested parties an opportunity to seek clarification of any aspect of the regulations to modify the allowable maintenance on light duty vehicles which were proposed on November 8, 1972. The meetings is scheduled for 2 p.m., December 12, 1972, at the EPA Emission Control Laboratory in Ann Arbor, Mich. and is intended to allow interested parties to seek such clarification prior to the time at which formal comments on the proposed regulations are due.

The format of the meeting will be as follows:

(1) All questions received prior to the meeting will be responded to before the meeting will be opened to other questions from the floor;

(2) EPA will not debate the relative merits of the proposed regulations, and will limit its comments to amplification of intent, and to providing background information where possible; and

(3) Comments that may be made at the meeting by interested parties will not be considered by the Administrator as representing formal comments on the proposed regulations. All comments intended to be formally considered for that purpose must be made, in writing, as specified in the preamble to the proposed regulations.

Questions to which interested parties desire a response at the meeting should be submitted by no later than close of business Monday, December 11, 1972. Questions should be addressed to the attention of the Director, Division of Certification and Surveillance, EPA, 2565 Plymouth Road, Ann Arbor, MI 48105.

Dated: December 5, 1972.

WILLIAM D. RUCKELSHAUS,
Administrator.

[FR Doc.72-21214 Filed 12-8-72;8:46 am]

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

EDUCATION OF DISADVANTAGED CHILDREN

Notice of Public Meeting

Notice is hereby given, pursuant to Executive Order 11671, that the next meeting of the National Advisory Council on the Education of Disadvantaged Children will be held on December 13, 1972, at 1:30 p.m.–4:30 p.m. at the Sheraton Silver Spring Motor Hotel in the Main Maryland Ballroom, and on December 14, 1972, at 1 p.m.–4:30 p.m., local time in Room 261, 1717 H Street NW., Washington, DC.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Education Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

The agenda of the meeting on December 13, 1972, is as follows:

(1) Evaluation.
(2) Inservice education.
(3) Migrant record transfer system.
(4) Location, identification, documentation, and recruitment of migratory children.

The agenda of the meeting on December 14, 1972, is to review subcommittee reports.

Because of limited space for the meeting of December 14, 1972, all persons wishing to attend should call for reservations at 632-5221 by December 12.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on the Education of Disadvantaged Children, located in Room 202, 1717 H Street NW., Washington, DC 20006.

Signed at Washington, D.C., on December 1, 1972.

ROBERTA LOVENHEIM,
Executive Director.

[FR Doc.72-21299 Filed 12-8-72;8:46 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report 625]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

DECEMBER 4, 1972.

Pursuant to §§ 1.227(b) (3) and 21.30(b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cut-off dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

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

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[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations and other requirements.

[2] The above alternative cut-off rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio and Local Television Transmission Services (Part 21 of the rules).

APPENDIX

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

DECEMBER 4, 1972.

3800–C2–AL–73—Diane S. Harragan, consent to assignment of license from Diane S. Harragan, as Successor Executrix of the Estate of Lawrence H. Smith, assignor, to Beep Communication Systems, Inc., Assignee. Station: KEA855 Manorville, N.Y.

3801–C2–P–(4)–73—General Communications Service, Inc. (KOA265), replace transmitter operating on 454.350 MHz and add 454.050, 454.150, and 454.225 MHz at location No. 3: Atop South Mountain, 7.5 miles south of Phoenix, Ariz.

3802–C2–AP–73—George M. Stites, consent to assignment of license from George M. Stites, assignor, to Tel-Air Communications, Inc., assignee. Station: KSW214 Sparta, N.J.

3803–C2–P–73—RCC of Virginia, Inc. (KTS243), replace transmitter operating on 152.03 MHz at top of Mill Mountain, Roanoke, Va., also change the antenna system.

3812–C2–P–(4)–73—Airsignal International, Inc. (KAA285), relocate facilities operating on 152.03, 152.06, 152.15, and 152.21 MHz at location No. 1 to: 1821 University Avenue, St. Paul, MN.

3813–C2–P–(2)–73—Airsignal International, Inc. (KAH661), for additional facilities to operate on 35.22 MHz at location No. 2: 1821 University Avenue, St. Paul, MN and location No. 3: Shelard Plaza South, 400 South Country Road 18, Minneapolis, MN.

3814–C2–P–73—Airsignal of California, Inc. (New), for a new 1-way station to operate on 158.70 MHz at 2904 Fine Avenue, Modesto, CA.

3818–C2–P–(2)–73—Southwestern Bell Telephone Co. (KKC263), for an additional channel to operate on 152.54 MHz base at 10th and West Lynn Streets, Austin, TX and 157.80 MHz auxiliary test at Ninth and Colorado Streets, Austin, TX.

3819–C2–P–73—Oden Communications Co. (New), for a new 2-way station to operate on 152.15 MHz at U.S. Highway 20, 0.5 mile southeast of city limits, O'Neill, Nebr.

3820–C2–P–(2)–73—Answerite Professional Telephone Service (New), for a new 2-way station to operate on 454.050 and 454.200 MHz at approximately 300 feet east of the Intersection of Routes 438 and 535, Winter Garden, Fla.

3853–C3–P–73—Mobilphone-Paging Radio Corp. (KCA725), replace transmitter operating on 152.09 MHz at Falmouth Street, near Ashby Street, Johnston, R.I.

3854–C2–P–73—Same (New), for a new 2-way station to operate on 152.15 MHz at Copicut Hill, Fall River, Mass.

3881–C2–P–73—Radiotelephone Co. of Indiana, Inc. (KSA811), for additional facilities to operate on 152.21 MHz at 4639 East Edgewood Avenue, Indianapolis, IN.

3904–C2–MP–73—Northwestern Bell Telephone Co. (KSV902), replace test transmitter operating on 157.86 MHz at 403 Sycamore Street, Waterloo, IA.

3905–C2–P–73—The Pacific Telephone Telegraph Co. (KMA400), replace transmitter operating on 35.46 MHz at location No. 1, 2.6 miles north-northeast of Burbank, Los Angeles, Calif.

POINT-TO-POINT MICROWAVE RADIO SERVICE

3804–C1–P–73—Rock Hill Telephone Co., Inc. (KJA68), 1200 feet west of Lesslie, S.C. Latitude 34°53'29'' N., longitude 80°57'35'' W. C.P. to add frequency 5974.8H MHz toward Rock Hill, S.C.

3805–C1–P–73—Same (KJA69), 500 feet north of Pleasant Hill, S.C. Latitude 34°37'20'' N., longitude 80°41'13'' W. C.P. to add 6226.9H MHz toward Lesslie, S.C.; frequency 6226.9V MHz toward Lancaster, S.C.

3806–C1–P–73—Indiana Bell Telephone Co. (KSJ45), 240 North Meridian Street, Indianapolis, IN. Latitude 39°46'16'' N., longitude 86°09'29'' W. C.P. to change frequencies from 6241.7, 6360.3 MHz to 6226.9V, 6345.5V MHz toward Morgantown, Ind.; to change polarization from H to V on frequencies 6197.2V, 6256.5V MHz toward Montclair, Ind.

3807–C1–P–73—Same (KSN75), 3.5 miles northwest of Danville, Ind. Latitude 39°47'56'' N., longitude 86°34'06'' W. C.P. to change polarization from H to V on frequencies 5945.2V, 6004.5V MHz toward Indianapolis, Ind.

3808–C1–P–73—Same (KTG60), 2.3 miles north-northeast of Morgantown, Ind. Latitude 39°24'15'' N., longitude 86°15'03'' W. C.P. to change frequencies from 5989.6, 6108.3 MHz to 5974.8V, 6093.5V MHz toward Indianapolis, Ind.

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

3809–C1–P–73—Central Telephone Co. (New), 3 miles south of Boulder City, Nev. Latitude 35°55'40'' N., longitude 114°49'59'' W. C.P. for a new station on frequencies 10,895V, 11,135V MHz toward Red Mountain, Nev.

3810–C1–P–73—Same (New), 2 miles northwest of Boulder City, Red Mountain, Nev. Latitude 35°59'44'' N., longitude 114°51'47'' W. C.P. for a new station on frequency 6286.2H MHz toward Las Vegas, Nev.; frequencies 11,425V, 11,665V MHz toward Mead substation, Nev.

3811–C1–P–73—Same (KPQ53), 125 Las Vegas Boulevard South, Las Vegas, NV. Latitude 36°10'07'' N., longitude 115°08'25'' W. C.P. to add frequency 6034.2H MHz toward Red Mountain, Nev.

3815–C1–P–73—South Central Bell Telephone Co. (KJG50), approximately 2 miles southwest of Brownsville, Tenn. Latitude 35°34'49'' N., longitude 89°17'32'' W. C.P. to add frequency 4090H MHz toward Arlington, Tex.

3816–C1–P–73—Same (KJG49), approximately 3 miles south of Arlington, Tenn. Latitude 35°15'14'' N., longitude 89°39'36'' W. C.P. to add frequency 4050H MHz toward Memphis, Tenn.

3824–C1–P–73—Western Tele-Communications, Inc. (KSQ33), Blackhorse, 6 miles north of Great Falls, Mont. (latitude 47°35'42'' N., longitude 111°20'25'' W.): C.P. to relocate receiving station at Great Falls (KRTV–TV), Montana, to latitude 47°32'09'' N., longitude 111°17'22'' W., existing frequency 6330.7V MHz on azimuth 147°09''.

3883–C1–P–73—General Telephone Co. of California (New), 2020 Santa Monica Boulevard, Santa Monica, CA. Latitude 34°01'43'' N., longitude 118°28'43'' W. C.P. for a new station on frequency 10,835V MHz toward Topanga (Saddle Peak), Calif.

3884–C1–P–73—Same (New), 3.1 miles west of Topanga, Calif. Latitude 34°04'18'' N., longitude 118°39'41'' W. C.P. for a new station on frequency 11,365H MHz toward Santa Monica, Calif.; frequencies 11,525H, 11,685H MHz toward Backbone Peak, Calif.; frequency 6197.2H MHz toward Long Beach, Calif.

3885–C1–P–73—Same (New), 5077 East Lew Davis Street, Long Beach, CA. Latitude 33°49'48'' N., longitude 118°08'02'' W. C.P. for a new station on frequency 5945.2V MHz toward Topanga (Saddle Peak), Calif.

3886–C1–P–73—GTE Satellite Corp. (New), 2.5 miles south-southwest from Brooksville, Fla. Latitude 28°31'12'' N., longitude 82°23'56'' W. C.P. for a new station on frequencies 6212.1H, 6271.4H, and 6330.7H MHz toward Greenfield, Fla.; frequencies 6212.1V, 6271.4V, and 6330.7V MHz toward Lecanto, Fla.; frequency 2167.2H MHz toward Greenfield, Fla.; frequency 2176.8H MHz toward Lecanto, Fla.

3887–C1–P–73—Same (New), 2 miles southwest from Greenfield on bearing 233° F.T.N., Greenfield, Fla. Latitude 28°20'11'' N., longitude 82°31'51'' W. C.P. for a new station on frequencies 5960.0V, 6019.3V, 6078.6V, and 2126.8H MHz toward Odessa, Fla.; frequencies 5960.0H, 6019.3H, 6078.3H, and 2117.2H MHz toward Brooksville, Fla.

3888–C1–P–73—General Telephone Co. of Florida (KYJ43), 2 blocks west of intersection of Gunn Highway and Florida Highway 54, Odessa, FL. Latitude 28°11'35'' N., longitude 82°35'43'' W. C.P. to add frequencies 6212.1V, 6271.4V, 6330.7V, and 2176.8H MHz toward Greenfield, Fla.

3889–C1–P–73—CPI Microwave, Inc. (New), 2.9 miles east-southeast of Buda, Tex. Latitude 30°03'32'' N., longitude 97°48'33'' W. C.P. for a new station on frequency 6019.3V MHz toward Geronimo, Tex.; frequency 11,445.0V MHz toward KHFI–TV, Tex. (Informative: The applications referenced above were filed to maintain on file those facilities deleted from applications file nos. 5892–C1–P–70; 5894–C1–P–70 through 5896–C1–P–70.)

3893–C1–ML–73—Mid-Kansas, Inc. (KBC61), 2 miles northeast of Abilene, Kans. Latitude 38°57'32'' N., longitude 97°12'18'' W. Modification of license to change the designation of station at McPherson, Kans., from Relay to Drop/Relay—for purpose of delivering the signal of KBMA–TV, Kansas City, Mo., to McPherson CATV, Inc., at McPherson (KZA42), Kans.

3894–C1–ML–73—Same (KZA42), 2 miles east of McPherson, Kans. Latitude 38°22'32'' N., longitude 97°35'56'' W. Modification of license to change the designation of station at Lyons, Kans., from Relay to Drop/Relay—for purpose of delivering the signal of KBMA–TV, Kansas City, Mo., to Lyons CATV, Inc., at Lyons, (KZA43), Kans.

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

3900-C1-P-73—The Bell Telephone Company of Pennsylvania (WDE64), hilltop, 0.38 mile southwest of Concordia Church, West Hempfield Township, Pa. Latitude 40°02'49" N., longitude 76°27'16" W. C.P. to add frequency 6301.1V MHz toward Ramsey Hill, Pa.; frequency 11,345.0H MHz toward Lancaster, Pa. via Passive Reflector; correct azimuth of radio path to WDE65 from Passive repeater.

3901-C1-P-73—Same (WDE65), 126 North Duke Street, Lancaster, PA. Latitude 40°02'26" N., longitude 76°18'17" W. C.P. to add frequency 10,935H MHz toward Concordia Church, Pa. via Passive Reflector.

3902-C1-P-73—Same (KYJ36), 210 Pine Street, Harrisburg, PA. Latitude 40°15'44" N., longitude 76°53'07" W. C.P. to add frequency 11,465.0H MHz toward Ramsey Hill, Pa.

3903-C1-P-73—Same (KYS58), Ramsey Hill, 2.6 miles southwest of Lewisberry, Pa. Latitude 40°06'12" N., longitude 76°53'23" W. C.P. to add frequency 11,055H MHz toward Harrisburg, Pa.; frequency 6078.6V MHz toward Concordia Church, Pa.; correct length of radio path to KYJ36.

MULTIPOINT DISTRIBUTION SERVICE

3895-C5-P-73—Cox Cable Communications, Inc. (New), 5600 Avenue A, Lubbock, TX. Latitude 33°32'32" N., longitude 101°50'14" W. C.P. for a new station on frequencies 2150.25V (Aural) and 2154.75V (Visual). (Primary Service Area: Lubbock, Tex.)

3896-C5-73—Same (New), 1615 V Street, Bakersfield, CA. Latitude 35°22'21" N., longitude 119°00'13" W. C.P. for a new station on frequencies 2150.25V (Aural) and 2154.75V (Visual). (Primary Service Area: Bakersfield, Calif.)

3897-C5-73—Same (New), Santa Ynez Mountain, Santa Barbara, Calif. Latitude 34°29'16" N., longitude 119°43'00" W. C.P. for a new station on frequencies 2150.25V (Aural) and 2154.75V (Visual). (Primary Service Area: Santa Barbara, Calif.)

3898-C5-P-73—United Video, Inc. (New), corner of Capital and Main Streets, Little Rock, Ark. Latitude 34°44'41" N., longitude 92°16'21" W. C.P. for a new station on frequencies 2154.75V (Aural) and 2150.75V (Visual). (Primary Service Area: Little Rock, Ark.)

3899-C5-P-73—Same (New), 400 Travis Street, Shreveport, LA. Latitude 32°30'51" N., longitude 93°44'59" W. C.P. for a new station on frequencies 2154.75V (Aural) and 2154.75V (Visual). (Primary Service Area: Shreveport, La.)

[FR Doc.72-21168 Filed 12-8-72;8:45 am]

[Docket No. 19645; FCC 72-1066]

EMISSIONS CLASSIFICATION SYSTEM

Notice of Inquiry Regarding Adoption

In the matter of a notice of the pending adoption of the system of classification of emissions proposed in CCIR Recommendation 432-1, Docket No. 19645.

1. The Commission has the above captioned matter under consideration and is requesting comments on certain matters contained herein.

2. The CCIR at its XIth Plenary Assembly (OSLO, 1966) adopted Recommendation 432-1 entitled, "Classification and Designations of Emissions," and unanimously requested administrations to take steps preparatory to its use. Subsequently, the XII Plenary Assembly of the CCIR (New Delhi, 1970) unanimously recommended that administrations take steps to use the new method of emission designation and thereby give it international recognition.

3. A trial of the proposed new CCIR method of classification of emissions was effectuated within the United States from 1968 through April of 1972, during which times approximately 10,000 notifications were transmitted to the International Frequency Registration Board using emission designators in the format of CCIR Recommendation 432-1.

4. CCIR Recommendation 432-1 has many favorable provisions designed to facilitate the task of frequency management by administrations and the IFRB. However, U.S. participation in the international trial, mentioned in the prior paragraph, has disclosed that there are several limitations which make the method unsuitable for practical use within the United States. This, coupled with the recognition that the currently employed method of emission designation outlined in Article 2 of the international radio regulations is rapidly becoming obsolete, has prompted U.S. CCIR Study Group 1/B to prepare an alternate proposal to Recommendation 432-1. This alternate proposal, with its salient features compared to the present method in Article 2 RR, and to the method recommended in CCIR Recommendation 432-1 is contained in the attachment to this notice of inquiry.[1]

5. It is intended that the U.S. alternate proposal to CCIR Recommendation 432-1 be incorporated as part of the U.S. response to the IFRB circular-letter dated July 3, 1972, which requested the latest comments of all administrations on the recommended method. Response to the circular-letter has been requested prior to January 1, 1973.

6. Following correlation of all comments received by the IFRB and with general agreement on a best method for designation of emissions, the CCIR will recommend a system for international adoption at the next World Administrative Radio Conference of the International Telecommunication Union which is competent to treat the matter.

7. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on this matter on or before December 22, 1972.

8. In accordance with the provision of § 1.419 of the Commission's rules, an original and 14 copies of all statements, brief or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

Adopted: November 29, 1972.

Released: December 4, 1972.

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

[FR Doc.72-21161 Filed 12-8-72;8:46 am]

[1] Attachment filed as part of the original document.

FEDERAL MARITIME COMMISSION

COMPANIA SUD AMERICA DE VAPORES AND LYKES BROS. STEAMSHIP CO., INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street, NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Lloyd Strickland, Vice President, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, LA 70130.

Agreement No. 9942-1, between Compania Sud Americana De Vapores and Lykes Bros. Steamship Co., Inc., covers a petition by the parties to extend the termination date of their agreement (No. 9942) from December 31, 1972, to December 31, 1974.

The basic agreement between the parties covers a pooling, sailing and equal access to Government-controlled cargo arrangement in the southbound trade on all cargo, with certain exceptions, moving

from U.S. gulf coast ports to ports on the Chilean coast, as far south as and including the ports of Talcahuano and San Vicente.

Dated: December 6, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-21264 Filed 12-8-72;8:45 am]

FEDERAL POWER COMMISSION

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON CONSERVATION OF ENERGY

Order Rescinding Order

DECEMBER 4, 1972.

The "Order of the National Power Survey Technical Advisory Committee on Conservation of Energy" issued on November 22, 1972 (37 F.R. 25415), is hereby rescinded.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21206 Filed 12-8-72;8:47 am]

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON CONSERVATION OF ENERGY TASK FORCE ON TECHNICAL ASPECTS

Notice of Meeting and Agenda

Agenda for meeting, December 13, 1972, 9:30 a.m., GAO Building, Room 4008, 441 G Street NW., Washington, DC.

I. Introductory remarks.
II. Expansion and interpretation of Task Force Guidelines relating to:
A. Existing technology.
B. New technology.
III. Other business.
IV. Adjournment.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21314 Filed 12-8-72;8:48 am]

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON CONSERVATION OF ENERGY TASK FORCE ON ENVIRONMENTAL ASPECTS

Notice of Meeting and Agenda

Agenda for meeting, December 15, 1972, 9:30 a.m., GAO Building, Room 2043, 441 G Street NW., Washington, DC:

I. Introductory remarks.
II. Identification of issues, resources, and people in assessing:
A. Environmental impact of energy consumption through the year 2000 as presently projected.
B. Impact of existing and planned environmental standards on energy use.
C. Environmental implications of opportunities for energy conservation.
III. Other business.
IV. Adjournment.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21315 Filed 12-8-72;8:48 am]

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON CONSERVATION OF ENERGY TASK FORCE ON PRACTICES AND STANDARDS

Notice of Meeting and Agenda

Agenda for meeting, December 18, 1972, 9:30 a.m., GAO Building, Room 2043, 441 G Street NW., Washington, DC:

I. Introductory remarks.
II. Review of practices and standards in the following areas which may be possible sources of energy savings:
A. Generation.
B. Transmission and distribution.
C. Utilization-Industry.
D. Utilization-Buildings.
E. Pricing and rates.
III. Other business.
IV. Adjournment.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21316 Filed 12-8-72;8:48 am]

[Project No. 2628-Alabama]

ALABAMA POWER CO.

Notice of Availability of Draft Environmental Statement

DECEMBER 4, 1972.

Notice is hereby given that on December 5, 1972, as required by the Commission rules and regulations under Order 415, as amended, a staff draft environmental statement, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-190) was placed in the public files of the Federal Power Commission. This statement deals with an application for license filed by Alabama Power Co. for the proposed Crooked Creek Project, pursuant to the Federal Power Act.

This statement is available for public inspection in the Commission's Office of Public Information, Room 2523, General Accounting Office, 441 G Street NW., Washington, DC and its Atlanta Regional Office. Copies will be available from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

The project would be located in the Counties of Clay and Randolph in Alabama on the Tallapoosa River.

The project would consist of: (1) A concrete dam about 140-feet high and 956-feet long, including a gated-spillway section and a non-overflow section containing the headworks for the powerhouse; (2) an earth and rock fill dike section extending from each abutment of the concrete dam; (3) a 10,661-acre, 24-mile long reservoir having a normal operating range between elevations 793 feet and 785 feet (USC&GS datum); (4) a powerhouse integral with the dam, containing two generators each rated at 67,500 kw.; (5) recreational development; and (6) appurtenant facilities.

Any person desiring to present evidence regarding environmental matters in this proceeding must file with the Federal Power Commission a petition to intervene, and also file an explanation of their environmental position, specifying any difference with the environmental statement upon which the intervenor wishes to be heard. Written statements by persons not wishing to intervene may be filed for the Commission's consideration. The petitions to intervene or comments should be filed with the Commission on or before 45 days from December 5, 1972. The Commission will consider all responses to the statement.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21204 Filed 12-8-72;8:47 am]

BACA GAS GATHERING SYSTEM, INC.

Notice of Application

DECEMBER 1, 1972.

Take notice that on November 27, 1972, Baca Gas Gathering System, Inc. (Applicant), Hartford Building, Dallas, Tex. 75201, filed in Docket No. CP73-141 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Panhandle Eastern Pipe Line Co. (Panhandle) in Morton County, Kans., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to purchase natural gas in Baca County, Colo., from PetroDynamics, Inc., small producer certificate holder in Docket No. CS72-302, at 32.0 cents per Mcf at 14.65 p.s.i.a. and proposes to resell said gas to Panhandle at 37.60 cents per Mcf at 14.65 p.s.i.a. Estimated deliveries to Panhandle during each of the first three full years are 500,000 Mcf at 14.73 p.s.i.a. of gas.

Applicant states that the 32.0-cent rate to be paid for its gas is the amount needed to encourage development of a large area of marginal gas production in Baca County and that the production is marginal because of its subnormal pressure of 440 p.s.i.g. at a depth of 3,000 feet and its erratic occurrence in thin lime stringers of low permeability. Applicant further states that the 5.60-cent differential between its intended purchase price and proposed sale price is the same as that authorized by the Commission in its order of June 2, 1972, in Docket No. CP65-57, et al.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the

Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21198 Filed 12-8-72;8:46 am]

[Docket No. CP73-140]

COLORADO INTERSTATE GAS CO.

Notice of Application

DECEMBER 1, 1972.

Take notice that on November 24, 1972, Colorado Interstate Gas Co., a division of Colorado Interstate Corp. (Applicant), Post Office Box 1087, Colorado Springs, Colo. 80901, filed in Docket No. CP73-140 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the regulations thereunder for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing April 1, 1973, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system additional supplies of natural gas in areas generally coextensive with said system.

The application states that the total cost of all facilities will not exceed $4 million and that no single project will cost in excess of $1 million.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1972, file with the Federal Power Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21200 Filed 12-8-72;8:47 am]

[Docket No. CP73-132]

DISTRIGAS CORP.

Notice of Application

DECEMBER 1, 1972.

Take notice that on November 17, 1972, Distrigas Corp. (Applicant), 125 High Street, Boston, MA 02110, filed in Docket No. CP73-132 an application pursuant to section 3 of the Natural Gas Act requesting authorization to import by ship into the United States from Algeria approximately 45 trillion B.t.u. per year of liquefied natural gas (LNG) for 20 years, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to import into the United States at deep-water terminals located at Staten Island, N.Y., and at Everett, Mass., owned respectively by Applicant's affiliates, Distrigas of New York Corp. and Distrigas of Massachusetts Corp., 17 entire cargoes of a methane tanker with a geometric capacity of 750,000 barrels each year beginning April 1975, pursuant to an agreement dated May 30, 1972,[1] between Applicant and Alocean, Ltd., a Bermuda corporation. Applicant states that Sonatrach, the Algerian national oil company is the original owner of the LNG which will come from production in the Hassi R'Mel Field in Algeria and be liquefied at Sonatrach's Skikda liquefaction plant in Algeria for delivery to Alocean. Applicant expects that this LNG will be transported by the Benjamin Franklin, a 120,000 cubic meter tanker which is presently under construction in a French shipyard.

Pursuant to the May 30, 1972, agreement, Applicant will purchase the LNG from Alocean for a price of 73.9 cents per million B.t.u., plus certain contractual escalations and adjustments beginning in 1973, which include factors for changes in crew ship wages, ship building and repairing, production-worker average hourly earnings, and the total annualized charges to be actually incurred for the insurance of the Benjamin Franklin.

Applicant states that the LNG proposed to be imported will be used as supplemental natural gas supplies to meet the fuel requirements for essential uses of companies in the general vicinity of the import terminals. Applicant indicates that it is currently negotiating for the sale of this imported LNG to distributors of natural gas located in the States of Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21195 Filed 12-8-72;8:46 am]

[Docket No. E-7838]

EL PASO ELECTRIC CO.

Notice of Application

DECEMBER 5, 1972.

Take notice that on November 22, 1972, El Paso Electric Co. (Applicant), filed an application with the Federal Power Commission seeking authority pursuant to section 204 of the Federal Power Act to

[1] The contract entirely supersedes a contract between the same parties dated March 18, 1971.

issue unsecured promissory notes not to exceed $40 million face value at any one time outstanding.

The Applicant is incorporated under the laws of the State of Texas with its principal business office at El Paso, Tex., and is engaged in the electric utility business in the States of Texas and New Mexico in an area in the Rio Grande Valley extending approximately 110 miles northwesterly from El Paso to the Caballo Dam in New Mexico and approximately 120 miles southeasterly from El Paso to Van Horn, Tex., with a population of approximately 456,000 of whom 360,000 reside in the metropolitan area of El Paso.

The notes, including banknotes and commercial paper, are to have maturities not exceeding twelve months from the dates of issuance, with final maturity dates not later than December 31, 1975.

The interest rate on the notes to be issued to commercial banks not for resale to the public will be at a rate not exceeding one-fourth of 1 percent over the prime rate in effect from time to time, plus in some instances, provision for compensating balances of 20 percent. The interest rate for commercial paper will be the prevailing rate in effect at the time of its issuance for paper of comparative quality and term.

The proceeds from the sale of the notes will be used, pending permanent financing, to reimburse the Applicant for construction expenditures and to finance a portion of the Applicant's construction program. Applicant's construction program for the years 1972 through 1975 has an estimated cost of $66,575,700.

Any person desiring to be heard or to make any protest with reference to application should, on or before December 22, 1972, file with the Federal Power Commission will be considered by it in detertions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21207 Filed 12-8-72;8:47 am]

[Docket No. CP73-145]

LONE STAR GAS CO.

Notice of Application

DECEMBER 1, 1972.

Take notice that on November 27, 1972, Lone Star Gas Co. (Applicant), 301 South Harwood Street, Dallas, TX 75201, filed in Docket No. CP73-145 an application pursuant to section 7(b) of the Natural Gas Act and § 157.7(e) of the regulations thereunder (18 CFR 157.7(e)) for permission and approval to abandon, during the calendar year 1973, direct sales service and facilities no longer required for deliveries of natural gas to Applicant's customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in adandoning service and removing direct sales measuring, regulating, and related facilities. Applicant states that it will abandon only service and sales measuring facilities where maximum deliveries of natural gas to any one direct sales customer have not exceeded 100,000 Mcf of natural gas during the last year of service.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21201 Filed 12-8-72;8:47 am]

[Docket No. CP73-144]

LONE STAR GAS CO.

Notice of Application

DECEMBER 1, 1972.

Take notice that on November 27, 1972, Lone Star Gas Co. (Applicant), 301 South Harwood Street, Dallas TX 75201, filed in Docket No. CP73-144 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(c) (18 CFR 157.7(c)) of the regulations thereunder for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1973, and operation of facilities to make miscellaneous rearrangements of existing facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making changes in existing field operations and miscellaneous rearrangements and relocations of existing facilities when required by highway, dam, and similar construction projects which will not result in any change in service.

Applicant states that the total cost of all facilities proposed will not exceed $300,000 and that no single project will cost in excess of $75,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21199 Filed 12-8-72;8:46 am]

[Docket No. RP72-127]

NORTHERN NATURAL GAS CO.

Notice of Further Extension of Time and Postponement of Hearing

DECEMBER 4, 1972.

On November 29, 1972, the Commission Staff Counsel filed a motion for extension of time of the procedural dates fixed by notice issued October 17, 1972, in the above-designated matter. The motion states that all parties concur in the motion.

Upon consideration, notice is hereby given that the procedural dates are further modified as follows:

Staff service date	Mar. 5, 1973.
Intervener service date	Mar. 19, 1973.
Northern Natural Gas Co. rebuttal service date.	Apr. 9, 1973.
Prehearing conference and hearing date.	May 1, 1973.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21205 Filed 12-8-72;8:47 am]

[Docket No. E-7845]

NORTHERN STATES POWER CO.

Notice of Application

DECEMBER 4, 1972.

Take notice that on November 29, 1972, Northern States Power Co. (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking an order authorizing the Applicant to enter into a Guaranty Agreement with the Trustee of pollution control revenue bonds (the Bonds) to be issued by the Village of Monticello, Minn., in the amount of $5 million which bonds will be sold by the village as soon as possible after obtaining approval of this guaranty.

Applicant is incorporated under the laws of the State of Minnesota with its principal business office at Minneapolis, Minn., and is engaged primarily in the electric utility business in central and southern Minnesota, southeastern South Dakota, and in the Fargo-Grand Forks and Minot areas of North Dakota.

The bonds of the village will be sold to purchase pollution abatement equipment at Applicant's Monticello Nuclear Generating Plant at Monticello, Minn. Completion of construction and initial operation of the Facilities are scheduled for March 1973. Said equipment will be leased by the Village to the Applicant and payments under said lease will be sufficient to pay principal, interest, and premium if any, on said bonds. The bonds will not be issued by the Applicant. The rate of interest will be negotiated at a private sale of the bonds between the village and the underwriters.

The authorization sought is for Applicant to issue an independent guaranty to the trustee and holders of the bonds of payment of principal, interest, and premium if any, on said bonds. No payments will be required under the guaranty if all payments are made pursuant to the lease.

Expenditures during 1973 for the construction program of Applicant are estimated at $204 million, of which $192 million is for electric facilities, $7 million for gas facilities, and $5 million for heating, telephone, and general facilities.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 20, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21203 Filed 12-8-72;8:47 am]

[Docket No. E-7844]

NORTHERN STATES POWER CO.

Notice of Application

DECEMBER 4, 1972.

Take notice that on November 29, 1972, Northern States Power Co. (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking an order authorizing the issuance of $50 million principal amount of first mortgage bonds (the New Bonds).

Applicant is incorporated under the laws of the State of Minnesota with its principal business office at Minneapolis, Minn., and is engaged primarily in the electric utility business in central and southern Minnesota, southeastern South Dakota, and in the Fargo-Grand Forks and Minot areas of North Dakota.

The bonds are to be issued at competitive bidding pursuant to the Commission's regulations under the Federal Power Act. Applicant has scheduled January 24, 1973, as the date for the opening of bids. The New Bonds will be dated as of February 1, 1973, and will mature on February 1, 2003.

None of the New Bonds will be redeemable prior to February 1, 1978, other than for the sinking fund, with money borrowed at a lower cost.

The proceeds from the sale of the New Bonds will be added to the general funds of Applicant and will be used to prepay some of the outstanding short-term borrowings of Applicant which are estimated at approximately $67 million as of the date of the issuance and delivery of the New Bonds. The short-term borrowings have been or will be incurred in connection with the construction program of Applicant and for temporary advances to Northern States Power Co., a Wisconsin corporation, a wholly owned subsidiary of Applicant, for its construction program.

Expenditures during 1973 for the construction program of Applicant are estimated at $204 million, of which $192 million is for electric facilities, $7 million for gas facilities, and $5 million for heating, telephone, and general facilities.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 20, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21202 Filed 12-8-72;8:47 am]

[Docket No. E-7783]

PENNSYLVANIA POWER & LIGHT CO.

Order Denying Requests for Hearing and Investigation and Permitting Proposed Rates To Become Effective Without Suspension and Order To Show Cause

DECEMBER 4, 1972.

On October 6, 1972, Pennsylvania Power & Light Co. (applicant) tendered for filing proposed changes in its FPC Rate Schedules Nos. 12, 26, 27, 28, 29, 30, 32, 34, 36, 42, 45, 47, 50, 51, and 52,[1] to become effective on December 5, 1972. The filing purports to show that approximately $664,696 additional revenues based on the 12 months ended December 31, 1971, as adjusted will result from the proposed increased rates. The applicant's adjusted cost-of-service study reflects, for wholesale-for-resale service at 66 kv. and at 12 kv., an indicated overall rate of return of 3.702 percent and 6.995 percent respectively, and a total overall rate of return of 4.913 percent.

By notice issued October 19, 1972, protests and petitions to intervene were invited to be filed by November 13, 1972. Timely protests were filed by the Boroughs of Watsontown, Olyphant, Lehighton, Mifflinburg, Ephrata, Catawissa, Duncannon, Quakertown, Weatherly, and Schuylkill Haven. The Borough of Saint Clair filed a protest on Novem-

[1] Supplement No. 5 to FPC No. 26, 28, 32, and 36; Supplement No. 3 to FPC No. 45, 50, and 51; Supplement No. 1 to FPC No. 54, 55, 56, 57, 58, 59, 60, and 61, respectively (based upon subsequently renumbered rate schedules).

ber 16, 1972.[2] By letter filed November 13, 1972, the Borough of Lehighton requested permission to intervene and to participate in any hearings in this proceeding. The Borough of Ephrata also implied that it wished to participate in any hearings in this proceeding.

The grounds for the protests filed herein included the following:

(1) The applicant recently increased its rates for wholesale-for-resale service;

(2) An additional 3 to 6 months are needed to review the applicant's filing;

(3) The proposed increase is not uniform for all wholesale customers;

(4) The proposed increase is greater than 5 percent which the applicant has publicly stated is its policy for annual rate increases;

(5) The proposed increase is inflationary and is contrary to the economic stabilization program.

Olyphant Borough expressed its "hope" that a hearing would be held to determine whether the proposed increase is justified. The Borough of Ephrata requested an investigation of the "cost of the production and wheeling of wholesale electric power" in the applicant's system.

Upon review of the applicant's filing, we conclude that the applicant has supported its increased rates and that they should be permitted to become effective as proposed. Nothing in the foregoing pleadings persuades us that we should do otherwise. None challenge the reasonableness of the applicant's classification of service between 66 kv. and 12 kv. or the rate of return applicable to each class of service. The applicant's cost-of-service study is based on actual costs for the 12 months ended December 31, 1971, unadjusted, which is verifiable by reference to its 1971 Form 1 annual report filed with this Commission. Moreover, the proposed rates do not reflect any cost increases incurred by the applicant after December 31, 1971, while increased revenues from a wholesale rate increase effective July 31, 1971, are reflected in applicant's study. Further, the 4.913 percent overall rate of return which the proposed rates would yield is far below the level of rates of return which we have found just and reasonable in rate proceedings over the last few years.

None of the aforementioned grounds of objection to the proposed rates justify a hearing in this proceeding. The first, second, and fourth grounds are irrelevant to the question of whether the proposed rates have been justified by the applicant's cost and revenue data. The third objection is erroneous because the proposed rates are uniform for each class of customer, i.e., those taking service at 12 kv. and those taking service at 66 kv. The annual effect of the proposed increase, in terms of percentage impact on revenues, differs from customer to customer because of their differences in load factor and amounts purchased. The fifth ground of objection is erroneous because the applicant's cost-of-service study does not include inflation adjustments or anticipatory adjustments for future cost increases. No additional presentation relative to the foregoing objections would lead us to conclude other than that the proposed rate schedule changes should be given affect as proposed. The requests for hearing shall therefore be denied.

Our review also indicates, nonetheless, that the applicant's fuel adjustment clause may not conform with the requirements of § 35.14(a)(1) of the Commission's regulations under the Federal Power Act. A fuel adjustment clause should, in the public interest and as a matter of regulatory policy, be designed, with respect to the fuel cost component of purchased power, to recover the seller's cost of the fuel which is consumed to generate such power, as distinguished from the purchaser's cost of fuel attributable to such power. New England Power Company, Docket No. E-7541 (Opinion No. 633, mimeo. p. 17, issued October 30, 1972). The applicant's fuel adjustment clause may be improper in that it may impute its own changes in fuel costs to its power purchases. We will order the applicant, therefore, to show cause, by December 29, 1972, why it should not be required to change its fuel adjustment clause in conformity with the principle enunciated in New England Power Company, supra.

The Commission orders:

(A) The requests for hearing are denied.

(B) The proposed rate schedules tendered herein are accepted for filing to be effective as of December 5, 1972.

(C) Pursuant to sections 205, 206, and 309 of the Federal Power Act and the Commission's rules of practice and procedure, the applicant shall show cause on or before December 29, 1972, why its fuel adjustment clause should not be changed to conform with § 35.14(a)(1) of the Commission's regulations under the Federal Power Act.

(D) The Boroughs of Lehighton and Ephrata are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting rights and interests specifically set forth in their respective petitions to intervene: and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they, or any of them, might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(E) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission against Pennsylvania Power & Light Co. or any other persons affected by the rates hereby permitted to be effective.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[2] On November 17, 1972, the Borough of Blakely filed a letter protesting the proposed rate increase and requesting that a hearing be held to determine whether the proposed increase is justified.

PENNSYLVANIA POWER & LIGHT CO. CERTIFICATION OF PRICE INCREASE

With respect to the price increase granted in this instance, under the Economic Stabilization Act of 1970, as amended, and revised § 300.16 of the rules and regulations of the Price Commission, 6 CFR 300 (1972), the Federal Power Commission certifies the following:

(1) The former price, before the increase granted herein, the new price as granted, and the percentage increase in price are as follows (based on test year operations, 12 months ended December 31, 1971):

	Former price	New price	Percent increase
Revenues	3,591,975	4,256,671	18.5

(2) The rate increase is expected to provide increased annual revenues of $664,696 from the wholesale customers.

(3) The increase in the company's profits will be $299,160, or stated in terms of percentage of its total jurisdictional sales, will be 8.33 percent.

(4) The increase in the company's overall rate or return on capital (rate base) will be from 8.31 to 8.34, 0.03 percentage point or 0.36.

(5) Sufficient evidence was taken during the course of this proceeding to determine whether or not the criteria set forth in paragraphs (d) (1) through (4) of § 300.16 of the rules and regulations of the Price Commission have been met.

(6) The rate increase granted in this proceeding meets the criteria set out in paragraphs (d) (1) through (4) of § 300.16 of the rules and regulations of the Price Commission.

[FR Doc.72-21194 Filed 12-8-72;8:46 am]

[Docket No. E-7768]

PUBLIC SERVICE ELECTRIC AND GAS CO.

Notice of Extension of Time

DECEMBER 1, 1972.

On November 29, 1972, Counsel for Borough of Milltown requested an extension of time within which to submit offer of proof as required by order issued October 30, 1972 in the above matter accepting for filing and suspending proposed changes in rate schedules permitting intervention and directing submission of offer of proof.

Upon consideration, notice is hereby given that the time is hereby extended to and including December 11, 1972, within which the Borough of Milltown may submit offer of proof. Accordingly, the time is extended to and including December 27, 1972, for Public Service Electric and Gas Company to file its answer to such pleading.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.72-21197 Filed 12-8-72;8:46 am]

[Docket No. CP73-136]

SOUTHERN NATURAL GAS CO.

Notice of Application

DECEMBER 1, 1972.

Take notice that on November 22, 1972, Southern Natural Gas Co. (Applicant), Post Office Box 2563, Birmingham, AL 35202, filed in Docket No. CP73-136 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain metering and regulating facilities and service in Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to abandon metering and regulating facilities located on its Tinsely branch line in Yazoo County, Miss., which have been used for the sale of natural gas to Edwards Producing Co., W. L. Ethridge, Sr., Hassie Hunt Trust, and Sohio Petroleum Co. Applicant states that the purchasers have used the gas so purchased to operate pumps or other equipment in the production of oil and gas. Applicant proposes to abandon such facilities as a result of the cancellation of its contracts with the subject purchasers except Edwards Producing Co. Applicant proposes to abandon the facilities serving Edwards Producing Co. because there have been no deliveries of gas requested by the purchaser under its contract since October 1968.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-21196 Filed 12-8-72;8:46 am]

FEDERAL RESERVE SYSTEM

FIRST TENNESSEE NATIONAL CORP.

Order Approving Acquisition of Bank

First Tennessee National Corp., Memphis, Tenn., 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 the successor by merger to the First National Bank of Cookeville, Cookeville, Tenn. (Bank). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of 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 largest banking organization in Tennessee, controls six banks with aggregate deposits of approximately $980.7 million, representing 10.8 percent of the total commercial bank deposits in the State. (Banking data are as of June 30, 1972, adjusted to reflect holding company formations and acquisitions approved by the Board through October 31, 1972.) The acquisition of Bank (deposits of $32.6 million) would increase applicant's percentage share of deposits in the State by less than four-tenths of 1 percent and would not result in a significant increase in the concentration of banking resources in Tennessee.

Bank, located in Cookeville, Tenn., is one of 16 banks having offices in the Cookeville banking market. There is no existing competition between Bank and any of applicant's banking subsidiaries. Applicant's nearest subsidiary banking office is located in a separate market area approximately 85 miles from Cookeville. Due to the distances involved and restrictions placed on branching by Tennessee laws, there is little probability of substantial future competition developing between any of these subsidiaries and Bank.

Bank is the largest bank in the market area, holding 15.9 percent of total market deposits. The second largest bank ($30.3 million deposits) controls 14.8 percent; and the remaining 14 banks range in size from $23.2 million to $2.8 million in deposits, and control 11.3 percent to 1.4 percent of the total market deposits. The population per banking organization is significantly lower in the market area than the State average. Also, in the Board's judgment, size or location precludes all but the two largest banks in the Cookeville banking market from having comparable attraction to applicant as vehicles for entry into the market. Therefore, it appears to the Board that the market served by Bank would not be particularly attractive for de novo entry by applicant or for its acquisition of a foothold bank. Consummation of the proposed acquisition would not foreclose significant potential competition, nor would it have any adverse effect on competing banks since Bank is not dominant in the market. In addition, it appears to the Board that the proposed acquisition might result in some increase in competition in the market by eliminating the interlocking ownership of Bank and of another small bank.[1]

The financial and managerial resources and future prospects of applicant and its subsidiary banks are regarded as satisfactory. In view of applicant's commitment to improve the capital position of Bank by an injection of $500,000 of additional equity capital funds and its plans to provide Bank with supervision and management expertise, Bank's prospects are favorable and banking factors are consistent with approval. Considerations relating to the convenience and needs of the community to be served lend some support to approval, primarily because affiliation with applicant will permit Bank to improve its real estate lending capability. It is the Board's judgment that the proposed transaction is in the public interest and that the application should be approved.

Applicant controls two nonbanking subsidiaries, Norlen Life Insurance Co., Phoenix, Ariz., and Investors Mortgage Service, Inc., Memphis, Tenn., which were acquired on October 21, 1969, and on January 17, 1969, respectively. Norlen Life Insurance Co. reinsures underwriters of credit life insurance, and Investors Mortgage Service, Inc., is a mortgage broker which manages real estate for others and develops real estate. Investors Mortgage Service, Inc., owns two subsidiaries, Griffen Mortgage Co., a mortgage broker acquired on December 4, 1969, and Investors Service, Inc., a real estate developer acquired on January 8, 1970.

In approving this application, the Board finds 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

[1] Approximately 27 percent of the voting shares of Bank are presently owned by the same family which owns 100 percent of Bank of Monterey, Monterey, Tenn.

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 St. Louis pursuant to delegated authority.

By order of the Board of Governors,[2] effective December 1, 1972.

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

[FR Doc.72-21179 Filed 12-8-72;8:50 am]

GENERAL SERVICES ADMINISTRATION

ARCHIVES ADVISORY COUNCIL

Notice of Meeting

Notice is hereby given that the Region 6 Archives Advisory Council will meet at the time and place indicated. Anyone who is interested in attending, or wants additional information should contact the person shown below.

REGIONAL ARCHIVES ADVISORY COUNCIL

REGION 6

Meeting date: January 12, 1973.
Time: 9:30 a.m.–4 p.m.
Place: The Harry S. Truman Library, Auditorium, U.S. Highway 24 and Delaware Street, Independence, MO 64050.
Agenda: Effectiveness of the Archives Advisory Council; report on Missouri Valley Historical Conference; Archives Symposia; National Archives microfilm program at Archives branches.

For further information contact:

Ivan D. Eyler, NARS Regional Commissioner, 819 Taylor Street, Fort Worth, TX 76102, 817–334–2759.

Issued in Washington, D.C., on December 4, 1972.

JAMES E. O'NEILL,
Acting Archivist of the United States.

[FR Doc.72-21220 Filed 12-8-72;8:48 am]

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Sheehan, and Bucher. Voting against this action: Governor Brimmer. Absent and not voting: Governor Daane. Dissenting Statement of Governor Brimmer filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of St. Louis.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

ACCURATE CALCULATOR CORP.

Order Suspending Trading

DECEMBER 5, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, and all other securities of Accurate Calculator Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from December 6, 1972, through December 15, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-21223 Filed 12-8-72;8:48 am]

[File No. 500-1]

FIRST WORLD CORP.

Order Suspending Trading

DECEMBER 5, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the Class A and Class B common stocks, $0.15 par value, and all other securities of First World Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from December 6, 1972, through December 15, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-21224 Filed 12-8-72;8:48 am]

[File No. 500-1]

NOVA EQUITY VENTURES, INC.

Order Suspending Trading

DECEMBER 1, 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 Nova Equity Ventures, 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 10 a.m. (e.s.t.) on December 4, 1972, through December 13, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-21226 Filed 12-8-72;8:48 am]

[812-3277]

TAX-EXEMPT ENVIRONMENTAL BOND FUND

Notice of Filing of Application for an Order Granting Exemptions

DECEMBER 5, 1972.

Notice is hereby given that The Tax-Exempt Environmental Bond Fund (Applicant), % The First Boston Corp., 20 Exchange Place, New York, NY 10004, a unit investment trust registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 6(c) of the Act for an order for exemption from the provisions of section 14(a) of the Act, and Rule 19b-1 and Rule 22c-1 under the Act. All interested persons are referred to the applications on file with the Commission for a statement of the representations therein, which are summarized below.

Applicant is sponsored by The First Boston Corp., Blyth Eastman Dillon & Co., Inc. and E. F. Hutton & Co., Inc. (Sponsors). The Evaluator is Standard & Poor's Corp. Applicant represents that the objective of each of its series is to seek tax-exempt income and conservation of capital through an investment in tax-exempt bonds which were issued to obtain moneys to be used directly or indirectly for the abatement of some form of environmental pollution, for the prevention of further environmental deterioration, or for an improvement in the quality of the environment. All of such bonds will be obligations issued by or on behalf of States, counties, territories, or municipalities of the United States and authorities or political subdivisions thereof, the interest of which, in the opinion of counsel to the various issuers of such bonds, is exempt from all Federal income taxes under existing law.

On October 5, 1972, Applicant filed a registration statement on Form S-6 under the Securities Act of 1933 for 30,000 units of undivided interest in Monthly Income Series 1 of Applicant. This registration statement has not yet become effective. On October 11, 1972, Applicant also filed a notification of

registration on Form N–8A for said Series and a registration statement on Form N–8B–2 under the Investment Company Act for said Series.

Each series of Applicant (Monthly Income Series 1 and subsequent series) will be governed by the provisions of a trust indenture and agreement (Indenture) to be entered into by the Sponsors and a corporation organized and doing business under the laws of the United States or a State thereof, which is authorized under such laws to exercise corporate trust powers and having at all times an aggregate capital, surplus, and undivided profits of not less than $5 million (Trustee). It is contemplated that the United States Trust Company of New York will serve as Trustee for Monthly Income Series 1 and subsequent series. A separate Indenture will be entered into each time a series of the Fund is created and activated and the bonds which comprise its portfolio are deposited with the Trustee. Each series of the Fund will be substantially identical except as to size, number of units and the individual bonds in its portfolio.

SECTION 14(a)

Section 14(a) of the Investment Company Act of 1940, in substance, provides that no registered investment company and no principal underwriter for such a company shall make a public offering of securities of which such company is the issuer unless (1) the company has a net worth of at least $100,000; (2) at the time of a previous public offering it had a net worth of $100,000; or (3) provision is made that a net worth of $100,000 will be obtained from not more than 25 responsible persons within 90 days, or the entire proceeds received, including sales charge, will be refunded.

Applicant represents that the bonds for a portfolio of a series of Applicant are delivered to the Trustee on the date of deposit, and from that time on, except for the payment of limited amounts of expenses specified in the Indenture, such bonds are held in the custody of the Trustee subject to the Indenture which, in substance, provides that the Trustee may dispose of the bonds when events occur which may affect their investment stability and distribute the proceeds thereof in partial liquidation to unit holders. However, there is no provision permitting the bonds to be pledged or subjected to any debt by Applicant. The Trustee must sell the bonds if necessary for the payment of the redemption price of units tendered for redemption. The proceeds of bonds which mature or are redeemed in accordance with their terms are distributed to unit holders.

The Sponsors have represented that no series of Applicant will be created which will contain in its portfolio on the date of deposit, bonds having a principal amount of less than $5 million. In the event the value of such a series should decrease to $1 million (20 percent of the amount of the bonds initially deposited) or less, for any reason, the Trustee may, and when so directed by the Sponsors shall, terminate the trust and liquidate such series. Thus, Applicant represents that it is highly unlikely that, except during the course of a liquidation, the net worth of any series would ever decline to $100,000 or less.

As a further basis for the requested exemption, the Sponsors also represent that, in the event that the net worth of any series of Applicant should be reduced to less than $100,000 within 90 days after the registration statement under the Securities Act becomes effective in respect of that series, the Sponsors will repurchase all units which have been sold prior to such date at the same price paid by the original purchaser, including sales charge.

In addition, on the day of the deposit of the bonds comprising the portfolio of any series of Applicant, the Sponsors will instruct the Trustee that, in the event the Sponsors, and the other underwriters who are parties to the agreement among underwriters, as the owners of units of any such series of Applicant, which have not previously been sold to the public, shall tender such unsold units to the Trustee for redemption in an amount constituting more than 60 percent of the number of units which such series of Applicant is authorized to have outstanding, and that thereby the net worth of such series is reduced to less than 40 percent of the principal amount of bonds originally deposited therein, the Trustee shall terminate such series in the manner provided in the Indenture relating thereto and the Sponsors will refund, on demand, to each purchaser of units of any such series, the entire sales charge paid by such purchaser without any deduction whatsoever.

In light of these representations and undertakings, Applicant requests that the Commission issue an order exempting all series of Applicant from the provisions of section 14(a) of the Act subject to future series being substantially identical in all material respects to Monthly Income Series 1 except as to size, number of units, and identity of portfolio bonds.

RULE 19b–1

Rule 19b–1 provides, in part, that no registered investment company which is not a "regulated investment company" as defined in section 851 of the Internal Revenue Code of 1954 shall make more than one distribution of long-term capital gains in any 1 taxable year of such investment company. One purpose of the rule is to relieve investment company managers from pressure to realize such gains on a frequent and regular basis.

Each series of Applicant is or will be a registered investment company which is not a regulated investment company. From time to time bonds in a portfolio of a series of Applicant may be redeemed by the issuer thereof or may be sold by the Trustee for the purpose of providing either investment stability or funds for the redemption of units. These transactions may give rise to a problem under Rule 19b–1 when the funds distributed from Applicant's principal account involve a long-term capital gain.

The Indenture establishes record and distribution dates for the distribution to unit holders of their pro rata share of the cash balance of the interest and principal accounts computed as of the record date. Since the Trustee has no authority to reinvest funds received upon the disposition of bonds, it is not permitted to accumulate cash and must distribute such funds promptly. Initially it is contemplated that distributions will be made each month from the interest and principal accounts. However, the Trustee would be subjected to the same problem in subsequent series if the distributions were made semiannually or quarterly. Unit holders will be advised annually of the amount of any distribution which should be considered as a capital gain.

Applicant states that distributions of principal constituting capital gains to unit holders may arise in the following circumstances: (1) If an issuer calls or redeems an issue held in the portfolio; and (2) if bonds are liquidated in order to provide funds necessary to meet redemptions by unit holders. Applicant states that capital gains are not anticipated to arise from sales of bonds made by the Trustee at the request of the Sponsors to provide investment stability, i.e., after default in payments of principal or interest on such bonds or the occurrence of other market or credit factors which, in the opinion of the Sponsors, would make retention of such bonds in Applicant detrimental to the interests of the unit holders.

Applicants state that the dangers which Rule 19b–1 is intended to guard against will not exist in connection with Applicant, since the events which give rise to a net long-term capital gain are independent of the Sponsors and the Trustee. Accordingly, Applicant requests that the Commission grant an exemption from the provisions of Rule 19b–1 to permit the operations as proposed for Monthly Income Series 1 and for such additional series as may be created in the future.

RULE 22c–1

Rule 22c–1 provides, in part, that redeemable securities of registered investment companies may not be sold, redeemed, or repurchased except at a price based on the current net asset value which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. For the purpose of the rule, the current net asset value of any such security shall be that computed on each day during which the New York Stock Exchange is open for trading, not less frequently than once daily as of the time of the close of trading on such exchange.

Applicant represents that the purpose of the rule was to eliminate or reduce so far as reasonably practicable any dilution of the value of other outstanding securities of an investment company or any other result of such purchase, redemption or sale which is unfair to holders of such other outstanding securities.

Applicant represents that during the initial public offering, it will fully comply with the rule, since it is intended that there will be an evaluation made each day the New York Stock Exchange is open for trading. The first evaluation after receipt of an order for sale, purchase or redemption of units is the evaluation which will govern the terms of such transaction. Applicant further represents that the Sponsors intend to maintain a market for the units and continuously to offer to purchase units at prices based upon the aggregate offering price of the bonds in Applicant's portfolio. For purposes of the secondary market transactions, an evaluation will only be made once each week.

Applicant asserts that the pricing by the Sponsors in the secondary market in no way affects the assets of Applicant since all units of any series of Applicant are issued and outstanding prior to any offering thereof to the public. Moreover, the units represent an interest in a fixed portfolio of bonds which is subject only to limited change. Therefore, the relation of a unit to Applicant is not affected in any manner by the price at which other units are sold. Finally, because of the nature of the bonds in the portfolio, price changes are gradual and depend largely on general changes in interest rates.

The application states that the Sponsors have undertaken to adopt a procedure whereby the Evaluator, without a formal evaluation, will provide the Sponsors with estimated evaluations on trading days. In the case of a repurchase, if the Evaluator cannot state that the previous Friday's price is at least equal to the current bid price, the Sponsors will order a full evaluation. In case of resale, if the Evaluator cannot state that the previous Friday's price is no more than one-half point ($5.00 per $1,000.00 principal amount of underlying bonds) greater than the current offering price, a full evaluation will be ordered.

Thus, under these circumstances, after the initial distribution is completed, the Sponsors believe that it would be appropriate for Applicant and its unit holders to be relieved from the cost of daily evaluations and in lieu thereof to permit evaluations to be made as of the close of trading on the New York Stock Exchange on the last business day of the week with each such evaluation to be effective for transactions during the ensuing week. Applicant requests an exemption from the provisions of Rule 22c–1 for Monthly Income Series 1 and for all subsequently created series of Applicant insofar as the rule may apply after completion of the primary distribution of units of such series.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 27, 1972, at 5:30 p.m., submit to the Commission in writing a request for 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 (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order 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.72–21222 Filed 12–8–72;8:47 am]

[File No. 500–1]

TRANS-EAST AIR, INC.

Order Suspending Trading

DECEMBER 5, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.50 par value, and all other securities of Trans-East Air, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from December 6, 1972, through December 15, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72–21225: Filed 12–8–72;8:48 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–72–6]

GENERAL MOTORS CORP.

Notice of Application for Variance and Interim Order; Grant of Interim Order

I. *Notice of application.* Notice is hereby given that General Motors Corporation, 3044 West Grand Boulevard, Detroit, MI 94565, has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596, 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and for an interim order pending a decision on the application for a variance, from the standard prescribed in 29 CFR 1910.252(c)(2)(viii). The standard is as follows:

Sec. 1910.252 *Welding, cutting, and brazing.*

* * * * *

(c) * * *

(2) * * *

(viii) *Safety pins.* On large machines, four safety pins with plugs and receptacles (one in each corner) shall be provided so that when safety pins are removed and inserted in the ram or platen, the press becomes inoperative.

* * * * *

The facilities affected by this application are as follows:

Buick Motor Division, 1051 East Hamilton Avenue, Flint, MI 48550.
Chevrolet—Cleveland, Stumpf Road and Brookpark, Cleveland, OH 44130.
Chevrolet—Flint Assembly, Van Slyke and Atherton Roads, Flint, MI 48551.
Fisher—Cleveland, East 140th and Colt Road, Cleveland, OH 44110.
Fisher—Detroit Fort Street, 6307 West Fort Street, Detroit, MI 48209.
Fisher—Flint Coldwater Road, Coldwater Road, Flint, MI 48559.
Fisher—Flint No. 1, 4300 South Saginaw Street, Flint, MI 48557.
Fisher—Marion, 2400 West Second Street, Marion, IN 46953.
GMAD—Arlington, 2525 East Abram Street, Arlington, TX 76010.
GMAD—Baltimore, Post Office Box 148, Baltimore, MD 21203.
GMAD—Doraville, 3900 Motors Industrial Way, Doraville, GA 30340.
GMAD—Fairfax, 100 Kindelberger Road, Kansas City, KS 66115.
GMAD—Framingham, Western Avenue, Framingham, MA 01701.
GMAD—Fremont, 45500 Fremont Boulevard, Fremont, CA 94537.
Fisher—Grand Blanc, Grand Blanc, MI 48439.
Fisher—Grand Rapids No. 1, 300–36th Street SW., Grand Rapids, MI 49508.
Fisher—Hamilton, 4400 Dixie Highway, Hamilton, OH 45012.
Fisher—Kalamazoo, 5200 East Cork Street, Kalamazoo, MI 49002.
Fisher—Lordstown Fab., Hallock Young Road, Lordstown, OH 44482.
Fisher—Mansfield, 2525 West Fourth Street Road, Mansfield, OH 44906.
GMAD—Saint Louis, 3809 Union Boulevard, Saint Louis, MO 63115.
GMAD—South Gate, 2700 Tweedy Boulevard, South Gate, CA 90280.
GMAD—Tarrytown, Beekman Avenue, North Tarrytown, NY 10591.

GMAD—Van Nuys, 8000 Van Nuys Boulevard, Van Nuys, CA 91409.
GMAD—Willow Run, Post Office Box F, Ypsilanti, MI 48197.
GMAD—Janesville, Post Office Box 629, Janesville, WI 53545.
GMAD—Lakewood, Post Office Box 4605, Atlanta, GA 30302.
GMAD—Leeds, 6817 East 37th Street, Kansas City, MO 64129.
GMAD—Linden, 1016 West Edgar Road, Linden, NJ 07036.
GMAD—Lordstown, Post Office Box 1406, Warren, OH 44482.
GMAD—Norwood, Post Office Box 12171, Norwood, OH 45212.
GMAD—Wilmington, Post Office Box 1512, Wilmington, DE 19899.
GMC Truck & Coach Division, 660 South Boulevard, East Pontiac, MI 48011.
Oldsmobile Division, 1014 Townsend Street, Lansing, MI 48921.
Pontiac Motor Division, 196 Oakland Avenue, Pontiac, MI 48053.

Applicant certifies that the employees who will be affected by the variance have been notified of the application by mailing of a copy to International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW-CIO), Solidarity House, 8000 East Jefferson Ave., Detroit, MI 48214, and by posting of copies of the application in the affected areas of the facilities involved. Employees have received notice, through the above posting, of their right to petition for a hearing.

Applicant's operations involve the use of welding presses which are subject to 29 CFR 1910.252(c)(2)(viii). Rather than using the safety pins prescribed in the regulation, applicant has developed "safety blocks" which it argues are as least as safe as, if not safer than, the safety pins. Applicant states that two safety blocks, mounted in diametrically opposite corners of each welding press, accomplish the same objectives as do the pins required under the regulation. The safety blocks are electrically interlocked so that the removal of the blocks from the stored position results in removal of electrical power to the press electrical control circuit (and automatic feeder mechanisms, when used), thereby rendering the press inoperative. Limit switches are used for interlocking each safety block with the press electrical circuit. Applicant also argues that such factors as high visibility, easy installation, ready supervision, and suitability for use in heavy mechanical power presses as required by 29 CFR 1910.217 (d)(9)(iv) demonstrate that safety blocks are at least as safe as safety pins.

For further information, interested persons are referred to copies of the application which will be made available for inspection and copying upon request, at the Office of Standards, Room 500, 400 First Street NW., Washington, DC 20210, and at the following regional offices:

U.S. Department of Labor, Occupational Safety and Health Administration, John F. Kennedy Federal Building, Government Center, Room No. E 308, Boston, Mass. 02203.
U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), New York, NY 10036.
U.S. Department of Labor, Occupational Safety and Health Administration, Penn Square Building, Room 623, 1317 Filbert Street, Philadelphia, PA 19107.
U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street NE., Suite 587, Atlanta, GA 30309.
U.S. Department of Labor, Occupational Safety Health Administration, 300 South Wacker Drive, Room 1201, Chicago, IL 60606.
U.S. Department of Labor, Occupational Safety and Health Administration, Seventh Floor—Texaco Building, 1512 Commerce Street, Dallas, TX 75201.
U.S. Department of Labor, Occupational Safety and Health Administration, 823 Walnut Street, Waltower Building, Room 300, Kansas City, MO 64106.
U.S. Department of Labor, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, CA 94102.

All interested persons, including employers and employees who believe they will be affected by the grant or denial of the application for a variance, are invited to submit written data, views, and arguments regarding the application within 30 days following the publication of this notice in the FEDERAL REGISTER. In addition, employers and employees who believe they would be affected by the grant or denial of the variance may request a hearing on the application within 30 days after the publication of this notice in the FEDERAL REGISTER, in conformity with the requirements of 29 CFR 1905.15. Submissions of written comments and requests for a hearing should be in quadruplicate and shall be addressed to the Office of Standards, Room 500, 400 First Street NW., Washington, DC 20210.

II. *Interim order.* It appears from the application for a variance and interim order, and supporting data, filed by General Motors Corp., that the safety block arrangement presently in use on its welding presses at the installations mentioned previously in this notice provides employment and places of employment as safe and healthful as those which would prevail if the applicant were to make the changes necessary in order to comply with 29 CFR 1910.252(c)(2)(viii). It further appears that an interim order is necessary to prevent interruption of operations of the applicant and hardships to both applicant and affected employees.

Therefore, *It is ordered,* Pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 and 29 CFR 1905.11(c), that General Motors Corp. be, and it is hereby, authorized to continue to use the safety block arrangement as described above, in lieu of complying with 29 CFR 1910.252(c)(2)(viii).

Applicant shall give notice to affected employees of the terms of this interim order by the same means required to be used to inform them of the application for a variance.

Effective date. This interim order shall be effective as of December 9, 1972, and shall remain in effect until a decision is rendered on the application for a variance.

Signed at Washington, D.C., this 6th day of December 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-21228 Filed 12-8-72;8:45 am]

NORTH CAROLINA DEVELOPMENTAL PLAN

Submission of Plan and Availability for Comment

1. *Submission and description of plan.* Pursuant to section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) and § 1902.11 of Title 29, Code of Federal Regulations, notice is hereby given that an occupational safety and health plan for the State of North Carolina has been submitted to the Assistant Secretary of Labor for Occupational Safety and Health. The Assistant Secretary has preliminarily reviewed the plan, and hereby gives notice that the question of approval of the plan is in issue before him.

The plan designates the Department of Labor as the agency responsible for administering the plan throughout the State. It proposes to define the occupational safety and health issues covered by it as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). The Department of Labor is to have full authority to administer and enforce occupational safety and health laws applicable to all employees within the State with the exception of domestic servants, employees of the United States, employees whose safety and health are subject to protection under the Atomic Energy Act of 1954, 42 U.S.C. 2021, the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801, the Federal Metal and Nonmetallic Mine Safety Act, 30 U.S.C. 721, the Federal Safety Appliances Act, 45 U.S.C. 1, the Federal Railroad Safety Act of 1970, 45 U.S.C. 431, and the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901.

Implementation of the plan is dependent upon enactment of the Occupational Safety and Health Act of North Carolina which is to be introduced in the 1973 session of North Carolina's General Assembly and passage is anticipated by April 1, 1973. The proposed legislation is accompanied by an opinion from the State attorney general that it will meet the requirements of the Occupational Safety and Health Act of 1970 and that it is consistent with the constitution and other laws of the State of North Carolina. North Carolina's legislation is modeled on the Federal act and is intended to meet the requirements of part 1902 of the regulations of the Occupational Safety and Health Administration of the U.S. Department of Labor.

Within the proposed Act are provisions relating to the authority of the Commissioner of the Department of Labor to inspect workplaces including inspections in response to employee complaints with employees having the right to request an informal review of any refusal to issue a citation with respect to an alleged violation; the right of both a representative of

the employer and the employees to consult with or accompany inspectors during an inspection; and a prohibition of advance notice of such inspections. The legislation also contains effective sanctions against employers for violation of standards and abatement orders. Employers are given, however, the right of review of such alleged violations, abatement periods and proposed penalties, and employees will be given the opportunity to participate in such review proceedings.

The legislation also includes provisions relating to the granting of variances; the promulgation of temporary emergency standards; the prompt restraint of imminent danger situations, the requirement of employer recordkeeping and reporting; the protection of employees exposed to toxic materials or harmful physical agents; the protection of employees againts new and unforeseen hazards; the protection of employees against discharge or discrimination in terms and conditions of employment; and the safeguarding of trade secrets.

Within the meaning of 29 CFR 1902.2(b) the plan is developmental. Also appearing in the plan are a comprehensive description of the resources to be allocated to it, a description of the State's merit system for personnel, and a description of state programs to encourage voluntary compliance with the proposed Act.

2. *Location of plan for inspection and copying.* A copy of the Plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, Room 305, Railway Labor Building, 400 First Street NW., Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, Suite 587, 1371 Peachtree Street NE., Atlanta, GA 30309; and North Carolina Department of Labor, Room 106, Labor Building, corner of Salisbury and Edenton, Raleigh, N.C. 27602.

3. *Public participation.* Interested persons are hereby given 30 days from the date of this publication in which to submit to the Assistant Secretary written data, views, and arguments concerning the plan. The submissions are to be addressed to the Director, Office of State Programs, Room 305, Railway Labor Building, 400 First Street NW., Washington, DC 20210. The written comments will be available for public inspection and copying at the above addresses.

Any interested person(s) may request an informal hearing concerning the proposed plan, or any part thereof whenever particularized written objections thereto are filed within the 30 days specified above. If the Assistant Secretary finds that substantial objections are filed, he shall hold a formal or an informal hearing on the subjects and issues involved.

The Assistant Secretary of Labor for Occupational Safety and Health shall thereafter consider all relevant comments and arguments presented and issue his decision as to approval or disapproval of the plan.

Signed at Washington, D.C., this 6th day of December 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-21250 Filed 12-8-72;8:45 am]

Office of the Secretary

OTTO GOEDECKE, INC.

Notice of Revised Certification of Eligibility of Workers To Apply for Adjustment Assistance

Following a Tariff Commission report under section 301(c)(2) of the Trade Expansion Act of 1962 (76 Stat. 884), and subsequent investigation as authorized under 29 CFR Part 90 and notice in 34 F.R. 18342; 37 F.R. 2472; 20137, a certification under section 302(c) of the Trade Expansion Act was made on October 31, 1972, certifying that:

All workers, hourly and salaried of Otto Goedecke, Inc., Hallettsville, Tex. who were not engaged in raw cotton merchandizing and who became unemployed or underemployed after January 7, 1970, and before August 5, 1970, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All hourly and salaried workers of Otto Goedecke, Inc.'s affiliate, Lone Star Textile Cuero plant, Cuero, Tex., who became unemployed or underemployed after January 3, 1970, and before June 22, 1970, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All hourly and salaried workers of Otto Goedecke, Inc.'s affiliate, Lone Star Textile Mexia plant, Mexia, Tex., who became unemployed or underemployed after January 3, 1970, and before July 20, 1970, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All hourly and salaried employees of Otto Goedecke, Inc.'s affiliate, Red River Cotton Mills, Bonham plant, Bonham, Tex., who became unemployed or underemployed after March 15, 1969, and before April 27, 1970, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962 (37 FR 23490).

On the basis of a further showing and further investigation by the Director of the Office of Foreign Economic Policy, and pursuant to the provisions of section 302(d) of such Act, the certification issued by the Department on October 31, 1972, is hereby revised to change the termination date shown therein for the Cuero plant, and accordingly, to include within the coverage of the certification additional workers who became unemployed or underemployed.

Such revised certification is hereby made as follows:

All hourly and salaried workers of Otto Goedecke, Inc.'s affiliate, Lone Star Textile Cuero plant, Cuero, Tex., who became unemployed or underemployed after January 3, 1970, and before July 20, 1970, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

Signed at Washington, D.C., this 5th day of December, 1972.

JOEL SEGALL,
Deputy Under Secretary for International Affairs.

[FR Doc.72-21229 Filed 12-8-72;8:45 am]

WELPRO, INC.

Notice of Certification of Eligibility of Workers To Apply for Adjustment Assistance

Under date of November 6, 1972, the U.S. Tariff Commission made a report of the results of its investigation (TEA-W-156) under section 301(c)(2) of the Trade Expansion Act of 1962 (76 Stat. 884) in response to a petition for determination of eligibility to apply for adjustment assistance submitted on behalf of the workers formerly employed by Welpro, Incorporated, Seabrook, N.H. In this report, the Commission found that articles like or directly competitive with footwear for women manufactured by Welpro, Inc. are, as a result in major part of concessions granted under trade agreements, being imported into the United States in such increased quantities as to cause and threaten to cause, unemployment or underemployment of a significant number or proportion of the workers of such firm.

Upon receipt of the Tariff Commission's affirmative finding, the Department, through the Director of the Office of Foreign Economic Policy, Bureau of International Labor Affairs, instituted an investigation. Following this, the Director made a recommendation to me relating to the matter of certification (Notice of Delegation of Authority and Notice of Investigation, 34 F.R. 18342; 37 F.R. 2472, 24069; 29 CFR Part 90). In the recommendation she noted that imports like or directly competitive with women's dress and casual shoes produced by Welpro, Inc. increased substantially. As a result, corporate sales and production fell, as did employment levels and hours worked, despite efforts to remain competitive. Unemployment and underemployment directly related to import competition began in June 1969, October 1970, February and August 1972. After due consideration, I make the following certifications:

All workers, hourly, piecework, and salaried, of Welpro, Inc., Seabrook Plant, Seabrook, N.H., who became or will become unemployed or underemployed after February 5, 1972, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All workers, hourly and salaried, of Welpro, Inc., Portsmouth plant, Portsmouth, N.H., who became or will become unemployed or underemployed after October 3, 1970, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All workers, hourly and salaried, of Welpro, Inc., Welpro Pacific plant, Paramount, Calif., who became unemployed or underemployed after June 13, 1969, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All workers, hourly and salaried, of Welpro, Inc., Hampton plant, Hampton, N.H., who became or will become unemployed or underemployed after August 19, 1972, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

Signed at Washington, D.C., this 5th day of December, 1972.

JOEL SEGALL,
Deputy Under Secretary for International Affairs.

[FR Doc.72-21230 Filed 12-8-72;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 133]

ASSIGNMENT OF HEARINGS

DECEMBER 6, 1972.

Cases assigned for hearing, postponement, cancellation, or oral arguement 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-F-11666, McLean Trucking Co.—Control—Topeka Motor Freight, Inc. (Bruce E. Yeakel, Trustee in Bankruptcy), now being assigned hearing January 31, 1973 (3 days), at Kansas City, Mo., in a hearing room to be later designated.

MC 112822 Sub 236, Bray Lines, Inc., now being assigned hearing February 1, 1973 (2 days), at Omaha, Nebr., in a hearing room to be later designated.

MC-F-11545, Miller Transfer and Rigging Co.—Purchase—Engel Trucking, Inc., et al., now assigned December 11, 1972, at Washington, D.C., is postponed to January 17, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 106497 Sub 66, Parkhill Truck Co., continued to January 9, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 51146 Sub 274, Schneider Transport, Inc., continued to February 13, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 134599 Sub 53, Interstate Contract Carrier Corp., now assigned February 8, 1973, at Columbus, Ohio, is canceled.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-21242 Filed 12-8-72;8:45 am]

[Notice 176]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74032. By order of November 16, 1972, the Motor Carrier Board approved the transfer to Edward D. Pohutsky, doing business as Edward Pohutsky Movers, Eynon, Pa., of Certificate No. MC-106205 (Sub-No. 2), issued April 11, 1951, to Hanlon Auto Transport, Inc., Corona, N.Y., authorizing the transportation of household goods, as defined, between Holyoke and South Hadley, Mass., on the one hand, and, on the other, points in Connecticut, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. William D. Traub, 10 East 40th Street, New York, NY 10016.

No. MC-FC-74035. By order of November 16, 1972, the Motor Carrier Board approved the transfer to Allstate Van Lines, Inc., Media, Pa., of Certificate No. MC-26321 issued to William H. Lane, doing business as G. C. Lane Movers, Chester, Pa., authorizing the transportation of: Household goods, as defined by the Commission, between points in Philadelphia and Delaware Counties, Pa., on the one hand, and, on the other, points in New York, New Jersey, Massachusetts, Connecticut, Delaware, Maryland, Virginia, Ohio, and the District of Columbia. Murray B. Dolfman, attorney, One East Penn Square Building, Philadelphia, Pa. 19107.

No. MC-FC-74078. By order entered December 1, 1972, the Motor Carrier Board approved the transfer to Chapin & Sadler, Inc., Montague, Mass., of the operating rights set forth in Certificates Nos. MC-107896 and MC-107896 (Sub-No. 1), issued November 4, 1966, as corrected November 23, 1966, and June 22, 1972, respectively, authorizing the transportation of passengers and their baggage, in charter operations, from Northfield and Gill, Mass., to points in Connecticut, Maine, New Hampshire, New York, Rhode Island, and Vermont, and return; and beginning and ending at Montague, Sunderland, and Conway, Mass., and extending to points in Connecticut, Maine, New Hampshire, Rhode Island, Vermont, and New York. David M. Marshall, 135 State Street, Suite 200, Springfield, MA 01103, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-21245 Filed 12-8-72;8:45 am]

[Notice 178]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73882. By order of November 17, 1972, the Motor Carrier Board approved the transfer to Service Air Cargo, a corporation, Los Angeles, Calif., of the operating rights in Certificate No. MC-29309 issued March 21, 1952, to Jack O. Murch, doing business as American Transportation Co., Los Angeles, Calif., authorizing the transportation of general commodities, with exceptions, between Vernon and Los Angeles, Calif., and points in Los Angeles County, Calif., within 5 miles of the intersection of Ninth and Indiana Streets, Los Angeles, on the one hand, and, on the other, Los Angeles Harbor and Long Beach, Calif. William Davidson, registered practitioner, 2455 East 27th Street, Vernon, CA 90058, representative for applicants.

No. MC-F-73933. By order of November 17, 1972, the Motor Carrier Board approved the transfer to Mid-City Freight Lines, Inc., Sibley, Mo., of a portion of Certificate No. MC-39961 issued to Clark Truck Line, Inc., authorizing the transportation of: General commodities, usual exceptions, between Wellington, Mo., and Kansas City, Kans., serving specified intermediate and off-route points. Harold A. Kyser, Clark Manufacturing Co., Atherton, Mo., attorney for applicant. Frank W. Taylor, 1221 Baltimore Avenue, Kansas City, MO 64105, attorney for applicant.

No. MC-FC-74053. By order of November 17, 1972, the Motor Carrier Board approved the transfer to Thomas G. Horngren, Downey, Calif., of the operating

rights in Certificate No. MC–66194 (Sub-No. 9) issued January 6, 1969 to Owl Truck Company, a corporation, Compton, Calif., authorizing the transportation of gypsum plaster and gypsum wall board from Blue Diamond, Nev. to points in Los Angeles, Orange, San Bernadino, and Riverside Counties, Calif. Gerold von Pahlen-Fedoroff, 9401, Wilshire Boulevard, Beverly Hills, CA 90212, attorney for applicants.

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

[FR Doc.72-21244 Filed 12-8-72;8:45 am]

[Notice 179]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 6, 1972.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC–FC–74145. By application filed November 29, 1972, EASTMAN TRANSPORT, INC., Post Office Box 305, Fort Bragg, CA 95437, seeks temporary authority to lease the operating rights of LANDIS MORGAN, INC., 4000 North State Street, Ukiah, CA, under section 210a(b). The transfer to EASTMAN TRANSPORT, INC., of the operating rights of LANDIS MORGAN, INC., is presently pending.

By the Commission.

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

[FR Doc.72-21243 Filed 12-8-72;8:45 am]

[No. 35726]

PENN CENTRAL TRANSPORTATION CO.

Petition for Declaratory Order Regarding Freight Charges, Lake Cargo Coal

NOVEMBER 22, 1972.

Notice is hereby given that by petition filed September 22, 1972, the Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., Willard Wirtz, trustees, request the Commission to issue a declaratory order pursuant to 5 USC section 554(e), which provision of the Administrative Procedure Act provides that the Commission in its sound discretion may issue a declaratory order to terminate a controversy.

It appears that a controversy exists between Penn Central Transportation Co. and a shipper, Energy Resources, Inc., concerning the applicable tariff charges on shipments of bituminous coal from mines in the eastern coal fields, including mines served by Penn Central which are located within the Sutton Coal Rate District of northwestern Pennsylvania to the Ports of Ashtabula and Toledo, Ohio, for steamship movement beyond to Green Bay, Wis., which coal is being consumed by a single consignee within the city of Green Bay, Wis.

It is Penn Central's contention that the volume movements involved herein are subject to annual volume rates named in TL/CTR Freight Tariff 116, ICC G–114. The shipper asserts that the applicable rates are the rail-lake proportional rates named in OCTB Freight Tariff 40, ICC–107 by virtue of a provision in Supplement 2 to NewEra Corp. Tariff ICC–1.

A copy of this notice will be served upon the petitioners and the following parties:

Mr. E. C. Bock, Tariff Publishing Officer (OCTB FT 40), 2 Pennsylvania Plaza, New York City, N.Y. 10001.

Mr. J. J. Hogan, Tariff Publishing Officer (TL/CTR FT 116), 2 Pennsylvania Plaza, New York City, N.Y. 10001.

Mr. John J. Nowicki, President, NewEra Corp., Chairman of Board, Energy Resources, Inc., 614 West Brown Deer Road, Milwaukee, WI 53217.

Mr. Thomas Poletti, President, Energy Resources, Inc., Vice President, NewEra Corp., 614 West Brown Deer Road, Milwaukee, WI 53217.

Mr. William L. Slover, Secretary and General Counsel, Energy Resources, Inc., and NewEra Corp., 1224 17th Street NW., Washington, DC 20036.

In addition notice of filing of the petition will be given to the general public by depositing a copy of this notice in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

Any person intereseted in any of the matters in the petition, and desiring to participate therein may, on or before 30 days from the publication of this notice in the FEDERAL REGISTER, file replies to the petition indicating merely whether they intend to participate in the proceeding, if instituted. An original and 15 copies of such replies must be filed with the Office of Proceedings of this Commission and must show service of a copy thereof upon persons listed above and service of two copies thereof upon petitioner's attorney, Richard J. Murphy, 1138 Six Penn Center, Philadelphia, PA 19104. Thereafter, the nature of further proceedings herein, if any, will be designated. Written material or suggestions submitted will be available for public inspection at the offices of the Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, D.C. 20423 during regular business hours.

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

[FR Doc.72-21241 Filed 12-8-72;8:45 am]

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SATURDAY, DECEMBER 9, 1972
WASHINGTON, D.C.

Volume 37 ■ Number 238

PART II

DEPARTMENT OF THE INTERIOR

Bureau of Mines

■

HEALTH AND SAFETY STANDARDS

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Mines

[30 CFR Part 55]

HEALTH AND SAFETY STANDARDS

Metal and Nonmetallic Open Pit Mines

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721–740) to promulgate health and safety standards for metal and nonmetallic mines it is proposed to amend Part 55, Subchapter N, Chapter I, Title 30, Code of Federal Regulations by adding certain standards and by revising certain standards in force as set forth below. These standards have been developed after consultation with the Metal and Nonmetal Mine Safety Advisory Committee appointed pursuant to section 7 of the Act (30 U.S.C. 726).

Each standard which is to be a mandatory standard is so designated by the word "Mandatory" which appears at the beginning of the section in which the standard is prescribed. If the Metal and Nonmetal Mine Safety Advisory Committee has recommended a mandatory standard, the standard will be preceded by the word "Mandatory" and the letters "MNMSAC" in this manner: *"Mandatory,* MNMSAC—."

Subject to the provisions of subsection (e) of section 6 (30 U.S.C. 725(e)) and in accordance with the provisions of subsection (d) of section 6 of the Act (30 U.S.C. 725(d)) on or before the last day of the period fixed for the submission of written data, views, or arguments, any person who may be adversely affected by a proposed health and safety standard which is designated as a mandatory standard and which has not been recommended as a mandatory standard by the Metal and Nonmetal Mine Safety Advisory Committee may file with the Secretary of the Interior written objections thereto stating the grounds for such objection and requesting a public hearing (subject to the provisions of the Administrative Procedure Act) on such objections.

Pursuant to the provisions of subsection (e) of section 6 of the Act (30 U.S.C. 725(e)) proposed mandatory standards which have been recommended by the Advisory Committee, are not subject to hearings.

Interested persons may, within a period of 30 days following publication of this notice in the FEDERAL REGISTER, submit written data, views, arguments, or objections to the proposals. All communications should be addressed to the Director, Bureau of Mines, Department of the Interior, Washington, D.C. 20240.

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

DECEMBER 5, 1972.

1. It is proposed to revoke advisory standard 55.4–32, promulgated on July 31, 1969 (34 F.R. 12505), and to add a new mandatory standard as follows:

55.4–48 *Mandatory.* All employees shall be instructed at least once each calendar year on fire alarm signals and applicable procedures to be followed in case of fire or other disaster. Records of instruction shall be kept.

2. It is proposed that advisory standard 55.18–10, promulgated on July 31, 1969 (34 F.R. 12509), be made mandatory and revised to read as follows:

55.18–10 *Mandatory.* MNMSAC—Selected supervisors shall be trained in first aid. First aid training shall be made available to all interested employees.

3. It is proposed to add a new § 55.26 *Procedures,* and to add a new mandatory standard 55.26–1 as follows:

§ 55.26 Procedures.

NOTIFICATION OF COMMENCEMENT OF OPERATIONS AND CLOSING OF MINES

55.26–1 *Mandatory.* The owner, operator, or person in charge of any metal or nonmetal mine shall notify the nearest Bureau of Mines Subdistrict Office, before starting operations, of the approximate or actual date mine operation will commence. The notification shall include the mine name, location, the company name, mailing address, person in charge, and whether operations will be continuous or intermittent.

When any mine is closed, the person in charge shall notify the nearest subdistrict office and indicate whether the closure is temporary or permanent.

[FR Doc.72–21106 Filed 12–8–72;8:53 am]

[30 CFR Part 56]

HEALTH AND SAFETY STANDARDS

Sand, Gravel, and Crushed Stone Operations

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721–740) to promulgate health and safety standards for metal and nonmetallic mines it is proposed to amend Part 56, Subchapter N, Chapter I, Title 30, Code of Federal Regulations by adding certain standards and by revising certain standards in force as set forth below. These standards have been developed after consultation with the Metal and Nonmetal Mine Safety Advisory Committee appointed pursuant to section 7 of the Act (30 U.S.C. 726).

Each standard which is to be a mandatory standard is so designated by the word "Mandatory" which appears at the beginning of the section in which the standard is prescribed. If the Metal and Nonmetal Mine Safety Advisory Committee has recommended a mandatory standard, the standard will be preceded by the word "Mandatory" and the letters "MNMSAC" in this manner: *"Mandatory,* MNMSAC—."

Subject to the provisions of subsection (e) of section 6 (30 U.S.C. 725(e)) and in accordance with the provisions of subsection (d) of section 6 of the Act (30 U.S.C. 725(d)) on or before the last day of the period fixed for the submission of written data, views, or arguments, any person who may be adversely affected by a proposed health and safety standard which is designated as a mandatory standard and which has not been recommended as a mandatory standard by the Metal and Nonmetal Mine Safety Advisory Committee may file with the Secretary of the Interior written objections thereto stating the grounds for such objection and requesting a public hearing (subject to the provisions of the Administrative Procedure Act) on such objections.

Pursuant to the provisions of section (e) of section 6 of the Act (30 U.S.C. 725(e)) proposed mandatory standards which have been recommended by the Advisory Committee, are not subject to hearings.

Interested persons may, within a period of 30 days following publication of this notice in the FEDERAL REGISTER, submit written data, views, arguments, or objections to the proposals. All communications should be addressed to the Director, Bureau of Mines, Department of the Interior, Washington, D.C. 20240.

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

DECEMBER 5, 1972.

1. It is proposed to revoke advisory standard 56.4–32, promulgated on July 31, 1969 (34 F.R. 12512), and to add a new mandatory standard as follows:

56.4–48 *Mandatory.* All employees shall be instructed at least once each calendar year on fire alarm signals and applicable procedures to be followed in case of fire or other disaster. Records of instruction shall be kept.

2. It is proposed that advisory standard 56.18–10, promulgated on July 31, 1969 (34 F.R. 12515), be made mandatory and revised to read as follows:

56.18–10 *Mandatory.* MNMSAC — Selected supervisors shall be trained in first aid. First-aid training shall be made available to all interested employees.

3. It is proposed to add a new § 56.26 *Procedures,* and to add a new mandatory standard 56.26–1 as follows:

§ 56.26 Procedures.

NOTIFICATION OF COMMENCEMENT OF OPERATIONS AND CLOSING OF MINES

56.26–1 *Mandatory.* The owner, operator, or person in charge of any metal or nonmetal mine shall notify the nearest Bureau of Mines Subdistrict Office, before starting operations, of the approximate or actual date mine operation will commence. The notification shall include the mine name, location, the company name, mailing address, person in charge, and whether operations will be continuous or intermittent.

When any mine is closed, the person in charge shall notify the nearest Subdistrict Office and indicate whether the closure is temporary or permanent.

[FR Doc.72–21107 Filed 12–8–72;8:53 am]

[30 CFR Part 57]

HEALTH AND SAFETY STANDARDS

Metal and Nonmetallic Underground Mines

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721–740) to promulgate health and safety standards for metal and nonmetallic mines it is proposed to amend Part 57, Subchapter N, Chapter I, Title 30, Code of Federal Regulations by adding certain standards and by revising certain standards in force as set forth below. These standards have been developed after consultation with the Metal and Nonmetal Mine Safety Advisory Committee appointed pursuant to section 7 of the Act (30 U.S.C. 726).

Each standard which is to be a mandatory standard is so designated by the word "Mandatory" which appears at the beginning of the section in which the standard is prescribed. If the Metal and Nonmetal Mine Safety Advisory Committee has recommended a mandatory standard, the standard will be preceded by the word "Mandatory" and the letters "MNMSAC" in this manner: "*Mandatory*, MNMSAC—."

Subject to the provisions of subsection (e) of section 6 (30 U.S.C. 725(e)) and in accordance with the provisions of subsection (d) of section 6 of the Act (30 U.S.C. 725(d)) on or before the last day of the period fixed for the submission of written data, views, or arguments, any person who may be adversely affected by a proposed health and safety standard which is designated as a mandatory standard and which has not been recommended as a mandatory standard by the Metal and Nonmetal Mine Safety Advisory Committee may file with the Secretary of the Interior written objections thereto stating the grounds for such objection and requesting a public hearing (subject to the provisions of the Administrative Procedure Act) on such objection.

Pursuant to the provisions of subsection (e) of section 6 of the Act (30 U.S.C. 725(e)) proposed mandatory standards which have been recommended by the Advisory Committee, are not subject to hearings.

Interested persons may, within a period of 30 days following publication of this notice in the FEDERAL REGISTER, submit written data, views, arguments, or objections to the proposals. All communications should be addressed to the Director, Bureau of Mines, Department of the Interior, Washington, D.C. 20240.

HOLLIS M. DOLE,
Assistant Secretary of the Interior.
DECEMBER 5, 1972.

1. It is proposed to revoke advisory standard 57.4–32, promulgated on July 31, 1969 (34 F.R. 12519), which applies to both surface and underground operation, and to add two new standards, 57.4–48, which applies to surface only, and 57.4–74, which applies to underground only, as follows:

57.4–48 *Mandatory.* All employees shall be instructed at least once each calendar year on fire-alarm signals and applicable procdures to be followed in case of fire or other disaster. Records of instruction shall be kept.

57.4–74 *Mandatory.* MNMSAC—All employees at an underground operation shall be instructed at least once each calendar year on current escape and evacuation plans, fire-alarm signals, and applicable procedures to be followed in case of fire or other emergency. New employees shall receive such instructions before going underground. Records of instruction shall be kept. Whenever an employee is assigned to work in another area of the mine he shall be instructed on the escapeway for that area at the time of such assignment. Whenever a change is made in escape and evacuation plans and procedures for any area of a mine, all affected employees shall be instructed of such change.

2. It is proposed to add a new mandatory standard 57.4–73, which applies to underground only, as follows:

57.4–73 *Mandatory,* MNMSAC—Mine evacuation drills shall be held for each shift once every 6 months. These evacuation drills shall involve all employees on each shift and shall include:

(a) Activation of the fire-alarm system.

(b) Evacuation of all men from their work areas to the surface or to designated central evacuation points at some time other than a shift change.

Records of such drills, showing the time and date, shall be kept for at least 1 year after each drill.

3. It is proposed to revoke mandatory standard 57.4–50, promulgated on July 31, 1969 (34 F.R. 12519), and to revise mandatory standard 57.11–53, which applies to underground only, as follows:

57.11–53 *Mandatory.* A specific escape and evacuation plan and revisions thereof suitable to the conditions and mining system of the mine shall be developed by the operator and set out in written form. Within 45 calendar days after promulgation of this standard a copy of the plan and revisions thereof shall be available to the Secretary or his authorized representative. Also copies of the plan and revisions thereof shall be made available to the miners and their representatives and shall be posted at locations convenient to all persons on the surface and underground. Such a plan shall be updated as necessary and shall be reviewed jointly by the operator and the Secretary or his authorized representative at least once every 6 months from the date of the last review. The plan shall include:

(a) Mine maps showing directions of principal airflow, locations of escape routes, telephones, fans, fan controls, fire doors, ventilation doors, exits, and refuge chambers. Appropriate portions of such maps shall be posted at all shaft stations and in underground shops, lunchrooms, and elsewhere in working areas where men congregate.

(b) Procedures to show how the miners will be notified of emergency, and by whom.

(c) An escape plan for each working area in the mine to include instructions showing how each working area should be evacuated. Each such plan shall be posted at appropriate shaft stations and elsewhere in working areas where men congregate.

(d) A firefighting plan showing assigned responsibilities in the event of an emergency.

(e) Procedures for surface personnel to follow in an emergency, to include the notification of proper authorities, preparing rescue equipment, checking fans, and other vital equipment, and maintaining such equipment.

(f) Details of provisions for communication and transportation facilities, for emergency power and ventilation, and availability and location of rescue personnel and equipment.

4. It is proposed to revoke mandatory standard 57.18–27 and to add a new mandatory standard 57.11–58, which applies to underground only, as follows:

57.11–58 *Mandatory,* MNMSAC—Each operator of an underground mine shall establish a check-in and check-out system which shall provide an accurate record of persons in the mine. These records shall be kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazards. Every person underground shall carry a positive means of being identified.

5. It is proposed to add a new mandatory standard 57.15–30, which applies to underground only, as follows:

57.15–30 *Mandatory.* A 1-hour self-rescue device approved by the Bureau of Mines shall be made available by the operator to all personnel underground. Each operator shall maintain self-rescue devices in good condition.

6. It is proposed to add a new mandatory standard 57.15–31, which applies to underground only, as follows:

57.15–31 *Mandatory.* Self-rescue devices meeting the requirements of standard 57.15–30 shall be carried by all persons underground, except where a person works on or around mobile equipment self-rescue devices may be placed in a readily accessible location on such equipment.

7. It is proposed that advisory standard 57.18–10, promulgated on July 31, 1969 (34 F.R. 12524), which applies to surface and underground, be made mandatory and revised to read as follows:

57.18–10 *Mandatory,* MNMSAC—Selected supervisors shall be trained in first aid. First-aid training shall be made available to all interested employees.

8. It is proposed to add a new mandatory standard 57.18–28, which applies to underground only, as follows:

57.18–28 *Mandatory.* Within 6 months after promulgation of this standard and thereafter on an annual basis all underground employees shall be instructed in the Bureau of Mines approved courses on mine emergency training and the use of self-rescue devices by Bureau personnel or by qualified persons who are certified by the Bureau of Mines Division of Education and Training Services to give such instruction. Instructional materials, handouts, visual aids, and other teaching accessories used in these courses shall be available for inspection by the Secretary or his authorized representative.

New employees shall be trained in the use of self rescue devices before going under-

ground. Such training of new employees may be conducted by qualified company personnel who are not certified but who have obtained provisional approval from the Bureau of Mines Division of Education and Training Services to conduct such training.

Records of all training shall be kept at the mine site, or nearest mine office. Upon completion of such training, copies of the record shall be submitted to the nearest Bureau of Mines Training Center.

9. It is proposed to add a new § 57.26 *Procedures*, and to add a new mandatory standard § 57.26–1 as follows:

§ 57.26 Procedures.

NOTIFICATION OF COMMENCEMENT OF OPERATIONS AND CLOSING OF MINES

§ 57.26–1 *Mandatory.* The owner, operator, or person in charge of any metal and nonmetal mine shall notify the nearest Bureau of Mines Subdistrict Office, before starting operations, of the approximate or actual date mine operation will commence. The notification shall include the mine name, location, the company name, mailing address, person in charge, and whether operations will be continuous or intermittent.

When any mine is closed, the person in charge shall notify the nearest Subdistrict Office and indicate whether the closure is temporary or permanent.

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