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NOTICE TO AGENCIES

Agencies preparing documents for publication in the FEDERAL REGISTER are reminded that the revised rules of the Administrative Committee of the Federal Register are in effect as of January 3, 1973. (1 CFR Chapter I, 37 F.R. 23602, November 4, 1972.)

These revised rules include the following significant changes:

1. Requirement for a preamble in each proposed rule making and final rule making document that describes the contents of the document in a manner sufficient to apprise a reader who is not an expert in the subject area of the general subject matter of the document.
2. Requirement for setting forth specific effective dates and action dates.
3. Change in publication dates of the daily FEDERAL REGISTER (Monday through Friday instead of Tuesday through Saturday). See 1 CFR 17.2, 18.12, and 18.17.

HIGHLIGHTS OF THIS ISSUE

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

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FEDERAL REGISTER

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Title 3—The President

EXECUTIVE ORDER 11694

Creating an Emergency Board to Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees

WHEREAS, a dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood Railway Carmen of the United States and Canada, a labor organization; and

WHEREAS, this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS, this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service:

NOW, THEREFORE, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), I hereby create a board of three members, to be appointed by me, to investigate this dispute. No member of the board shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

The board shall report its finding to the President with respect to the dispute within thirty days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the board has made its report to the President, no change, except by agreement, shall be made by the Port Authority Trans-Hudson Corporation, or by its employees, in the conditions out of which the dispute arose.

Richard Nixon

THE WHITE HOUSE,
January 2, 1973.

[FR Doc.73-313 Filed 1-3-73;10:01 am]

Rules and Regulations

Title 32—NATIONAL DEFENSE

Chapter XVI—Selective Service System

OFFICERS, CLASSIFICATION, AND EXAMINATION

Whereas, on November 25, 1972, the Director of Selective Service published a notice of proposed amendments of Selective Service Regulations 37 F.R. 25054 of November 25, 1972; and

Whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. sections 451 et seq.) in that more than 30 days have elapsed subsequent to such publication during which period comments from the public have been received and considered; and I certify that I have requested the views of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now, therefore, by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.) and Executive Order 11623 of October 12, 1971, the Selective Service Regulations, constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, effective 11:59 p.m., e.s.t., on December 31, 1972, as follows:

PART 1604—SELECTIVE SERVICE OFFICERS

§§ 1604.61, 1604.62 [Revoked]

Section 1604.61 *Medical advisors to local boards*, is revoked.

Section 1604.62 *Disqualification*, is revoked.

PART 1622—CLASSIFICATION RULES AND PRINCIPLES

Paragraph (a) of § 1622.44 *Class 4–F: Registrant not qualified for military service*, is amended to read as follows:

§ 1622.44 Class 4–F: Registrant not qualified for military service.

(a) In Class 4–F shall be placed any registrant who is found by an Armed Forces examining and entrance station, under applicable physical, mental or administrative standards, to be not qualified for service in the Armed Forces; except that no such registrant whose further examination or reexamination is determined by AFEES to be justified shall be placed in Class 4–F until such further examination has been accomplished and such registrant continues to be found not qualified for military service.

* * * * *

PART 1625—REOPENING AND CONSIDERING ANEW REGISTRANT'S CLASSIFICATION

Section 1625.2 *Reopening of classification*, is amended to read as follows:

§ 1625.2 Reopening of classification.

(a) The local board will reopen and consider anew the classification of a registrant: (1) Upon the written request of the Director of Selective Service or the State Director of Selective Service and upon receipt of such request shall immediately cancel any order to report for induction or alternate service which may have been issued to the registrant; (2) who is in Class 1–H and becomes subject to processing for induction according to these regulations and the rules prescribed by the Director; (3) in any classification for the purpose of classifying him in Class 1–H according to these regulations and the rules prescribed by the Director; (4) upon the written request of the registrant that is accompanied by written information presenting facts other than pertaining to his acceptability for induction not considered when the registrant was classified which, if true in the opinion of the board, would justify a change in the registrant's classification; or (5) upon its own motion if such action is based upon facts other than pertaining to his acceptability for induction not considered when the registrant was classified which, in the opinion of the board, would justify a change in the registrant's classification: *Provided*, That in the event of paragraph (a)(4) or (5) of this section, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an order for induction or alternate service or, in the event the order to report for induction or alternate service was postponed and a subsequent letter from the local board establishes the date for induction or for reporting for alternate service, unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

PART 1628—EXAMINATION OF REGISTRANTS

§ 1628.1 [Amended]

Paragraph (c) of § 1628.1 *Who will be examined*, is revoked.

§§ 1628.2, 1628.3, 1628.4, 1628.5 [Revoked]

Section 1628.2 *Preliminary determination of acceptability*, is revoked.

Section 1628.3 *Registrants to be given medical interview*, is revoked.

Section 1628.4 *Duties of medical advisors to local board*, is revoked.

Section 1628.5 *Transfer for medical interview*, is revoked.

BYRON V. PEPITONE,
Acting Director.

DECEMBER 26, 1972.

[FR Doc.73-16 Filed 1-3-73;8:45 am]

Chapter XVI—Selective Service System

CLASSIFICATION PROCEDURES

Whereas, on November 28, 1972, the Director of Selective Service published a notice of proposed amendments to Selective Service Regulations, 37 FR 25179 on November 28, 1972; and

Whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. sections 451 et seq.) in that more than 30 days have elapsed subsequent to such publication during which period comments from the public have been received and considered; and I certify that I have requested the views of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.) and Executive Order 11623 of October 12, 1971, the Selective Service Regulations, constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, effective 11:59 p.m., e.s.t., on January 6, 1973, as follows:

PART 1621—PREPARATION FOR CLASSIFICATION

Section 1621.14 *Securing information from welfare and governmental agencies*, is amended to read as follows:

§ 1621.14 Securing information from welfare and governmental agencies.

The local board is authorized to request and receive information from welfare and governmental agencies whenever such information will assist it in determining the proper classification of a registrant.

PART 1622—CLASSIFICATION RULES AND PRINCIPLES

Section 1622.30 is amended to read as follows:

§ 1622.30 Class 3–A: Registrant deferred by reason of hardship to dependents.

(a) In Class 3–A shall be placed any registrant:

(1) Whose induction would result in extreme hardship to his wife when she is his only dependent;

(2) Whose induction would result in undue and genuine hardship to his child, parent, grandparent, brother or sister, who is dependent upon him for support;

(3) Who has been separated from active military service by reason of dependency or hardship; or

(4) Who prior to April 23, 1970, submitted to his local board information establishing his eligibility for deferment on the grounds of fatherhood under regulations in effect prior to such date.

(b) Any registrant classified prior to April 23, 1970, in Class 3–A on the grounds of fatherhood and who continues to maintain a bona fide relationship in their home with his child or children may be retained in Class 3–A.

(c) The local board will reopen and consider anew the classification of each registrant in Class 3–A not later than 365 days after he was last classified in Class 3–A.

(d) As used in this section:

(1) The term "child" shall include any person under 18 years of age who is a legitimate or an illegitimate child from the date of its conception, a stepchild, a foster child, or a child legally adopted;

(2) Dependency: Dependency exists when by reason of death or disability of a member of the registrant's family, other members of his family become principally dependent upon him for care or support;

(3) Hardship: Hardship exists when in circumstances not involving death or disability of a member of the registrant's family, his induction will materially affect the care or support of his family by aggravating or causing undue and genuine hardship.

(4) The term "parent" shall include any person who has stood in the place of a parent to the registrant for at least 5 years preceding the 18th anniversary of the registrant's date of birth.

PART 1623—CLASSIFICATION PROCEDURE

Section 1623.1(b) is amended to read as follows:

§ 1623.1 Commencement of classifications.

* * * * *

(b) The registrant's classification shall be determined on the basis of the official forms of the Selective Service System and other written information in his file, oral statements by the registrant at his personal appearance before the local board, appeal board, or National Selective Service Appeal Board, and oral statements by the registrant's witnesses at his personal appearance before the local board. No information in any written summary of the oral information presented at a registrant's personal appearance that was prepared by an official or employee of the Selective Service System will be considered or placed in the registrant's file unless a copy of it has been furnished to the registrant by the Selective Service System. No information in any other document in the registrant's file shall be considered in classifying the registrant unless that document was supplied by the registrant or a copy of it or a fair resume of its contents has been furnished to him by the Selective Service System.

PART 1631—ALLOCATION OF INDUCTIONS

Section 1631.6(b)(2) is amended to read as follows:

* * * * *

§ 1631.6 Action by local board upon receipt of allocation.

* * * * *

(b) * * *

(2) Nonvolunteers in the Extended Priority Selection Group in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1631.1: *Provided*, That, in the calendar year 1973, no registrant who first entered this group before December 31, 1972, shall be inducted.

BYRON V. PEPITONE,
Acting Director.

DECEMBER 29, 1972.

[FR Doc.73-168 Filed 1-3-73;8:45 am]

OFFICERS, CLASSIFICATION, AND EXAMINATION

Whereas, on November 25, 1972, the Director of Selective Service published a notice of proposed amendments of Selective Service regulations at 37 FR 25055 of November 25, 1972; and

Whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. sections 451 et seq.) in that more than 30 days have elapsed subsequent to such publication during which period comments from the public have been received and considered; and I certify that I have requested the views of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.) and Executive Order 11623 of October 12, 1971, the Selective Service regulations, constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, effective 11:59 p.m., e.s.t., on December 31, 1972, as follows:

PART 1622—CLASSIFICATION

Section 1622.2 *Classes*, is amended to read as follows:

§ 1622.2 Classes.

Each registrant shall be classified in one of the following classes:

CLASS 1

Class 1–A: Available for military service.
Class 1–AM: Registrant in any of the specified medical, dental, and allied specialist categories.
Class 1–A–O: Conscientious objector available for noncombatant military service only.
Class 1–C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.
Class 1–D: Member of reserve component or student taking military training.
Class 1–H: Registrant not currently subject to processing for induction.
Class 1–O: Conscientious objector available for alternate service.
Class 1–W: Conscientious objector performing alternate service in lieu of induction.

CLASS 2

Class 2–A: Registrant deferred because of civilian occupation (except agriculture) or nondegree study.
Class 2–C: Registrant deferred because of agricultural occupation.
Class 2–D: Registrant deferred because of study preparing for the ministry.
Class 2–M: Registrant deferred because of study preparing for a specified medical specialty.
Class 2–S: Registrant deferred because of activity in study.

CLASS 3

Class 3–A: Registrant with a child or children; and registrant deferred by reason of extreme hardship to dependents.

CLASS 4

Class 4–A: Registrant who has completed military service.
Class 4–B: Officials deferred by law.
Class 4–C: Aliens.
Class 4–D: Minister of religion.
Class 4–F: Registrant not qualified for military service.
Class 4–G: Registrant exempted from service during peace.
Class 4–W: Conscientious objector who has completed alternate service in lieu of induction.

Section 1622.15 is added to read as follows:

§ 1622.15 Class 1–AM: Medical, dental, or allied specialist.

(a) In Class 1–AM shall be placed every registrant (1) who is or becomes a doctor of medicine, a dentist, a doctor of optometry, a doctor of osteopathy, a doctor of podiatry, a veterinarian, a registered nurse, or other of the medical, dental or allied specialist categories for which in accord with section 5(a) of the Military Selective Service Act the Secretary of Defense has stated that requisitions for induction may be submitted, and (2) who is not eligible for classification in another class other than Class 1–A.

(b) Each registrant who is classified in Class 1–AM shall be identified as follows: Class 1–AMM for doctor of medicine; Class 1–AMD for dentist; Class 1–AME for doctor of optometry; Class 1–AMO for doctor of osteopathy; Class 1–AMP for doctor of podiatry; Class

1-AMV for veterinarian; and Class 1-AMN for registered nurse.

(c) For the purpose of this section a doctor of medicine is a registrant who has received the degree of doctor of medicine; a dentist is a registrant who has received the degree of doctor of dental surgery or doctor of dental medicine; a doctor of optometry is a registrant who has received the degree of doctor of optometry; a doctor of osteopathy is a registrant who has received the degree of doctor of osteopathy; a doctor of podiatry is a registrant who has received the degree of doctor of podiatry; a veterinarian is a registrant who has received the degree of doctor of veterinary medicine; and a nurse is a registrant who has been licensed as a registered nurse. A registrant who has received training equivalent to that evidenced by the issuance of any of the degrees listed in the preceding sentence will be deemed to have received the respective degree.

Section 1622.18 *Class 1-H (holding classification): Registrant not subject to processing for induction,* is amended to read as follows:

§ 1622.18 Class 1-H (holding classification): Registrant not subject to processing for induction.

(a) In Class 1-H shall be placed any registrant who is not eligible for Class 1-AM and is not currently subject to processing for induction according to these regulations and the rules prescribed by the Director of Selective Service.

Paragraph (a) of § 1622.25 *Class 2-S: Registrant deferred because of activity in study,* is amended to read as follows:

§ 1622.25 Class 2-S: Registrant deferred because of activity in study.

(a) In Class 2-S shall be placed any registrant who requests such classification, who was satisfactorily pursuing a full-time course of instruction at a college, university or similar institution of learning during the 1970-71 regular academic school year and who is satisfactorily pursuing such course, such classification to continue until such registrant completes the requirement for his baccalaureate degree, fails to pursue satisfactorily a full-time course of instruction, or attains the 24th anniversary of the date of his birth, whichever occurs first.

* * * * *

Section 1622.26 is amended to read as follows:

§ 1622.26 Class 2-M: Registrant deferred because of study preparing for a specified medical specialty.

In Class 2-M shall be placed any registrant who is satisfactorily pursuing a full-time course of study leading to a professional degree in medicine, dentistry, optometry, osteopathy, podiatry, veterinary medicine, licensure as a registered nurse, or other of the medical, dental, or allied specialist categories for which in accord with section 5(a) of the Military Selective Service Act the Secretary of Defense has stated that requisitions for induction may be submitted.

PART 1623—CLASSIFICATION PROCEDURE

Section 1623.2 *Consideration of classes,* is amended to read as follows:

§ 1623.2 Consideration of classes.

(a) Every registrant other than a registrant eligible for classification in Class 1-AM shall be placed in Class 1-A under the provisions of section 1622.10 of this chapter except that when grounds are established to place a registrant in any one of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class 1-A-O considered the highest class and Class 4-A considered the lowest class, according to the following table:

Class 1-A-O: Conscientious objector available for noncombatant military service only.
Class 1-O: Conscientious objector available for alternate service.
Class 2-A: Registrant deferred because of civilian occupation (except agriculture) or nondegree study.
Class 2-C: Registrant deferred because of agricultural occupation.
Class 2-S: Registrant deferred because of activity in study.
Class 2-D: Registrant deferred because of study preparing for the ministry.
Class 2-M: Registrant deferred because of study preparing for a specified medical specialty.
Class 3-A: Registrant with a child or children; and registrant deferred by reason of extreme hardship to dependents.
Class 4-B: Officials deferred by law.
Class 4-C: Aliens.
Class 4-D: Minister of religion.
Class 1-H: Registrant not currently subject to processing for induction.
Class 4-G: Registrant exempted from service during peace.
Class 4-F: Registrant not qualified for military service.
Class 4-W: Conscientious objector who has completed alternate service in lieu of induction.
Class 1-D: Member of reserve component or student taking military training.
Class 1-W: Conscientious objector performing alternate service in lieu of induction.
Class 1-C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.
Class 4-A: Registrant who has completed military service.

(b) A registrant eligible for classification in Class 1-AM under the provisions of § 1622.15 of this chapter shall be placed in that class except that when grounds are established to place a registrant in any one of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class 1-A-O considered the highest and Class 4-A considered the lowest class, according to the following table:

Class 1-A-O: Conscientious objector available for noncombatant military service only.
Class 1-O: Conscientious objector available for alternate service.
Class 2-A: Registrant deferred because of civilian occupation (except agriculture) or nondegree study.
Class 2-C: Registrant deferred because of agricultural occupation.
Class 2-S: Registrant deferred because of activity in study.
Class 2-D: Registrant deferred because of study preparing for the ministry.
Class 2-M: Registrant deferred because of study preparing for a specified medical specialty.
Class 3-A: Registrant with a child or children; and registrant deferred by reason of extreme hardship to dependents.
Class 4-B: Officials deferred by law.
Class 4-C: Aliens.
Class 4-D: Minister of religion.
Class 1-H: Registrant not currently subject to processing for induction.
Class 4-G: Registrant exempted from service during peace.
Class 4-F: Registrant not qualified for military service.
Class 4-W: Conscientious objector who has completed alternate service in lieu of induction.
Class 1-D: Member of reserve component or student taking military training.
Class 1-W: Conscientious objector performing alternate service in lieu of induction.
Class 1-C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.
Class 4-A: Registrant who has completed military service.

PART 1630—VOLUNTEERS

Paragraph (a) of § 1630.1 *Who may volunteer,* is amended to read as follows:

§ 1630.1 Who may volunteer.

(a) Any registrant who has attained the age of 18 years and who has not attained the age of 26 years and who has not discharged his current military obligation under the Military Selective Service Act may volunteer for induction into the Armed Forces other than as a medical, dental, or allied specialist by completing and filing with his local board an Application for Voluntary Induction (SSS Form 254) which shall be completed and filed in duplicate if he has not attained the age of 18 years and 6 months. A registrant in Class 1-AM may volunteer for induction as a medical, dental, or allied specialist in accord with § 1680.10 of this chapter.

* * * * *

PART 1631—ALLOCATION OF INDUCTIONS

§ 1631.3 [Amended]

The second sentence of § 1631.3 *Calls by the Secretary of Defense,* is revoked.

§ 1631.4 [Amended]

Paragraph (b) of § 1631.4 *Allocation by the Director of Selective Service,* is revoked.

PART 1680—MEDICAL, DENTAL, OR ALLIED SPECIALIST CATEGORIES (CLASS 1-AM)

Part 1680 is added to read as follows:

Sec.
1680.1 Examinations.
1680.2 Calls by the Secretary of Defense.
1680.3 Allocations by the Director of Selective Service.

Sec.
1680.4 Allocations by the State Director of Selective Service.
1680.5 Action by Local Board upon receipt of allocation.
1680.6 Random selection sequence.
1680.7 Postponement of induction.
1680.8 Deferments.
1680.9 Alternate service.
1680.10 Volunteers.

AUTHORITY: The provision of this Part 1680 issued pursuant to the Military Selective Service Act, as amended (50 U.S.C. App., sections 451 et seq.) and Executive Order 11623, dated October 12, 1971.

§ 1680.1 Examinations.

Local boards shall forward registrants in Class 1–AM for Armed Forces examination in accord with instructions of the Director of Selective Service.

§ 1680.2 Calls by the Secretary of Defense.

The Secretary of Defense may from time to time place with the Director of Selective Service a call or requisition for men in any medical, dental, or allied specialist category required for induction into the Armed Forces.

§ 1680.3 Allocations by the Director of Selective Service.

Upon receipt of a call or requisition from the Secretary of Defense for men in a medical, dental, or allied specialist category to be inducted into the Armed Forces, the Director of Selective Service shall issue a call or requisition to the several States. The allocation of a call for the delivery of registrants shall specify the random selection sequence numbers of registrants in the appropriate speciality who shall be selected for induction.

§ 1680.4 Allocations by the State Director of Selective Service.

The State Director of Selective Service shall allocate a call for the delivery of registrants as prescribed by the Director of Selective Service pursuant to § 1680.3 of this part.

§ 1680.5 Action by local board upon receipt of allocation.

(a) When an allocation is received from the State Director of Selective Service, any member or compensated employee of the local board, or any compensated employee of the Selective Service System whose official duties include the performance of administrative duties at a local board shall select as provided herein, and issue orders to report for induction to those men required to fill the call from among its registrants who have been classified in Class 1–AM and have been found acceptable for service in the Armed Forces and to whom a Statement of Acceptability (DD Form 62) has been mailed: *Provided*, That a registrant in Class 1–AM who has volunteered for induction may be selected and ordered to report for induction to fill an induction call notwithstanding the fact that he has not been found acceptable for service in the Armed Forces and regardless of whether or not a Statement of Acceptability (DD Form 62) has been mailed to him, but in such case the Armed Forces examination shall be performed after he has reported for induction as ordered and he shall not be inducted until his acceptability has been satisfactorily determined.

(b) Registrants shall be selected and ordered to report for induction in the following categories and in the order indicated:

(1) Volunteers in the sequence in which they have volunteered for induction;

(2) Nonvolunteers within their year of prime vulnerability in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1680.6;

(3) Nonvolunteers within the first year after their year of prime vulnerability in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1680.6;

(4) Nonvolunteers within the second year after their year of prime vulnerability in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1680.6;

(5) Nonvolunteers within the third year after their year of prime vulnerability in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1680.6;

(6) Nonvolunteers within each succeeding year, in turn, after their year of prime vulnerability in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1680.6, until attainment of age 35.

As used in this paragraph, the year of prime vulnerability for an alien who enters the United States after he has completed the professional training described in § 1622.15(c) of this chapter is the 12 months following his first year of residence in the United States. The year of prime vulnerability for all other persons is 365 days immediately following the attainment of the first appropriate professional degree or diploma, or completion of internship or 1 year of equivalent training, whichever is later. The internship or 1 year of equivalent training must follow immediately upon the attainment of the appropriate professional degree.

§ 1680.6 Random selection sequence.

A registrant in Class 1–AM who was born before 1944 shall be assigned a birth date sequence based upon the results of the drawing held on December 1, 1969. A registrant in Class 1–AM who was born in 1944 or later shall be assigned a birth date sequence based upon the results of drawings held in accord with § 1631.1 of this chapter.

§ 1680.7 Postponement of induction.

Section 1632.2 of this chapter applies to registrants subject to this part. The Director of Selective Service or any State Director of Selective Service (as to the registrants registered within his State), in accord with § 1632.2(b) of this chapter, may postpone the induction of a registrant who applies or has applied for an appointment as a Reserve Officer in one of the Armed Forces in any of the medical, dental, and allied specialist categories until final action has been taken on such application.

§ 1680.8 Deferments.

Any registrant subject to this part may be considered for classification in Class 2–A in accord with the standards in § 1622.23(a) of this chapter if his occupation following his year of prime vulnerability as defined in § 1680.5(c) has been found by the appropriate State medical advisory board to represent an especially critical community service, and a replacement cannot be found by the community involved in the time allotted by a postponement of induction.

§ 1680.9 Alternate service.

A registrant in Class 1–O who would be eligible for Class 1–AM were he not in Class 1–O will be ordered to alternate service in lieu of induction in accord with Part 1660 of this chapter at the time that he would be called for induction if he were in Class 1–AM.

§ 1680.10 Volunteers.

Any registrant in Class 1–AM who has not attained the age of 35 years may volunteer for induction under this part by filing with his local board his written request for such induction.

BYRON V. PEPITONE,
Acting Director.

DECEMBER 26, 1972.

[FR Doc.73-15 Filed 1-3-73;8:45 am]

PART 1660—ALTERNATE SERVICE

Whereas, on November 28, 1972, the Director of Selective Service published a notice of proposed amendments of Selective Service regulations at 37 F.R. 25179 of November 28, 1972; and

Whereas more than 30 days have elapsed subsequent to such publication during which period comments from the public have been received and considered.

Now therefore by virtue of the authority vested in me by section 6(j) of the Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.), the Selective Service Regulations, constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, effective 11:59 p.m., e.s.t., on January 6, 1973, as follows:

Section 1660.4(c) is amended to read as follows:

§ 1660.4 Selection of nonvolunteer for alternate service.

* * * * *

(c) A registrant in Class 1–O who would be eligible for Class 1–AM were he not in 1–O will be ordered to alternate

service in lieu of induction at the time that he would be ordered for induction if he were in Class 1-AM.

* * * * *

BYRON V. PEPITONE,
Acting Director.

DECEMBER 29, 1972.

[FR Doc.73-169 Filed 1-3-73;8:45 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 5A—Federal Supply Service, General Services Administration

MISCELLANEOUS AMENDMENTS

Chapter 5A of Title 41 is amended as follows:

PART 5A-3—PROCUREMENT BY NEGOTIATION

The table of contents of Part 5A-3 is amended to add the following:

Sec.
5A-3.603-71 Prompt payment discounts.
5A-3.809 Contract audit as a pricing aid.

Subpart 5A-3.6—Small Purchases

Section 5A-3.603-71 is added as follows:

§ 5A-3.603-71 Prompt payment discounts.

Prompt payment discounts offered for payment within less than 20 calendar days will not be considered in evaluating prices quoted on Standard Form 18, Request for Quotations. However, any discount offered by a successful bidder shall be taken provided payment is made within the discount period, even though such discount was not considered in evaluation of the offer (see also § 5A-2.407-3(a)).

Subpart 5A-3.8—Price Negotiation Policies and Techniques

Section 5A-3.809 is added as follows:

§ 5A-3.809 Contract audit as a pricing aid.

Requests by contracting officers for contract audits (see § 5A-53.301).

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PART 5A-53—CONTRACT ADMINISTRATION

Part 5A-53 is amended by adding the following new Subpart 5A-53.3:

Subpart A-53.3—Audit of Contractor's Records

Sec.
5A-53.301 General.

Subpart 5A-53.3—Audit of Contractor's Records

§ 5A-53.301 General.

(a) Section 5-53.301 prescribes that the Contract Audits Division (BKC), Office of Audits, performs contract audits as required by law, regulations, or sound business judgment.

(b) In order that the Commissioner, FSS, may be apprised of such audits and related information if requested, copies of all letters from contracting officers to BKC requesting contract audits shall be furnished to the Office of the Executive Director (FA) (see also § 5A-3.809).

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 41 CFR 5-1.101(c))

Effective date. These regulations are effective January 19, 1973, but may be observed earlier.

Dated: December 20, 1972.

M. S. MEEKER,
Commissioner,
Federal Supply Service.

[FR Doc.73-182 Filed 1-3-73;8:45 am]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5322]

[AA-5027]

ALASKA

Withdrawal for National Forest Natural Area

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from appropriation under the mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

SOUTH TONGASS NATIONAL FOREST

COPPER RIVER MERIDIAN

Old Tom Creek Natural Area

Beginning on point A, approximately 607 feet west of the northeast corner of sec. 6, T. 75 S., R. 86 E., coordinates 55°24'10" N. latitude, 132°23'25" longitude. Proceed S. 14° W., 1,675 feet to point B; thence S. 9° W., 9,500 feet to point C; thence S. 34° W., 7,640 feet to point D; thence S. 7° W., 8,430 feet to point E; thence N. 41° W., 5,540 feet to point F; thence N. 14° W. 8,260 feet to point G; thence N. 2° W., 4,490 feet to point H; thence N. 18° W., 5,800 feet to point I; thence N. 49° E., 6,330 feet to point J; thence N. 85° E., 3,300 feet to point K; thence N., 90° E., 5,500 feet to the point of beginning.

The area described aggregates 4,021 land acres and 213 water acres located on Prince of Wales Island.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of national forest lands under lease, license or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 21, 1972.

[FR Doc.73-12 Filed 1-3-73;8:45 am]

[Public Land Order 5323]

[Wyoming 23432]

NEBRASKA

Partial Revocation of Reclamation Withdrawals

By virtue of the authority contained in section 3 of the Act of June 17, 1902, as amended and supplemented, 43 U.S.C. 416 (1970), it is ordered as follows:

1. The departmental orders of December 22, 1949, October 15, 1951, and July 11, 1955, withdrawing lands for reclamation purposes in connection with the Missouri River Basin Project, are hereby revoked so far as they affect the following described lands:

SIXTH PRINCIPAL MERIDIAN

T. 31 N., R. 7 W.,
sec. 4, lot 1.

T. 32 N., R. 8 W.,
sec. 17, lot 3.

T. 32 N., R. 10 W.,
sec. 1, lot 4.

T. 34 N., R. 27 W.,
sec. 27, lots 5, 7, 8;
sec. 33, lot 3;
sec. 34, lots 1 to 5, incl.

T. 32 N., R. 31 W.,
sec. 1, lots 1 and 2.

T. 33 N., R. 29 W.,
sec. 28, NE¼NE¼;
sec. 31, lots 2 and 3.

T. 33 N., R. 30 W.,
sec. 31, SW¼SE¼.

T. 33 N., R. 32 W.,
sec. 31, lot 1.

T. 33 N., R. 37 W.,
sec. 13, SE¼NW¼.

T. 24 N., R. 32 W.,
sec. 6, lot 11;
sec. 7, lot 1;
sec. 13, lot 7.

T. 21 N., R. 22 W.,
sec. 23, lot 5.

The areas described aggregate 635.40 acres in Knox, Boyd, Cherry, Hooker, and Blaine Counties.

2. Of these lands, about 272.65 acres described as lots 5, 7, and 8, sec. 27, lot 3, sec. 33, and lots 1 to 5, incl., sec. 34, T. 34 N., R. 27 W., remain withdrawn for the Niobrara National Wildlife Refuge as

enlarged by Executive Order No. 3256 of March 31, 1920.

3. The lands described as lot 1, sec. 4, T. 31 N., R. 7 W., lot 3, sec. 17, T. 32 N., R. 8 W., lot 4, sec. 1, T. 32 N., R. 10 W., lots 1 and 2, sec. 1, T. 32 N., R. 31 W., and the SW¼SE¼, sec. 31, T. 33 N., R. 30 W., containing 132.90 acres, are hereby classified as suitable for lease or sale under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended 43 U.S.C. §§ 869–869–4 (1970), pursuant to an application filed by the Nebraska Game and Parks Commission. These lands, therefore, will not be subject to other use or disposition under the public land laws in the absence of a modification or revocation of such classification (43 CFR 2440.4).

4. At 10 a.m. on January 26, 1973, the remaining unappropriated, unreserved 229.85 acres of public lands described above, shall be open to operation of the public land laws generally, including the U.S. mining laws, subject to valid existing rights, the provisions of existing withdrawals, classifications, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on January 26, 1973, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. These lands have been and continue to be open to the filing of applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Division of Technical Services, Bureau of Land Management, Cheyenne, Wyo.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 21, 1972.

[FR Doc.73-13 Filed 1-3-73;8:45 am]

[Public Land Order 5324]
[Arizona 08807]

ARIZONA

Withdrawal and Reservation of Lands for Luke-Williams Air Force Range Extended

By virtue of the authority contained in section 1 of the Act of August 24, 1962, 76 Stat. 399 (hereinafter referred to as the Act), and at the option of the Secretary of Defense, as provided in the Act, notice is hereby given that the withdrawal and reservation of lands for the Luke-Williams Air Force Range, as particularly described in the Act, were extended until August 24, 1977, subject to all of the terms, conditions, and limitations contained in the Act.

The withdrawal and reservation of the lands involved may be terminated prior to August 24, 1977, upon notice to the Secretary of the Interior by the Secretary of Defense. If all or part of the lands are needed for military purposes after the termination date of August 24, 1977, the Secretary of the appropriate military department may make application therefor under the applicable laws and regulations then in force.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 21, 1972.

[FR Doc.73-14 Filed 1-3-73;8:45 am]

Title 45—PUBLIC WELFARE

Chapter X—Office of Economic Opportunity

PART 1060—GENERAL CHARACTERISTICS OF COMMUNITY ACTION PROGRAMS

Subpart 1060.4—Resolving Complaints of Discrimination in Employment, Program Participation and Benefits Against OEO Grantees (OEO Instruction 6004–4)

Part 1060 of Chapter X of Title 45 of the Code of Federal Regulations is revised by adding a new Subpart 1060.4 reading as follows:

Sec.
1060.4–1 Applicability of this subpart.
1060.4–2 Policy.
1060.4–3 Effective date.
1060.4–4 Responsibilities.
1060.4–5 Pre-complaint procedure.
1060.4–6 Formal complaint procedure.
1060.4–7 Implementation of OEO procedures.

AUTHORITY: The provisions of this Subpart 1060.4 issued under sec. 602(n), 78 Stat. 530; 42 U.S.C. 2942.

§ 1060.4–1 Applicability of this subpart.

(a) This subpart applies to all grantees, and the delegate agencies of all grantees receiving financial assistance under Titles II, III–B, and VII of the Economic Opportunity Act of 1964, as amended, if the assistance is administered by the Office of Economic Opportunity.

(b) Hereinafter the words "grantee" and "recipient" are used interchangeably to include both grantees and delegate agencies.

(c) To the extent that these instructions do not conflict with other Federal agency's regulations on the subject, they shall apply to all programs sponsored by grantees.

§ 1060.4–2 Policy.

It is the policy of OEO that no person shall be discriminated against in employment because of race, color, religion, sex, national origin, age, or political affiliation or belief, or in any way excluded from participation in or be denied the benefits in connection with any program of activity receiving OEO funds.

§ 1060.4–3 Effective date.

This subpart is officially effective February 1, 1973, but grantees are urged to comply at the earliest possible date.

§ 1060.4–4 Responsibilities.

(a) All grantees shall have at least one Equal Opportunity Officer (EOO). Grantees with 50 full-time employees or more should have an EOO with full-time responsibility for the Equal Opportunity Program within the agency. Grantees with less than 50 full-time employees should have an EOO who spends an adequate amount of his/her time on the agency's Equal Opportunity Program. OEO may request removal of an EO Officer who fails to carry out the mission of the EEO program. The EOO shall undergo training as prescribed by the Office of Human Rights. All expenses incurred by such training shall be borne by the grantee. Grantees shall display, in a prominent place, posters which summarize the functions of the EOO and explain the procedures for filing complaints either through the EOO or filing complaints directly to OEO. The EOO shall be granted the authority to carry out the following activities:

(1) To receive and attempt to resolve equal opportunity complaints on an informal basis.

(2) To provide aggrieved persons with information and advice on equal opportunity procedures including local, State, and Federal redress procedures, including notification of the filing deadlines for EEOC complaints. The EOO shall also inform the complainant of the right to sue in court.

(3) To take any other steps which may assist in the resolution of the problem, prior to filing a formal complaint.

(4) To assist in preparing a formal complaint to OEO of alleged discrimination based on race, color, religion, sex, national origin or age, political affiliation or belief.

(5) Nothing contained herein shall be construed to deny a complainant the right to make a direct complaint to OEO.

(b) In connection with the responsibilities listed in paragraph (a) of this section:

(1) The aggrieved person and the EOO shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the program or grievance. The EOO shall not reveal the identity of an aggrieved person who has come to him for consultation, except when authorized to do so by the aggrieved person.

(2) The EOO shall make every effort to resolve the problem informally. To this end, the EOO shall, if requested by the complainant, assist in discussion with the supervisor or any other party to the problem and may take other steps which may assist in the resolution of the problem.

(3) The aggrieved person has the right to be accompanied, represented, and advised by a representative or attorney of his own choice. If the aggrieved person and/or his representative is an employee of the agency, he shall be given a reasonable number of working hours to prepare and present his request for a solution of the problem. These procedures should be included in the grantee's personnel policies.

(4) The EEO shall be given access within the agency to information necessary to provide the aggrieved person with a basis for determining whether there are grounds for filing either a formal civil rights complaint or a personnel grievance. The complaint may not be withdrawn without the consent of the EOO.

(5) The EOO of the recipient shall have 20 working days to resolve the problem before filing a formal complaint.

(6) The EOO shall be responsible for the development and implementation of the agency's affirmative action plan.

(c) Each recipient is responsible for reviewing on a systematic basis the manner in which the program activities are planned and conducted in light of applicable equal opportunity requirements.

(d) The appropriate Assistant, Associate, or Regional Director is responsible for the following:

(1) Monitoring equal opportunity practices on the part of any organization receiving financial assistance through his office;

(2) Attempting, by informal methods of conference, conciliation, and persuasion to resolve any individual complaint and to obtain specific assurances regarding the elimination or avoidance of any unlawful practice;

(3) Initiating action to deny applications for refunding or to suspend or terminate financial assistance in appropriate cases.

(e) The OEO Associate Director for Human Rights is responsible for:

(1) Initiating and coordinating OEO investigations of allegations of discriminatory practices;

(2) Determining whether or not probable cause exists to believe that an unlawful discriminatory practice has occurred;

(3) Making recommendations with respect to the suspension or termination of financial assistance and to the refusal of an application for refunding in appropriate cases.

§ 1060.4–5 Pre-complaint procedure.

(a) *Submission of equal opportunity problems.* Any person who believes he has encountered discrimination because of race, color, religion, sex, national origin, or age should first discuss the problem with the EOO of the grantee or delegate agency. Problems may be submitted by any person or by any group or representative with the approval of the aggrieved person.

(b) *Reports on precomplaint efforts.* When the Equal Opportunity Officer has completed his attempts to resolve the problem he shall prepare a report of his efforts, setting out a summary of the problem, his investigation, his disposition of the problem and the basis for that disposition. He shall file a copy of this report with the OEO Associate Director for Human Rights in Washington or with the Human Rights Chief at the appropriate OEO Regional office. This report shall be forwarded in every case regardless of whether a formal complaint is filed.

§ 1060.4–6 Formal complaint procedure.

(a) *Submission of formal complaint.* (1) A formal signed written complaint shall be addressed to the OEO Associate Director for Human Rights and may be filed with OEO Headquarters in Washington, D.C., or any of its field offices with the Human Rights Chief (OEO Form 265 may be used for this purpose). The formal complaint should contain the following elements of information:

(i) An identification of the organization receiving funds by name and address.

(ii) Specification of the nature of the discriminatory practice (i.e., race, color, religion, sex, national origin, or age).

(iii) Dates or time period within which the discriminatory practice is alleged to have occurred.

(iv) Identification of any Federal, State or local fair employment practices commission to which the practice has been reported (if the charge concerns a discriminatory employment practice).

(2) The OEO Associate Director for Human Rights will notify the complainant in writing of receipt of the complaint, and if the complaint involves employment discrimination, that in order to assure protection of his individual rights under the Federal equal employment opportunity law, title VII of the Civil Rights Act of 1964, he must also file a complaint with the Equal Employment Opportunity Commission, and that he may file a complaint with any State or local agency or commission which may have power to act on charges of discrimination in employment based on race, color, religion, sex or national origin, or that he may file suit directly under 42 U.S.C. 1981 or 1983 in cases of racial discrimination. He shall also advise the complainant that he is taking one or more of the following actions:

(i) Requesting a report from the recipient which is charged with discrimination, and indicating the maximum amount of time allowed for response.

(ii) Forwarding the complaint to the head of the OEO office through which the recipient receives OEO financial assistance for coordination and action.

(iii) Requesting or initiating an OEO investigation of the complaint.

(iv) Rejecting the complaint, stating the reason why the complaint cannot be processed.

(b) *Complaints presented to State or local commissions or to the Equal Employment Opportunity Commission.* When a complainant has also filed a complaint with the Equal Employment Opportunity Commission or with a State or local commission having jurisdiction over the matter, the OEO Associate Director for Human Rights shall communicate with the responsible official of the compliance agency which has received the complaint and shall arrange to handle the complaint in such a way as to avoid duplication and to secure the most effective action to resolve the problem. It shall be the general practice of OEO to await the report of the compliance agency, unless there appears to be a compelling reason for earlier action.

(c) *Investigation of complaints.* (1) All formal complaints shall be forwarded to the Associate Director for Human Rights, whether they are originally filed in headquarters or in a regional office. He will arrange for the full investigation of each formal complaint except where:

(i) He determines on the basis of all reports that the complaint is frivolous.

(ii) He determines on the basis of all reports that the recipient has corrected the alleged discriminatory practice.

(iii) He determines that the charge is being investigated by an appropriate authority which will furnish the results to the Office of Economic Opportunity.

(2) Each investigator will be provided with written authorization to investigate all aspects of complaints of discrimination. Directors of grantee agencies will require all employees to cooperate with the investigators and to have all employees having any knowledge of the matter available for interview.

(3) The investigator shall forward the report of investigation to the Associate Director for Human Rights within two (2) weeks after completion of the investigation.

(d) *Findings and recommendations of the Associate Director for Human Rights.* The OEO Associate Director for Human Rights will review the report of investigation and will determine whether or not there is probable cause to credit the allegation of discrimination. He will forward the decision to the appropriate assistant, associate, or regional director, who shall have the responsibility for its implementation and notification to the respondent and complainant. If the assistant, associate, or regional director does not concur in the decision, he and the Associate Director for Human Rights will prepare summaries for the basis of their conclusions to the Deputy Director of OEO, who will review the summaries and case file for a final determination. If the settlement is satisfactory to the complainant and the respondent, it shall be incorporated into a conciliation agreement, signed by the parties and made part of the case file.

§ 1060.4–7 Implementation of OEO procedures.

(a) *Decision in favor of the respondent.* Where the investigation discloses that a valid claim of discrimination has not been established, the complaint will be dismissed. To the extent practicable, the complainant will be advised of any other administrative office or judicial forum which might accept the complaint without regard to the results of the OEO investigation .

(b) *Procedure to remedy discriminatory practices.* (1) Whenever it is determined that there is probable cause to believe that an unlawful discriminatory practice has occurred the Associate Director for Human Rights, with notice to the head of the responsible OEO office (Assistant Director, Associate Director, or Regional Director), shall inform the recipient of the fact of the determination and will recommend to the recipient(s) any appropriate remedial action. The recipient shall have 30 days to respond.

(2) The Associate Director for Human Rights, in conjunction with the head of the responsible OEO office will also attempt by informal methods of conference, conciliation, and persuasion, to

achieve a just resolution of the complaint and to obtain assurances that the recipient will eliminate the unlawful practice and will take appropriate affirmative action to insure that such practices do not recur.

(3) If the recipient fails or refuses to confer with the Associate Director for Human Rights, or to adopt the recommended remedial action, within a reasonable time, and ordinarily no longer than 60 days from the commencement of such efforts, OEO efforts to conciliate the dispute will be terminated. In addition,

(i) If the investigation resulted in proof that the recipient committed an unlawful discriminatory practice, the responsible OEO official will initiate action to suspend or terminate financial assistance, or to refuse an application for refunding, as the case may be, or to refer the matter to the Department of Justice for appropriate action, under appropriate regulations.

(ii) If the results of the investigation do not warrant any of the actions described in the immediately preceding subparagraph, the complainant(s) will be advised of any administrative office or judicial forum which has jurisdiction over the complaint; and will be requested to inform the head of the responsible OEO office of the results.

(4) No OEO funding action including extensions, modification, and applications for spending, will be approved for a recipient who is the subject of a complaint, investigation, or request for remedial action, except as follows:

(i) For regionally funded actions, by a regional director with the concurrence of both the OEO Assistant Director for Operations and the OEO Associate Director for Human Rights.

(ii) For headquarters funded actions, by an OEO Assistant or Associate Director with the concurrence of the OEO Associate Director for Human Rights.

WESLEY L. HJORNEVIK,
Deputy Director.

[FR Doc.72-22446 Filed 12-29-72;5:09 pm]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 72-1178]

RE-REGULATION OF RADIO AND TELEVISION BROADCASTING

Miscellaneous Amendments to Chapter

1. By order adopted November 1, 1972 (FCC 72-967), the Commission amended certain rules which, as a result of its study looking toward re-regulation of radio and television broadcasting, were considered no longer necessary in their existing form.

2. Our continuing re-regulation study indicates that further such amendments are in order.

3. The amendments herein eliminate a number of station reporting, recordkeeping and operating requirements. Individually, they may be minor but, collectively, they become unnecessarily burdensome on the licensee and, in many cases, on the Commission.

4. We believe that the amendments will contribute to the more orderly dispatch of business by the Commission and its licensees in meeting their responsibilities for serving the public interest.

5. The following changes will be made in our rules and regulations:

(a) The requirements that an auxiliary transmitter must be tested at least once a week, and at specified hours, are eliminated. If the licensee determines that testing is necessary, it can be done any time (§§ 73.63(d); 73.255(d); 73.555(d); 73.638(d)).

(1) It is sufficient to specify, as the existing rule does, that the auxiliary transmitter may be used only if it is in proper operating condition and adjusted to the licensed frequency. How often any testing is deemed necessary for an auxiliary transmitter—and the time of day it is done—can be left to the licensee's judgment. Present limitations on test hours are inconsistent for the various broadcast services, and, in the case of AM and FM services, are unnecessarily restrictive.

(b) Provision is made that an auxiliary transmitter licensed for lower power than the regular transmitter can be operated in excess of the auxiliary's licensed power (but at not more than 105 percent of the regular transmitter's licensed power). (§§ 73.63(g); 73.255(f); 73.555(f).)

(1) The licensed power of many auxiliary transmitters is less than the licensed power of the regular transmitter. In such case, there is no adverse effect from operation of the auxiliary with power in excess of its licensed power, as long as required performance specifications are met and power does not exceed that which is allowed for the regular transmitter.

(c) The 5-day restriction on use of an FM or TV auxiliary transmitter without further authority of the Commission is deleted. (§§ 73.255(c)(2); 73.555(c)(2); 73.638(c)(2).)

(1) The corresponding rule applicable to AM stations does not include the 5-day restriction. No problems have arisen. Accordingly, we are conforming the FM and TV rules to the AM rule. This will eliminate a source of filings which we have found unnecessary in comparable situations.

(d) The provision for entry in the maintenance log of auxiliary transmitter tests is revised to reflect that such tests are no longer required but, if made voluntarily, must be entered. (§§ 73.114(a)(1)(ii); 73.284(a)(1); 73.584(a)(1); 73.672(a)(1).)

(1) The amendment is editorial to conform to new §§ 73.63(d); 73.255(d); 73.555(d); 73.638(d).

(e) Restriction on an FM auxiliary transmitter not exceeding the power rating or operating range of the main transmitter is deleted (§ 73.321), to conform to the new provision in § 73.255(f).

(f) Under the existing rules, a permittee or licensee can operate for a period of not more than 10 days without further authority of the Commission when, due to causes beyond his control, he cannot meet the requirements of our rules with respect to maintaining minimum operating power (§§ 73.52(a); 73.267(c); 73.567(c); 73.689(b)(3)) or minimum hours of operation (§§ 73.71(b); 73.261(b); 73.651(a)(3)), but must notify the Commission and the engineer in charge immediately. Those rules are revised to eliminate the present notification and to spell out the procedure for obtaining further authority of the Commission, e.g., a written request, no later than the 10th day, for such additional time as may be deemed necessary.

(1) Commission practice in handling such notifications has been to place them in a tickler file until expiration of the 10 day grace period, after which appropriate action is taken. In light of that procedure, the ultimate result will be unaltered if we permit the station to operate without the notification but request, on the last day of the grace period, permission for such additional time as may be deemed necessary. The Commission will be relieved of the man hours required for maintenance of such a file, and both the Commission and the licensees will be relieved of unnecessary paperwork generated by problems remedied in less than 10 days.

(h) Clarification is made of the provisions in the AM and FM rules that an operator on duty must have ready access to, and visibility of, the transmitter, required monitors and other metering equipment—or the remote control instruments. The words "clearly visible" are deleted. They have been construed by some as limiting the instruments to a position directly in front of the operator. The rule is now written to provide that they must be readily accessible and so located that deviations from normal indications of the instruments can be observed within a 360° arc. (§§ 73.93(a); 73.265(a); 73.565(a).)

(1) Both the Commission's staff and licensees have experienced difficulty with this rule as it applies to AM and FM operations. A problem has been the interpretation given to the term "clearly visible." In the past, the Commission has held to a very narrow interpretation, and enforcement of the rule has produced unsatisfactory results. To remedy this situation, a more liberal interpretation was recently implemented. The substance of that interpretation is being incorporated into the revised language of the rule. (The nature of TV operation is such that no problems have arisen. The TV rule is not being changed.)

(i) Notifications to the FCC engineer in charge of the radio district in which the station is located are no longer required in the following cases: Defective modulation monitor (§§ 73.56(b)(2); 73.253(b)(2); 73.553(b)(2); 73.691

(b)(2)); defective indicating instruments (§§ 73.58(b)(2); 73.258(b)(2); 73.558(b)(2); 73.688(f)(2)); defective frequency monitor (§§ 73.60(b)(2); 73.252(b)(2); 73.552(b)(2)); maintaining minimum operating schedule (§§ 73.71 (b); 73.261(b); 73.651(a)(3)); maintaining minimum operating power (§§ 73.52(a); 73.267(c); 73.567(c); 73.689 (b)(3)); departure from regular schedule of sharetime operation (§ 73.77); beginning of stereophonic broadcasting (§§ 73.297(a); 73.596(a)); transmission of point-to-point messages during emergency operation (§§ 73.98(f); 73.298(e); 73.597(e); 73.675(e)).

(l) In the above cases of defective equipment, notifications to the engineer in charge when the defect is found and when the equipment is restored to service are no longer necessary, and so serve no useful purpose. Other provisions of the rules limit operation without such equipment to 60 days without further authority from the Commission.

The other notifications above are made also to the Commission, and duplicate notifications to the engineer in charge are unnecessary.

(j) Specifications concerning temperature variations at the crystals used in transmitters are deleted as unnecessary. (§ 73.40(a)(9)(i)(ii)(iii).

(l) Paragraph (a)(9) requires automatic frequency control equipment. With that requirement, it makes no difference whether the frequency is maintained by temperature cotrol or other means. The means generally for maintaining frequency stability are best left to the industry and current technology.

(k) The requirement that an accurate circuit diagram, as furnished by the manufacturer of the equipment, be retained at the transmitter is eliminated. (§§ 73.317(e); 73.687(h).)

(l) Availability of such circuit diagram at the transmitter serves no Commission purpose.

(l) Equipment performance measurement data may be kept on file at the remote control point or at the transmitter. Additionally, the person signing the required material must also date it. (§§ 73.47(b); 73.254(c).)

(l) The Commission's interest is served if the data to be kept on file are readily available when a Commission engineer is conducting an inspection of the station. Including the remote control point as a permissible location at which to keep the data will not impede the inspection and will accommodate licensees, many of whom have requested this change. Measurement data should be dated in order to demonstrate compliance with the time periods specified elsewhere in these sections; and, accordingly, the pertinent paragraphs are corrected to conform them to the requirements of these sections. (§§ 73.47; 73.254.)

(m) The requirement that a licensee maintain a supply of spare tower lamps is eliminated. (§ 17.52.)

(l) The Commission's fundamental concern is that faulty tower lights be replaced as soon as practicable. This is clearly spelled out in § 17.56. We leave to the licensee's judgment the practice he will follow to comply with § 17.56.

(n) The requirement for an entry in the operating log of each interruption of the carrier wave, where restoration is not automatic, its cause and duration, followed by the signature of the person restoring operation, is eliminated. (§§ 73.113(a)(2); 73.283(a)(2); 73.583 (a)(2); 73.671(a)(2).)

(l) The information serves no useful purpose. Strict compliance is unduly burdensome. Interruptions of significant duration are covered elsewhere in the rules.

(o) Signed copies of contracts with part-time, first class radiotelephone operators need no longer be filed with the engineer in charge of the radio district where the station is located. (§§ 73.93(c); 73.265(c); 73.565(c).)

(l) The copies serve no purpose that cannot be satisfied by a Commission request to inspect the contract. The rule presently requires that such contracts be kept in the files of the station and made available for inspection upon request by an authorized representative of the Commission.

(p) The requirement for entry of transmission-line meter readings in the operating logs of FM and TV stations is clarified by making an exception when power is being determined by the indirect method (which is entered under another provision). (§§ 73.283(a)(3)(ii); 73.583 (a)(3)(ii); 73.671(a)(3)(ii).)

(l) This is merely a clarification.

(q) The present rules require that one-hop aural STL's, aural intercity relays and TV STL's must be attended. Those rules are being revised to permit unattended operation, as the present rules provide for in the case of intermediate stations in multihop circuits in the aural services and in TV intercity relay stations, TV translator relay stations and multihop TV STL circuits. Observations at the receiving end of the circuit will still be required. (§§ 74.533(b); 74.635 (a).)

(l) As presently drawn, the rules present something of an anomaly. They allow unattended operation of intermediate stations in multihop configurations in the aural services and for TV intercity relay stations, TV translator relay stations and multihop TV STL stations, but do not provide for unattended operation in certain single-hop situations. Faced with the anomaly, the Commission has found it appropriate in several instances to waive the requirement that transmitters in single-hop situations be attended. In certain other provisions of this section, specific language for corresponding aural and TV rules differ, but Commission policy and practice has been to give the language the same meaning. Revisions are being made therein to conform the aural and TV provisions and reflect existing Commission policy and practice in this matter.

6. Amendments hereby adopted remove requirements which, for the reasons stated above, we consider no longer necessary. They also make editorial revisions and conform language of certain rule provisions to established Commission policy and practice. We conclude that adoption of the amendments will serve the public interest. Therefore, prior notice of rule making and public procedure thereon are unnecessary, pursuant to the Administrative Procedure and Judicial Review provisions of 5 U.S.C. 553 (b)(3)(B).

7. *Therefore, it is ordered*, That, pursuant to sections 4(i) and 303 (j) and (r) of the Communications Act of 1934, as amended, Parts 17, 73, and 74 of the Commission's rules and regulations are amended as set forth below, effective April 4, 1973.

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

Adopted: December 20, 1972.

Released: December 29, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

§ 17.52 [Deleted]

1. Section 17.52, *Spare Lamps*, is deleted and that section number is designated as [Reserved].

PART 73—RADIO BROADCAST SERVICES

2. Section 73.40(a)(9) is amended by deleting subdivisions (i), (ii), (iii), thereunder, and, as amended, reads as follows:

§ 73.40 **Transmitter; design, construction, and safety of life requirements.**

(a) * * *

(9) The transmitter is equipped with automatic frequency control equipment capable of maintaining the operating frequency within the limit specified by § 73.59.

* * * * *

3. Section 73.47(b) is amended to read as follows:

§ 73.47 **Equipment performance measurements.**

* * * * *

(b) The data required by paragraph (a) of this section, together with a description of instruments and procedure, signed and dated by the qualified person making the measurements, shall be kept on file at the transmitter or remote control point for a period of 2 years, and on request shall be made available during that time to any duly authorized repre-

[1] Statement of Commissioner Wiley filed as part of the original document.

sentative of the Federal Communications Commission.

4. Section 73.52(a) is amended to read as follows:

§ 73.52 Antenna input power; maintenance of.

(a) The actual antenna input power of each station shall be maintained as near as is practicable to the authorized antenna input power and shall not be less than 90 percent nor greater than 105 percent of the authorized power; except that, if, in an emergency, it becomes technically impossible to operate with the authorized power, the station may be operated with reduced power for a period of 10 days, or less, without further authority from the Commission. If causes beyond the control of the permittee or licensee prevent restoration of authorized power within the allowed period, informal written request shall be made to the Commission in Washington, D.C., no later than the 10th day for such additional time as may be deemed necessary.

* * * * *

5. Section 73.56(b) is amended by deleting subparagraph (2) and re-numbering subparagraph (3) as subparagraph (2). As amended, § 73.56(b) reads as follows:

§ 73.56 Modulation monitors.

* * * * *

(b) In the event that the modulation monitor becomes defective, the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided*, That:

(1) Appropriate entries shall be made in the maintenance log of the station showing the date and time the monitor was removed and restored to service.

(2) The degree of modulation of the station shall be monitored with a cathode ray oscilloscope or other acceptable means.

* * * * *

§ 73.58 [Amended]

6. Section 73.58(b)(2) is amended by deleting the requirement for notification to the engineer in charge and reserving the subparagraph number.

§ 73.60 [Amended]

7. Section 73.60(b)(2) is amended by deleting the requirement for notification to the engineer in charge and reserving the sbparagraph number.

8. Section 73.63 is amended by revising paragraphs (d) and (g) to read as follows:

§ 73.63 Auxiliary transmitter.

* * * * *

(d) The auxiliary transmitter may be used only if it is in proper operating condition and adjusted to the licensed frequency. If testing is necessary to assure proper operation, it may be done any time. A dummy load or any authorized antenna may be used. Notations as to the time and results of such testing must be made in the maintenance log.

* * * * *

(g) The authorized antenna input power of an auxiliary transmitter may be less, but not more, than that of the regular transmitter. If it is less, the actual operating power is not limited to 105 percent of the authorized antenna input power of the auxiliary transmitter but shall in no event exceed the authorized antenna input power of the regular transmitter.

* * * * *

9. Section 73.71(b) is amended to read as follows:

OPERATION

§ 73.71 Minimum operation schedule.

* * * * *

(b) In the event that causes beyond the control of a permittee or licensee make it impossible to adhere to the operating schedule in paragraph (a) of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 10 days, without further authority of the Commission. If causes beyond the control of the permittee or licensee make it impossible to comply within the allowed period, informal written request shall be made to the Commission in Washington, D.C., no later than the 10th day for such additional time as may be deemed necessary.

* * * * *

10. Section 73.77 is amended to read as follows:

§ 73.77 Sharing time; departure from regular schedule.

A departure from the regular schedule set forth in a time-sharing agreement will be permitted only in cases where an agreement to that effect is reduced to writing, is signed by the licensees of the stations affected thereby and filed in triplicate by each licensee with the Commission prior to the time of the proposed change. If time is of the essence, the actual departure in operating schedule may precede the actual filing of written agreement, provided appropriate notice is sent to the Commission in Washington, D.C.

11. In § 73.93, paragraphs (a) and (c) are amended to read as follows:

§ 73.93 Operator requirements.

(a) One or more operators holding a radio operator license or permit of a grade specified in this section shall be in actual charge of the transmitting system, and shall be on duty either at the transmitter location or at the remote control point. If operation by remote control has not been authorized, the transmitter, required monitors and other required metering equipment shall be readily accessible, and located sufficiently close to the operator at the normal operating position that deviations from normal indications of required instruments can be observed within a 360° arc from that position. If operation by remote control is authorized, the required controls and instruments shall be readily accessible, and located sufficiently close to the operator at the normal operating position that deviations from normal indications of required metering instruments can be observed in a 360° arc from that position.

* * * * *

(c) A station using a nondirectional antenna and with authorized power of 10 kilowatts or less shall have at least one first-class radio-telephone operator, readily available at all times, either in full-time employment, or, in the alternative, the licensee may contract in writing for the services on a part-time basis of one or more such operators. Signed contracts with part-time operators shall be kept in the files of the station and shall be made available for inspection upon request by an authorized representative of the Commission.

* * * * *

12. Section 73.98(f) is amended to read as follows:

§ 73.98 Operation during emergency.

* * * * *

(f) Immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages under paragraph (a) of this section, or when daytime facilities were used during nighttime hours in accordance with paragraph (d) of this section, a report in letter form shall be forwarded to the Commission, in Washington, D.C., setting forth the nature of the emergency, the dates and hours of emergency operation, and a brief description of the material carried during the emergency period. A certification of compliance with the noncommercialization provision of paragraph (d) of this section must accompany the report where daytime facilities are used during nighttime hours, together with a detailed showing concerning the alternate service provisions of that paragraph.

* * * * *

§ 73.113 [Amended]

13. Section 73.113(a)(2) is amended by deleting the provisions therein and reserving the subparagraph number.

14. Section 73.114(a)(1)(ii) is amended to read as follows:

§ 73.114 Maintenance log.

(a) * * *

(1) * * *

(ii) Time and result of any auxiliary transmitter test(s).

* * * * *

§ 73.252 [Amended]

15. Section 73.252(b)(2) is amended by deleting the requirement for notification to the engineer in charge and reserving the paragraph number.

16. Section 73.253(b) is amended by deleting subparagraph (2) and renumbering subparagraph (3) as subparagraph (2). As amended, § 73.253(b) reads as follows:

§ 73.253 **Modulation monitors.**

* * * * *

(b) In the event that the modulation monitor becomes defective, the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided,* That:

(1) Appropriate entries shall be made in the maintenance log of the station showing the date and time the monitor was removed and restored to service.

(2) During the period when the station is operated without the modulation monitor, the licensee shall provide other suitable means for insuring that the modulation is maintained within the tolerance prescribed in § 73.268.

* * * * *

17. Section 73.254(c) is amended to read as follows:

§ 73.254 **Required transmitter performance.**

* * * * *

(c) The data required by paragraph (b) of this section, together with a description of instruments and procedure, signed and dated by the qualified person making the measurements, shall be kept on file at the transmitter or remote control point for a period of 2 years, and on request shall be made available during that time to any duly authorized representative of the Federal Communications Commission.

18. Section 73.255(c)(2), (d) and (f) are amended to read as follows:

§ 73.255 **Auxiliary transmitter.**

* * * * *

(c) * * *

(2) The transmission of regular programs during maintenance or modification work on the main transmitter, necessitating discontinuance of its operation.

* * * * *

(d) The auxiliary transmitter may be used only if it is in proper operating condition and adjusted to the licensed frequency. If testing is necessary to assure proper operation, it may be done any time. A dummy load or any authorized antenna may be used. Notations as to the time and results of such testing must be made in the maintenance log.

* * * * *

(f) The authorized operating power of an auxiliary transmitter may be less but not more than that of the regular transmitter. If it is less, the actual operating power is not limited to 105 percent of the authorized operating power of the auxiliary transmitter, but shall in no event exceed the authorized operating power of the regular transmitter.

§ 73.258 **[Amended]**

19. Section 73.258(b)(2) is amended by deleting the requirement for notification to the Engineer in Charge and reserving the subparagraph number.

20. Section 73.261(b) is amended to read as follows:

TECHNICAL OPERATIONS AND OPERATORS

§ 73.261 **Time of operation.**

* * * * *

(b) In the event that causes beyond the control of a permittee or licensee make it impossible to adhere to the operating schedule in paragraph (a) of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 10 days, without further authority of the Commission. If causes beyond the control of the permittee or licensee make it impossible to comply within the allowed period, informal written request shall be made to the Commission in Washington, D.C. no later than the 10th day for such additional time as may be deemed necessary.

21. In § 73.265, paragraphs (a) and (c) are amended to read as follows:

§ 73.265 **Operator requirements.**

(a) One or more operators holding a radio operator license or permit of a grade specified in this section shall be in actual charge of the transmitting system, and shall be on duty either at the transmitter location or at the remote control point. If operation by remote control has not been authorized, the transmitter, required monitors and other required metering equipment shall be readily accessible, and located sufficiently close to the operator at the normal operating position that deviations from normal indications of required instruments can be observed within a 360° arc from that potion. If operation by remote control is authorized, the required controls and instruments shall be readily accessible, and located sufficiently close to the operator at the normal operating position that deviations from normal indications of required metering instruments can be observed in a 360° arc from that position.

* * * * *

(c) A station with authorized transmitter output power of 25 kilowatts or less shall have at least one first-class radiotelephone operator readily available at all times, either in full-time employment, or, in the alternative, the licensee may contract in writting for the services on a part-time basis of one or more such operators. Signed contracts with part-time operators shall be kept in the files of the station and shall be made available for inspection upon request by an authorized representative of the Commission.

* * * * *

22. Section 73.267(c) is amended to read as follows:

§ 73.267 **Operating power; determination and maintenance of.**

* * * * *

(c) *Reduced power.* In the event it becomes technically impossible to operate with authorized power, the station may be operated with reduced power for a period of 10 days or less without further authority of the Commission. If causes beyond the control of the permittee or licensee prevent restoration of authorized power within the allowed period, informal written request shall be made to the Commission in Washington, D.C. no later than the 10th day for such additional time as may be deemed necessary.

* * * * *

23. In § 73.283(a), subparagraph (2) is deleted and designated [Reserved], and paragraph (a)(3)(ii) is amended as follows:

§ 73.283 **Operating log.**

(a) * * *

(2) [Reserved]

(3) * * *

(ii) RF transmission line meter reading, except when power is being determined by the indirect method.

* * * * *

24. Section 73.284(a)(1) is amended to read as follows:

§ 73.284 **Maintenance log.**

(a) * * *

(1) Time and result of any auxiliary transmitter test(s).

* * * * *

25. Section 73.297(a) is amended to read as follows:

§ 73.297 **Stereophonic broadcasting.**

(a) FM broadcast stations may, without further authority, transmit stereophonic programs in accordance with the technical standards set forth in § 73.322: *Provided, however,* That the Commission in Washington, D.C. shall be notified within 10 days of the installation of type-accepted stereophonic transmission equipment or any change therein, and of the commencement of stereophonic programing.

* * * * *

26. Section 73.298(e) is amended to read as follows:

§ 73.298 **Operation during emergency.**

* * * * *

(e) Immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages under paragraph (a) of this section, a report in letter form shall be forwarded to the Commission in Washington, D.C., setting forth the nature of the emergency, the dates and hours of emergency operation, and a brief description of the material carried during the emergency period.

* * * * *

§ 73.317 **[Amended]**

27. Section 73.317(e) is amended by deleting the provisions therein and reserving the paragraph number.

28. Section 73.321 is amended to read as follows:

§ 73.321 **Auxiliary transmitters.**

Auxiliary transmitters must conform to the performance characteristics specified by § 73.317, except with respect to the provisions of paragraph (a) (2) through (5) thereof.

§ 73.552 **[Amended]**

29. Section 73.552(b)(2) is amended by deleting the requirement for notifica-

tion to the Engineer in Charge and reserving the subparagraph number.

* * * * *

30. Section 73.553(b) is amended by deleting subparagraph (2) and renumbering subparagraph (3) as subparagraph (2). As amended, § 73.553(b) reads as follows:

§ 73.553 Modulation monitors.

* * * * *

(b) In the event that the modulation monitor becomes defective, the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided*, That:

(1) Appropriate entries shall be made in the maintenance log of the station showing the date and time the monitor was removed and restored to service.

(2) During the period when the station is operated without the modulation monitor, the licensee shall provide other suitable means for insuring that the modulation is maintained within the tolerance prescribed in § 73.568.

* * * * *

31. Section 73.555(c)(2), (d) and (f) are amended to read as follows:

§ 73.555 Auxiliary transmitter.

* * * * *

(c) * * *

(2) The transmission of regular programs during maintenance or modification work on the main transmitter, necessitating discontinuance of its operation.

* * * * *

(d) The auxiliary transmitter may be used only if it is in proper operating condition and adjusted to the licensed frequency. If testing is necessary to assure proper operation, it may be done any time. A dummy load or any authorized antenna may be used. Notations as to the time and results of such testing must be made in the maintenance log.

* * * * *

(f) The licensed power of an auxiliary transmitter may be less, but not more, than that of the regular transmitter. If it is less, the operating power is not limited to 105 percent of its licensed power but shall in no event exceed 105 percent of the licensed power of the regular transmitter.

§ 73.558 [Amended]

32. Section 73.558(b)(2) is amended by deleting the requirement for notification to the Engineer in Charge and reserving the subparagraph number.

33. In § 73.565, paragraphs (a) and (c) are amended to read as follows:

§ 73.565 Operator requirements.

(a) One or more operators holding a radio operator license or permit of a grade specified in this section shall be in actual charge of the transmitting system, and shall be on duty either at the transmitter location or at the remote control point. If operation by remote control has not been authorized, the transmitter, required monitors and other required metering equipment shall be readily accessible, and located sufficiently close to the operator at the normal operating position that deviations from normal indications of required instruments can be observed within a 360° arc from that position. If operation by remote control is authorized, the required controls and instruments shall be readily accessible, and located sufficiently close to the operator at the normal operating position that deviations from normal indications of required metering instruments can be observed in a 360° arc from that position.

* * * * *

(c) The operators specified in paragraph (b) of this section shall perform transmitter maintenance and shall correct conditions of improper operation beyond the scope of authority of the lesser grade operator on duty. If the services of the operator or the operators indicated in paragraph (b) of this section are on a contract, part-time basis, a signed copy of the contract shall be kept in the files of the station and shall be made available for inspection upon request by an authorized representative of the Commission.

* * * * *

34. Section 73.567(c) is amended to read as follows:

§ 73.567 Operating power; determination and maintenance of.

* * * * *

(c) *Reduced power.* If a station licensed for transmitter power output greater than 10 watts finds it impossible to operate with authorized power, the station may operate with reduced power for a period not to exceed 10 days. If causes beyond the control of the permittee or licensee prevent restoration of authorized power within the allowed period, informal written request shall be made to the Commission in Washington, D.C. no later than the 10th day for such additional time as may be deemed necessary.

* * * * *

35. In § 73.583, paragraph (a)(2) is deleted and designated [Reserved], and subparagraph (3)(ii) is amended to read as follows:

§ 73.583 Operating log.

(a) * * *

(2) [Reserved]

(3) * * *

(ii) RF transmission line meter reading, except when power is being determined by the indirect method.

* * * * *

36. Section 73.584(a)(1) is amended to read as follows:

§ 73.584 Maintenance log.

(a) * * *

(1) Time and result of any auxiliary transmitter test(s).

* * * * *

37. Section 73.596(a) is amended to read as follows:

§ 73.596 Stereophonic broadcasting.

(a) Noncommercial educational FM broadcast stations may, without further authority, transmit stereophonic programs in accordance with the technical standards set forth in § 73.322: *Provided, however*, That the Commission, in Washington, D.C., shall be notified within 10 days, of the installation of type-accepted stereophonic transmission equipment or any change therein, and of the commencement of stereophonic programming.

* * * * *

38. Section 73.597(e) is amended to read as follows:

§ 73.597 Operation during emergency.

* * * * *

(e) Immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages under paragraph (a) of this section, a report in letter form shall be forwarded to the Commission in Washington, D.C., setting forth the nature of the emergency, the dates and hours of emergency operation, and a brief description of the material carried during the emergency period.

* * * * *

39. Section 73.638 (c)(2) and (d) are amended to read as follows:

§ 73.638 Auxiliary transmitter.

* * * * *

(c) * * *

(2) Transmission of regular programs during maintenance or modification work on the main transmitters, necessitating discontinuance of their operation.

* * * * *

(d) The auxiliary transmitter may be used only if it is in proper operating condition and adjusted to the licensed frequency. If testing is necessary to assure proper operation, it may be done any time. A dummy load or any authorized antenna may be used. Notations as to the time and results of such testing must be made in the maintenance log.

* * * * *

40. Section 73.651(a)(3) is amended to read as follows:

GENERAL OPERATING REQUIREMENTS

§ 73.651 Time of operation.

* * * * *

(a) * * *

(3) In the event that causes beyond the control of a permittee or licensee make it impossible to adhere to the operating schedule in paragraph (a) of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 10 days, without further authority of the Commission. If causes beyond the control of the permittee or licensee make it impossible to comply within the allowed period, informal written request shall be made to the Commission in Washington, D.C., no later than the 10th day for such ad-

ditional time as may be deemed necessary.

* * * * *

41. In § 73.671, paragraph (a) (2) is deleted and designated [Reserved], and paragraph (a) (3) (ii) is amended to read as follows:

§ 73.671 Operating log.

(a) * * *

(2) [Reserved]

(3) * * *

(ii) Transmission line meter readings for both transmitter. If power of the aural transmitter is being determined by the indirect method, enter the transmission line meter reading for the visual transmitter only.

* * * * *

42. Section 73.672(a) (1) is amended to read as follows:

§ 73.672 Maintenance log.

(a) * * *

(1) Time and result of any auxiliary transmitter test(s).

* * * * *

43. Section 73.675(e) is amended to read as follows:

* * * * *

(e) Immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages under paragraph (a) of this section, a report in letter form shall be forwarded to the Commission in Washington, D.C., setting forth the nature of the emergency, the dates and hours of emergency operation, and a brief description of the material carried during the emergency period.

* * * * *

§ 73.687 [Amended]

44. Section 73.687(h) is amended by deleting the provisions therein and reserving the paragraph number.

§ 73.688 [Amended]

45. Section 73.688(f) (2) is amended by deleting the requirement for notification to the Engineer in Charge and reserving the subparagraph number.

46. Section 73.689(b) (3) is amended to read as follows:

§ 73.689 Operating power.

* * * * *

(b) * * *

(3) *Reduced power.* In the event it becomes technically impossible to operate with the authorized power, the station may be operated with reduced power for a period of 10 days or less without further authority of the Commission. If causes beyond the control of the permittee or licensee prevent restoration of authorized power within the allowed period, informal written request shall be made to the Commission in Washington, D.C., no later than the 10th day for such additional time as may be deemed necessary.

* * * * *

47. Section 73.691(b), is amended by deleting subparagraph (2) and renumbering subparagraph (3) as subparagraph (2) and subparagraph (4) as subparagraph (3). As amended, § 73.691(b) reads as follows:

§ 73.691 Modulation monitors.

* * * * *

(b) In the event the visual monitoring equipment or the aural modulation monitor becomes defective, the station may be operated without such equipment pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided,* That:

(1) Appropriate entries shall be made in the maintenance log of the station to show the date and time the equipment was removed from and restored to service.

(2) During the period when the station is operated without the aural modulation monitor or the visual monitoring equipment, the licensee shall provide other suitable means for insuring that the aural modulation is maintained within the tolerance prescribed in § 73.687(b) (7) and that the visual signal is maintained in accordance with the requirements of this subpart.

(3) If conditions beyond the control of the licensee or permittee prevent the restoration of the monitor or monitoring equipment to service within the period specified above, an informal request in accordance with § 1.549 of this chapter may be filed with the Engineer in Charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument or equipment.

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

48. Section 74.533(b), (b) (1) and (4) are amended to read as follows:

§ 74.533 Remote control and unattended operation.

* * * * *

(b) Aural broadcast STL and intercity relay stations may be operated unattended: *Provided,* That such operation is conducted in accordance with the conditions listed below: *And provided further,* That the Commission in Washington, D.C., is notified at least 10 days prior to the beginning of such operation and that such notification is accompanied by a detailed description showing the manner of compliance with the following conditions:

(1) In the case where the station retransmits another station's signals received directly "off-the-air", the transmitter shall be equipped with automatic circuits that will cause it to cease radiating at times when no signal is being received from the station which it is relaying.

* * * * *

(4) Whenever an unattended aural broadcast STL or intercity relay station is in operation, appropriate observations shall be made at the receiving end of the circuit at intervals not exceeding 1 hour by a person designated by and under the control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of our rules.

* * * * *

49. Section 74.635(a) and (a) (1) are amended to read as follows:

§ 74.635 Unattended operation.

(a) Television intercity relay stations, television translator relay stations, and television STL stations may be operated unattended: *Provided,* That such operation is conducted in accordance with the conditions listed below: *And provided further,* That the Commission, in Washington, D.C., is notified at least 10 days prior to the beginning of such operation and that such notification is accompanied by a detailed description showing the manner of compliance with the following conditions:

(1) In the case where the station retransmits another station's signals received directly "off-the-air", the transmitter shall be equipped with automatic circuits that will cause it to cease radiating at times when no signal is being received from the station which it is relaying.

* * * * *

[FR Doc.73-59 Filed 1-3-73;8:45 am]

Title 49—TRANSPORTATION

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

[Docket No. 69-18; Notice 14]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Lamps, Reflective Devices, and Associated Equipment

This notice amends 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, to delete the requirements of the warpage tests for plastic lenses used on lamps.

The NHTSA proposed on July 7, 1972 (37 FR 13350), that the lens warpage test be deleted from the motor vehicle lighting standard. The test requirement itself, as contained in an SAE standard incorporated by reference, lacked objectivity, in that it prohibited warpage that would "affect the proper functioning of the device" without further clarification. The lens warpage test did not appear to add significantly to motor vehicle safety.

Comments to the docket were divided, some confirming the NHTSA position on both issues. Others objected, suggesting that the agency seek to establish objective compliance criteria. On review of all data and arguments, the NHTSA finds that a safety problem that would justify the development of such a requirement has not been demonstrated.

In the future, if serious problems of lens warpage arise, they may be dealt

with immediately as safety-related defects under section 113 of the National Traffic and Motor Vehicle Safety Act, and steps can be taken to develop and promulgate an objective test.

In consideration of the foregoing, 49 CFR 571.108 is amended as follows:

1. Paragraph S4.1.2 is revised to read:

S4.1.2 Plastic materials used for optical parts such as lenses and reflectors shall conform to SAE recommended practice J576b, August 1966. Plastic materials used as inner lenses or those covered by another material and not exposed directly to sunlight shall meet the requirements of paragraphs 3.4 and 4.2 of SAE J576b when covered by the outer lens or other material.

2. A new paragraph S5.3 is added to read:

S5.3 requirements of SAE standards incorporated by reference in this standard, other than J576b, do not include tests for warpage of devices with plastic lenses.

Effective date: January 1, 1973.

Because this amendment relieves a restriction and creates no additional burden, it is found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest.

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51)

Issued on December 29, 1972.

JACK L. GOLDBERG,
Acting Administrator.

[FR Doc.72-22455 Filed 12-29-72;2:06 pm]

Title 7—AGRICULTURE

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

[Navel Orange Reg. 282]

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

Limitation of Handling

This regulation fixes the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period January 5–11, 1973. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907. The quantity of Navel oranges so fixed was arrived at after consideration of the total available supply of Navel oranges, the quantity currently available for market, the fresh market demand for Navel oranges, Navel orange prices, and the relationship of season average returns to the parity price for Navel oranges.

§ 907.582 Navel Orange Regulation 282.

(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) The need for this section to limit the respective quantities of Navel oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Navel orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Navel oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Navel oranges is unsettled. Prices f.o.b. the week ended December 28, 1972, average $3.87 per carton on 682 carloads compared to $3.71 on 1,347 carloads the previous week. Track and rolling supplies at 423 cars were up 10 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Navel oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this 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 this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 2, 1973.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period January 5, 1973, through January 11, 1973, are hereby fixed as follows:

(i) District 1: 640,000 cartons;

(ii) District 2: 120,000 cartons;

(iii) District 3: 40,000 cartons."

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: January 3, 1973.

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

[FR Doc.73-324 Filed 1-3-73;11:48 am]

Title 14—AERONAUTICS AND SPACE

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-787, Amdt. 4]

PART 242—REPORTING RESULTS OF SCHEDULED ALL-CARGO SERVICES

Extension of Part

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 29th day of December 1972.

By circulation of EDR-236 (Docket 24890), dated November 3, 1972, and publication at 37 FR 23732, the Board gave notice that it proposed to amend Part 242 of the Economic Regulations (14 CFR Part 242) to extend for an indefinite period the duration of the part which is presently scheduled to expire by its terms on December 31, 1972.[1] Two comments were filed,[2] both of which support an extension of the part. However, these parties favor an extension of definite duration with the expiration date governed by the final Board decision in the pending "Domestic Air Freight Rate Investigation" (Docket No. 22859).[3] In sup-

[1] 14 CFR 242.1(b).

[2] The Flying Tiger Line Inc. (Flying Tiger) and Trans World Airlines, Inc. (TWA).

[3] Flying Tiger urges an extension of the part until 90 days after Board decision in the freight rate investigation; TWA would have the part terminate 1 year after the completion of such investigation.

port of its position, Flying Tiger states that by the time of the completion of the evidentiary hearing in the freight rate investigation, the Board's staff and the carriers should be able to formulate their respective views on the necessary statistical information, to be followed by the Board's institution of a rule making proceeding with final Board decision in such proceeding deferred for resolution either contemporaneously with, or subsequent to, Board decision in the air freight rate investigation.

We shall extend the part for an indefinite period, as proposed. As the notice indicates, the Board is aware that the comprehensive "Domestic Air Freight Rate Investigation" may indicate the need for, and the nature of, further refinements in reporting procedures and methods of allocation of cost between passenger and all-cargo services. At the conclusion of that evidentiary proceeding the Board intends to review the Part 242 requirements to determine, in light of the data developed, and findings and conclusions made therein, what revisions to Part 242 should be proposed. However, in order to allow ourselves greater flexibility in the timing of our issuance of proposed regulatory revisions to Part 242, to be based upon the outcome of the evidentiary proceeding, we believe that it is in the public interest to extend the part for an indefinite period, rather than to provide now for a definite period, with the expiration date thereof to be fixed by the Board's decision in the air freight rate investigation.

Since it is important that there be no hiatus in the term of the part, the Board finds that good cause exists for making this amendment effective on January 1, 1973. Moreover, since the first reporting period under this amendment will cover the 12 months ending on June 30, 1973, and the filing of said report will not be due until August 15, 1973, the Board further finds that no person will be adversely affected by the Board's failure to give 30 days' notice prior to the effective date of this amendment.

Therefore, in consideration of the foregoing, the Board hereby amends Part 242 of its Economic Regulations (14 CFR Part 242), effective January 1, 1973, as set forth below:

Amend § 242.1 by deleting and reserving paragraph (b) as follows:

§ 242.1 Applicability.

* * * * *

(b) [Reserved].

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

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.73-165 Filed 1-3-73;8:45 am]

[Reg. ER-786, Amdt. 288-15; Dockets Nos. 23553, 23579]

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Exemption of Air Carriers

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 29th day of December 1972.

On May 31, 1972, by notice of proposed rule making EDR-205A/PSDR-32A (37 FR 11344), the Board proposed to amend Parts 288 and 399 of the Economic Regulations (14 CFR Parts 288 and 399) by establishing new minimum rates applicable to certain foreign and overseas air transportation services performed by air carriers for the military on and after July 1, 1971. The notice also dealt with the request filed by several carriers in Docket No. 23579 for an increase in minimum rates for Categories A and Z transportation and with the proposal of DOD and various carriers to establish separate "Category Y" rates for the carriage of DOD passengers in scheduled service under blocked space arrangements. Written data, views, and arguments, were filed in response to the notice by the Department of Defense (DOD), 18 carriers,[1] and Davis Agency, Inc. and thereafter DOD and 13 carriers[2] filed reply comments. All comments and supporting materials before the Board have been carefully considered, and all contentions not otherwise disposed of herein are rejected. Final amendments to Part 399 are being adopted concurrently herewith.

While the notice proposed increases in some rates and decreases in others, the rates proposed for a normal year were, overall, just slightly above the rates currently in effect.[3] In their comments, most carriers argued for considerably higher increases, contending among other things that inflation has severely affected major elements of cost since the base period and will continue to do so in the future. They variously argue that the passage of time has rendered the base priod data stale; that increases have been experienced in fuel expense, wages, services, and materials; that the devaluation of the dollar has also resulted in increased expense; that the Board's policy of rejecting anticipatory cost increases is unrealistic; that the rates should be modified to reflect cost trends; that the Board should accept either the fiscal year 1972 cost projections of the carriers, as submitted, or their reported costs for that period; and that further rate increases should be made for fiscal 1973 and later years. A number of carriers also took issue with the proposed treatment of leased aircraft, the rate of return, the use of B-747 costs, aircraft utilization, and various technical factors affecting the rates or their application. Other major comments by several carriers concerned the rate relationships for categories of individually ticketed or waybilled services and the effective date and duration of the rates.

DOD provided an analysis of carrier costs which reflected the use of reported costs and operating statistics for the year ended March 31, 1972, for most carriers in some cost areas, but the analysis also variously used the figures from the notice, costs modified for current utilizations and speeds, the figures MAC recommended in its preliminary rate study prior to the issuance of the notice, and certain other bases. DOD employed the MAC recommended figures where it believed the carriers' increases in indirect costs allocated to MAC operations were excessive and out of line with industry averages, and hence not representative of an experienced MAC cost element. DOD also took issue with the rate of return used in the notice and with a number of technical factors and methods used to determine costs and payment. In addition, it raised questions concerning the rate relationships proposed and the effective date of the rates. The net effect of DOD's positions would

[1] Airlift International, Inc.; American Airlines, Inc.; Braniff Airways, Inc.; Eastern Air Lines, Inc.; The Flying Tiger Line, Inc.; Modern Air Transport, Inc.; Northwest Airlines, Inc.; Saturn Airways, Inc.; Seaboard World Airlines, Inc.; Trans International Airlines, Inc.; Overseas National Airways, Inc.; Pan American World Airways, Inc.; Saturn Airways, Inc.; Seaboard World Airlines, Inc.; Trans International Airlines, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; and World Airways, Inc., all filed individually. Braniff, Capitol, International Airways, Inc., Continental Air Lines, Inc., ONA, Saturn, TIA, and World filed a joint comment (Braniff et al.), as did Airlift, Southern Air Transport, Inc., and World (Airlift et al.).

[2] American, Braniff, Flying Tiger, Northwest, Pan American, Saturn, Seaboard, TWA, and World, individually, and Braniff et al.

[3] For fiscal year 1972 the proposed rates were estimated to be slightly below the current rates in view of the Board's proposal to hold the rates to the current level during the period August 16, 1971–November 13, 1971 (the freeze period) in conformance with rulings and regulations of the Cost of Living Council and the Price Commission. However, as indicated in ER-747, June 30, 1972, the Cost of Living Council has changed its position on disallowing price increass for services provided during the freeze period, and accordingly the rates we are establishing herein will be made applicable without change during the entire period of their effectiveness, which will include the dates August 16, 1971, through November 13, 1971.

be to reduce most rates below the current rate levels.

The rates proposed in the notice were predicated on carrier and DOD forecasts and submissions, screened and adjusted in the light of: (1) Cost data furnished by the carriers for the 12 months ended September 30, 1970 (the base period), (2) other reported data, and (3) those price or wage increases actually experienced subsequent to the base period or to be experienced during fiscal year 1972, as evidenced by existing contracts or similar documentation. In accordance with established practice, the Board refused to recognize in its proposed rate any anticipatory cost increases or any price or wage increases which were not adequately supported. We will adhere to that policy in establishing the final minimum rates for MAC services. The suggestion that the problem of the proper ratemaking approach to general allegations concerning inflation can be solved in the instant proceeding simply by using a more current base period is not well taken. While a considerable period of time has elapsed since the base period used in the notice (in substantial part because the rule making proceeding was complicated by problems associated with the Economic Stabilization Program), there would be no warrant for shifting the base period, since that would require us to embark upon another full scale review and screening of the reported data for the new period. This could only lead to a further extension of the open rate period during which the amount of carrier revenues for these services, as well as the level of MAC's transportation costs, remain in doubt. Reported costs could not, of course, be blindly accepted, and DOD points out deficiencies in reporting or allocation problems which indicate that modification of reported figures would be necessary, but the several cost data sources used by DOD appear to have been rather selectively chosen and reasons supporting the choices and their applications for each carrier have not been explained in sufficient detail to justify differentiations made by DOD among carriers and aircraft types.

For final rate purposes the Board has reviewed the carrier comments, in the light of the DOD responses, and adjusted the costs computed in the notice where sufficient supporting detail was furnished concerning increases in salaries and wages and costs of fuel, materials and supplies which were actually paid during fiscal 1972 or which were covered by contracts applicable to that rate period: *Provided*, That such increases were not inconsistent with Price Stabilization guidelines. Adequate documentation was supplied by nine carriers,[4] and the adjustments to their costs are shown in the appendixes hereto. Although other carriers made representations concerning the general effect of inflation or even particular areas of expense increases which would affect their cost forecasts, none of these statements contained enough information to afford a predicate for a change from the costs recognized in the notice. In particular, none of the carriers furnished sufficient detail to support an adjustment for the impact of devaluation of the dollar on expenses incurred for MAC services.[5]

As stated above, we have continued to eliminate cost increases of an anticipatory nature, such as increases based on historical trends in wages or other expenses, and have allowed only those cost increases which have been definitely substantiated as applying to MAC service. In following this course we are quite aware that the economy has been passing through a period of general inflation and that this undoubtedly has had an impact on airline costs. But we are also aware of our responsibility not to contribute to that inflation by recognizing undocumented expense increases or increases not reliably attributable to operations for the DOD, and we are aware that recent and future operational improvements and efficiencies are matters particularly within the knowledge of the carriers, which may reasonably be expected to come forward more willingly with information about cost increases than about productivity measures and cost savings. Certainly management continues to work to extend the time between aircraft and engine overhaul steps, to devise improvements in loading and handling techniques, to use more modern equipment where efficiencies are to be gained thereby, and to take advantage of the learning curve. The Board believes that this is reflected in the relatively stable costs of the MAC carriers since the base period.

Based on the Form 41 reports for the entities in which the carriers themselves reported MAC operations, half of the carriers show lower costs per available ton-mile for the year ended June 30, 1972, than for the year ended September 30, 1970, even after exclusion of the generally lower costs of wide-bodied jet aircraft and depreciation and amortization expenses. Further, after weighing the results by the MAC-fixed contract revenues, we find that the international MAC group as a whole showed a slight decrease in ATM expenses.[6] It is true that the Form 41 reports reflect commercial as well as MAC operations, but no convincing showing has been made that commercial services afforded a substantially greater potential for cost savings than MAC service.[7] However, since the results of a mixture of operations are reported in the Form 41 and some cost movements may be attributable solely to commercial service, we have also compared the carriers' figures for MAC operations alone as reported on their Forms 243. These figures show a modest increase of 2 percent between the base period and fiscal year 1972 in the cost per aircraft-mile flown,[8] and here, too, some caution must be used in evaluating the data, for DOD has claimed and several carriers have admitted that the Form 243 reports suffer from various deficiencies. On a standard available ton-mile basis the reported increase is somewhat greater (3.25 percent),[9] but this variance is due to changes to aircraft types with smaller standard ACL's by some carriers, rather than to inflation.

The rates proposed in the notice reflected some cost increases which had been incurred subsequent to the base period, and additional increases are incorporated in the final rates. With these and other changes discussed below or in the appendices, the rates we are establishing herein will provide an increase of approximately 2.66 percent in the yield from MAC services for fiscal year 1972.[10] In our judgment, these rates make adequate provision for recent cost inflation.

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[4] Certain of these carriers also provided data for fiscal 1973, but most of the information was so fragmentary as to be of little value, and the remainder was not substantial enough in amount to have any significant impact on the rate level.

[5] Only Seaboard provided figures purporting to reflect the impact of dollar devaluation on MAC costs, but the bases for these figures were not supplied and the apparent (albeit unstated) assumptions underlying their use are of doubtful validity.

[6] 0.89 percent, after excluding Northwest and World, which showed an even greater decrease, but whose results were distorted by strikes.

[7] Except in the shift to wide bodied equipment, but that equipment has been excluded from our cost comparisons. We reject the notion that revenue ton-mile costs should be compared rather than available ton-mile costs, since load factor declines in scheduled commercial operations would not require the conclusion that the costs of providing MAC charters increased.

[8] After eliminating Northwest, World, and Eastern. The data for all MAC international operations shows an increase of only .7 percent, but as indicated above the results of two carriers were affected by strikes, and Eastern's increase of 87.6 percent is so far removed from the experience of the group as to signify either reporting distortions or other distorting influences unrelated to price and wage inflation.

[9] Again, after eliminating Northwest, World, and Eastern. For all MAC international carriers the increase was 2 percent.

[10] See Appendix Q, which is filed as part of the original document.

The Davis Agency has requested a reduction in Category A, B, and Z rates of some 58 percent, based on a computation which assumes that (1) certain promotional fares for individually-ticketed personal transportation of active duty servicemen and their dependents are compensatory on a fully allocated cost basis; (2) MAC service is far less costly to provide than commercial service; and (3) the ratio of Pan American's forecast costs for MAC to the Davis Agency's computation of that carrier's commercial costs can be applied to yields from the said promotional fares to produce a MAC rate. On Dec. 13, 1972, Davis Agency filed a complaint in Docket 25004 in which it stated, among other things, that the same promotional fares are uneconomic (complaint, page 5). We shall not make a determination of the proper level for nonofficial individually-ticketed military travel in this rule making proceeding. It is sufficient to point out that the rates we are here establishing are cost-based; that they are minimum rates; and that, unlike the promotional fares Davis is attacking, they are computed on a fully allocated basis.

Effective date and duration of rate. DOD urges the Board to make the rates effective on or after the issuance of the final rule in this proceeding, rather than on July 1, 1971, as proposed in the notice, but states that it does not object to the rates being of indefinite duration. The carriers which have commented on these issues generally argue that (1) the new rates should be effective beginning July 1, 1971, (2) fiscal 1972 rates should be increased by from 2 to 10 percent for fiscal 1973, on a final or interim basis, and/or a new proceeding should be instituted for the latter year, and (3) absent an escalation factor or other cut-through approach to increase subsequent rates, a rate review should be started for fiscal 1974.

DOD position is that retroactive adjustments in minimum rates are undesirable and contrary to Board policy because of their effect on DOD budgets and appropriations and on carrier revenues; that it cannot make logical choices among aircraft types or volume of commercial service without knowing in advance the cost of the service; and that the MAC contracts call for performance at the minimum rates specified in Part 288 as in effect when the service is provided. With respect to retroactivity, the carriers argue that EDR–205/PSDR–32, which instituted this proceeding, gave all persons advance notice that the rate would be subject to revision effective from the beginning of fiscal 1972; that the Board has made rate changes retroactive to the date of institution of proceedings in the past in cases involving MAC rates without causing undue hardship to DOD (and has made such changes in cases involving rates for the carriage of mail); and that MAC contracts contain provision for amendment by change order to conform to the CAB minimum rate when established for fiscal year 1972. In support of higher rates or new rate reviews for periods following fiscal year 1972 the carriers point to cost increases since the base period and continuing inflationary trends, while MAC states that there is no evidence that the carriers failed to make substantial profits from MAC business at current rates, which it alleges were based on overstated costs, and indicates that the use of updated data in DOD comments meets the problem of stale data.

The Board has decided to establish new rates which will be effective from July 1, 1971, forward; will remain at the same level throughout the period of their effectiveness; and will contain no stated termination date. While it continues to be desirable as a general rule to establish rates on a prospective basis, an inflexible policy which would preclude our making the rates effective from the date of institution of the rule making proceeding is neither required by law nor appropriate to meet the demands of fluid circumstances.[11] Our original notice in this matter made clear that the Board contemplated fixing new minimum rates to be in effect beginning with the start of fiscal year 1972 and the MAC contracts appear to have provided for amendments to accommodate retroactive changes, although in any event the contracts could not limit the Board's authority to fix the level or the period of effectiveness of these rates. As the carriers point out, retroactive rate changes have been made as the result of MAC rate reviews on prior occasions, and these changes have been effectuated during the course of a fiscal year, despite the general desire to have rates remain in effect throughout the annual budget period. Balancing the effects on costs of recent changes in the economy and in MAC activity, on the one hand, against the undoubted benefits of stability and the inconveniences caused by rate changes, on the other, we conclude that we should adhere to the effective date proposed in the notice.

By the same token, we find it advisable to establish a single level of rates of indefinite duration. As set forth in our discussion of base period dates and cost increases, there is no basis, either in the Forms 41 or 243 or in the carriers' comments, for establishing a different rate for fiscal year 1973 or other periods. We have explored the possibility of using ratio techniques, but wide variances among carriers preclude the use of such cut-through approaches. The data would not support the use of a cost trend or escalation factor even if the use of such speculative methods were acceptable, and we find no warrant for embarking immediately upon a new rate review. Available ton-mile costs[12] currently appear to be decreasing for more carriers than not, even with B–747 costs excluded, and inflationary pressures on the general economy give signs of easing. The final rates here established reflect all cost increases documented in carrier comments, afford relief from the time of inception of this rate proceeding, and provide a rate of return to cover risks for reasonably extensive future periods. Under all the circumstances we will not fix a termination date for these rates nor embark on a new rate review at this time.

[11] We might also point out that the problem of MAC contracts being performed pursuant to tariffs by carriers which do not require exemption is not currently a material consideration.

[12] Contrary to the suggestion of some carriers, revenue ton-mile comparisons are not more appropriate, since, as previously indicated, MAC contract rates should not be burdened by load factor and scheduling problems of commercial operations. We also reject the notion that short-haul operations are somehow less costly than long-haul, or that changes in short-haul expenses must move in a different direction from changes in the cost of longer haul operations. Further, length of hop and haul for MAC operations has been increasing in recent years, and since it is a DOD policy to favor the newest and most efficient aircraft types for use in MAC service, the fleet mix continues to be representative of the most economical aircraft in use.

CATEGORY B MINIMUM RATES FOR LARGE TURBOJET AIRCRAFT

The existing minimum rates for category B charters, those proposed in the notice, and the revised minimum fair and reasonable rates adopted herein for large turbojet aircraft are set forth below. The table also shows the percentage differences between the current rates and the rates adopted.

	Current	Proposed	Adopted	Percent increase (decrease) from current
Passengers, cents per passenger mile:				
Round trip	1.916	1.91	1.959	2.24
1-way	3.448	3.60	3.686	6.90
Cargo, cents per ton mile:				
Round trip	7.728	7.45	7.730	.03
1-way	15.379	14.62	14.903	(3.10)

Rates for wide-bodied aircraft. The notice proposed the same rates for passenger service with B–747 aircraft as for other long-range jets. Forecasts had been received only from Braniff and Pan American, and the adjusted costs for these two carriers were included in the computation of the proposed rate per passenger-mile. In view of the relatively low passenger ACL for this aircraft, we also proposed that the request by DOD to use the lower compartment cargo capacity at no extra charge be adopted.

Comments were submitted by several carriers contending that since the wide-bodied jets were not used during fiscal year 1972 and MAC has not contracted for any such buy for fiscal year 1973, the B–747 data should not be considered in establishing the rates in this proceeding. In addition, Flying Tiger suggests that in the event the Board should decide to include B–747 data in establishing the rates, then similar data from other MAC carriers operating B–747 aircraft should be included. On the other hand, World Airways submitted comments in which it supports the common rating of the B–747 with narrow-bodied jets and, since it anticipates delivery of convertible B–747's during 1973, asks the Board to establish mixed rates for these aircraft. World opposes the proposal to allow MAC the free use of the lower compartment cargo capacity. Trans International urged the Board to establish minimum rates for the DC–10–30CF since it expects to take delivery of these convertible aircraft in April and June 1973. The carrier also requests the Board to establish convertible rates for such aircraft at the same rates as established for regular turbojets. DOD recommends that until such time as representative cost data become available the Board set the rates for wide-bodied aircraft at the same level as for first generation jets, that a passenger ACL be established for DC–10 aircraft, and that it be given free use of the belly cargo space.

Upon consideration of the foregoing we can find no valid basis to support the establishment of rates for wide-bodied

aircraft at this time. Since the wide-bodied aircraft have not been used, and, so far as can now be determined, are not expected to be used in MAC operations in the near future, no historical MAC cost data are available upon which to base a forecast, and no current need exists for these rates. Accordingly, we have eliminated the B–747 estimates from our costing used in determining the rates and will set no rates for wide-bodied aircraft in this proceeding.

Aircraft utilization. Three carriers, American, Saturn, and Trans International,[13] have requested that the Board adjust the aircraft utilization and costs projected in the notice to reflect the lower average daily aircraft utilization each claims to have experienced during fiscal year 1972. We have examined the carriers' claims and have determined to adjust the projections for Saturn, but not for Trans International or American.

With minor variations, the hours of daily utilization reflected in EDR–205A for each aircraft type used by a carrier was the higher of the carrier's forecast or its experience with that aircraft during the base year for its MAC system (that is, the regions or areas where it conducted MAC operations). However, in the case of Trans International's B–727's the carrier's forecast was adjusted to a utilization of 7 hours per day to reflect the minimum acceptable reasonable utilization for short-range jet aircraft in MAC service. Although TIA did not attain that level in fiscal year 1972 we will adhere to the 7-hour figure so as to assure that the MAC rate will be based upon the costs of economical and efficient operations.

For American the 12.29 hours projected in the notice for its B–707–300C aircraft was based on that carrier's submission of experienced utilization in MAC service during the base period. In its comments American requested that we substitute the 11.92 hours apparently reflected in its company records for MAC operations for fiscal 1972. However, beginning with data for January 1, 1972, a separate utilization figure for MAC service only has been reported in the Form 243. Based on that report we find that the carrier's experience for the last half of fiscal year 1972 (the 6 months ended June 30, 1972) was 12.11 hours, an improvement over the utilization for the entire year. In the light of this experience and the very minor difference between the most current figure and our projection in EDR–205A, we shall adhere to the utilization used for American in the notice.

Saturn's forecast of 9 hours per day for its DC–8–50 was accepted in the notice, but it now claims a utilization of 7.6 hours based on its experience with that aircraft in all operations for the year ended March 31, 1972. DOD would accept this change in utilization and we agree.

For its DC–8–61F's Saturn's forecast of 9.3 hours was accepted in the notice. However, its experience for all operations for the year ended March 31, 1972, was 8.3 hours. Nevertheless, the carrier contends that the same 7.6 hour utilization should be used for this aircraft type as for the DC–8–50 since its effectiveness in obtaining commercial charters was responsible for the 8.3 hour record. DOD would not accept the 7.6 for the DC–8–61's, citing figures which show that Saturn's utilization in MAC service is superior to its commercial service record. Instead, DOD believes that 8.3 hours is the most representative figure available for the DC–8–61's. We agree and have adjusted Saturn's cost accordingly.

Depreciation adjustments. In the notice the Board requested the views of the parties concerning the appropriate basis for computing flight equipment depreciation when a change in useful lives or residual values is made in MAC rate reviews. Only DOD responded and it favored retention of the entire service life basis, although it gave no explanation for its taking that position. Northwest suggests that as a matter of equity the method for adjusting flight equipment investment should be revised to parallel the basis used for adjusting depreciation, but it is at least as equitable to change the method of adjusting depreciation as to inflate investment by amounts already charged as depreciation. Adherence to the current bases used for depreciation and investment appears to offer a reasonable accommodation of the various interests at this time.

Rate of return. As in the case of the rates established for domestic MAC operations in ER–733, May 11, 1972, the Board proposed to maintain the 1.5 percentage point difference between the rates of return used for commercial rate and MAC purposes, and therefore to use a 10.5 percent return in this proceeding. In our notice we stated that our reasons for using the 10.5 percent figure were the same as those set forth in ER–733, where the Board canvassed the arguments adduced by MAC, in contending for a lower return of 9 percent, and by the carriers, in contending for a higher return of 12 percent. Yet the comments of the parties opposing the rate of return proposed in the notice[14] are basically the same as those we disposed of in the Logair and Quicktrans proceeding. The Board adheres to the 10.5 percent proposed.

There are, however, a few points on which further clarification or comment may be helpful. DOD points out that rather than its confusing the opportunity to make a fair return with the achievement of the return, this distinction has been the essence of its position, and again argues that since the domestic carriers may fail to achieve 12 percent on commercial operations we should not use our evaluation of trunkline capital costs in the domestic passenger fare investigation[15] as a guide to the establishment of a return for MAC operations. But, however stated, DOD apparently misconceives the purpose and operation of rate of return guidelines and would have us use an unacceptable approach to this area of ratemaking. The profit elements used in establishing rates are not intended to guarantee that the return utilized will in fact be realized, but to afford efficient carriers an opportunity to earn that return which the financial market-place requires over a reasonable time-span if it is to furnish the investment needed for operations. This return is based to a large degree on relative risks. Reported profits, while an element in the evaluation of future prospects, are not determinative by themselves of the investors' requirements and, despite DOD's arguments, do not constitute a ceiling on the capital costs of investment devoted to MAC.

Some carriers have urged that our treatment of leased aircraft requires a higher rate of return since the MAC investment base proposed does not include a constructed value for such equipment and the use of leased equipment has grown. However, as explained in the following section, the policy with respect to this item is the same as that used in the *Fare* case, a cost of capital approach has been followed, and the impact of high ratios of leased to owned aircraft is appropriately reflected in the recognized capital costs. It is also argued that international risks are higher than domestic risks, but it has not been demonstrated that there is any significant impact on risks or capital costs due to differences in foreign and overseas operations for MAC and domestic operations for MAC. We do not find persuasive arguments that long-haul international operations involve more economic risk than short haul domestic flights, since the operating costs of both are covered in their respective rates and the same 1.5 percentage points spread has been used historically for establishing rates for both domestic and foreign MAC service. On the other hand, United has urged that the investor places his money in airline securities, rather than in operations for MAC, or commercial passengers, etc., and indicates that a higher return is needed to attract capital. While the concept of the investor's primary interest being the carrier's total return is certainly valid, there are differences in risk between individually ticketed scheduled service for the general public and chartered service under contract with the DOD. Those features which reduce the risk for MAC include the fixed minimum gross volume of business for an entire year, the minimum rate which generally remains in effect for at least a year, and the guaranteed minimum volumes for each flight. In order that different users pay their proportionate share of costs, an allocation of cost differentials should be made even

[13] TIA's comment concerned the utilization used for its B–727 aircraft rather than its long-range equipment, but we are dealing with this item at this point as a matter of convenience.

[14] The seven carriers which filed a joint comment on long-range rates supported the Board's rate of return standard.

[15] Order 71–4–58, Apr. 9, 1971.

though the investor is looking to a composite of costs and risks stemming from different airline activities. In our view the increase in MAC risks attributed to the increasing uncertainty of volume of MAC operations and the costs flowing from related operational changes and the like are adequately covered by our increase in the return element to 10.5 percent.

Leased aircraft. A number of carriers have complained about our proposal to recognize actual and reasonable rental expenses (plus a profit element in special circumstances) in lieu of the constructive ownership approach used in prior international MAC rate reviews. They argue that the proposed policy would deprive them of an opportunity to make a profit on leased aircraft, is an unwarranted extension of a rule designed for commercial rate purposes, and fails to reflect the risk of foreign operations. Some carriers also contend that the policy has not been applied properly, in that an incorrect method was used for determining if unusual circumstances warranted a special profit element and that the profit element applied was too low.

The carriers basing their argument for retention of the constructive ownership approach because of the profits afforded on that basis apparently refuse to recognize in this connection that the purpose of including a profit element in the computation of all rates for air transportation, including MAC rates, is to provide for the cost of capital devoted to the service. Our adoption of § 399.43 of the Board's statements of general policy was based on a determination that recognizing actual rental expenses was the appropriate treatment of leased aircraft for ratemaking purposes because, among other things, this approach was in accordance with the facts, while the constructive ownership approach did not reflect the carriers' true revenue requirements. The cost of capital is the return on investment necessary to attract that capital, and leased aircraft are simply not a part of carrier capital investment.

The Board recognized that leasing does involve risks, but these risks affect the cost of the carriers' actual investment, and the ratepayers' costs should not be burdened by a profit element for phantom capital which is not truly an asset of the carriers.[16] We determined that these risks are reflected in the rate of return established in the domestic passenger fare investigation,[17] and to the extent that a significantly greater than normal proportion of leasing involves an additional risk not reflected in that rate of return for the capital which is a part of carrier investment, we provided for a profit element 6 percentage points lower than the standard rate of return. Thus, the policy covers all of the costs related to aircraft leasing. Our review of this problem, although part of the fare case, was based on principles generally applicable to all ratemaking, and the policy is intended for across-the-board application. We have already applied the policy in setting rates for domestic Logair and Quicktrans service, and no convincing arguments have been adduced which would persuade us to use a different rule for MAC international rates.

Since we have used as a starting point for MAC rate of return purposes the rate of return established in the *Fare* case, the use of the ratio of leased to owned aircraft values of the carriers in that case provides an appropriate benchmark for determining whether the ratio is so significantly exceeded by any MAC carrier as to entail an additional risk. In making that determination we look to the carrier's entire fleet of the aircraft types it devotes to MAC, rather than compute a ratio for each aircraft type or look to the particular individual aircraft employed. The average ratio of all of the aircraft in the ratemaking unit (the aircraft of all domestic air carriers) is used as the standard, and the ratio used for the individual MAC carriers in assessing the special risk, if any, should be similarly computed. In order to determine the special risk element the proportions of leased aircraft values of one type obviously must be balanced out against the proportions of leased aircraft values of other types devoted to MAC, and in establishing MAC rates the Board will not permit a carrier to pick and choose among its aircraft and allocate its most costly equipment to MAC. Finally, when § 399.43 called for the use of "the standard rate of return, less 6 percentage points," it meant just that: the operation of leased aircraft in a significantly higher ratio than the norm was judged to affect the capital costs of a ratemaking unit by the standard return for that unit less 6 percentage points.[18] Although the relative risk figure is clearly a broad judgment, we deem it applicable without regard to where the aircraft are flown, and there is no sound reason to adopt a different basis for MAC purposes.

Mileage absorption factor. Both DOD and the carriers have challenged the adjustments proposed in the notice to recognize differences between the mileages used to calculate costs and the standard mileages used by MAC for payment purposes. DOD questioned the need for making any adjustment. It claims that the historical costs include the higher costs resulting from shorter stage lengths flown where operationally required,[19] and therefore the adjustment would require a double payment for the same costs. DOD also argues that the costs of flying all miles—including ferry mileage, positioning mileage, and mileage due to longer than pay-mile routings—are divided by revenue miles, only, to determine costs, and hence any adjustment would reimburse carriers a second time for nonrevenue mile costs. Finally, DOD presents a comparison of MAC revenue aircraft miles flown and MAC pay miles, based on Form 243 data for calendar 1971, indicating a deviation factor of only 0.17 percent on an overall average basis, and notes that the use of even that figure should await clarification of reporting discrepancies.

The several carriers commenting on this item urge, variously, that some carriers fly routings longer than those prescribed for payment purposes because of cost savings, already part of the unit cost submissions, which are achieved by avoiding bad weather areas or high cost locations or by using on-line locations; that ferry and positioning miles are not included in the calculations, although they should be so as to permit the recovery of costs associated with nonrevenue operations necessary for MAC service; that errors in calculation in the notice resulted in an understatement of the absorption factor; and that the reporting discrepancies in the Forms 243 leave the Board's analysis and the factors proposed in the notice as the best computations available.

The Board has decided to continue to apply a factor for mileage absorption, based on the techniques historically used for MAC rate reviews. DOD and the carriers have made conflicting claims concerning the unit costs for mileage flown on routings longer than pay-miles routings, but no data supporting either of these allegations have been filed in this proceeding. We note, however, that in connection with a prior rate review, material was filed tending to show that the costs per mile on the longer mid-Pacific routings were lower than on the north-Pacific flights and the total costs were about the same.[20] No conclusion can be drawn from the current record that the historical unit costs used in the notice were increased because of the longer routings flown. Further, in determining unit costs, all MAC costs and all MAC mileages are included in the computation,[21] and hence there is neither a dou-

[16] The rental payments, which are recognized, obviously include an element which goes to pay the capital expenses of the lessor, since he must attract the necessary funds to cover his investment costs. To provide a further return on this investment to the lessee would be to duplicate this expense.

[17] Order 71-4-58, Apr. 9, 1971.

[18] Contrary to the arguments of some carriers, we did not divide the rate of return used in the *Fare* case by two nor fix on 6 percent as the measure of the extraordinary risk. Instead, we subtracted 6 percentage points—approximately the pure interest rate—from the "standard return," which we envisioned would vary in different ratemaking frameworks. The pure cost for the use of money (the 6 percentage points) was deducted from the standard return because no capital requirements (and hence no pure money costs) are involved in leasing.

[19] That is, where routes are flown encompassing: (1) Longer distances than the pay miles and hence (2) shorter stage lengths, because of equipment limitations.

[20] EDR-133, February 20, 1968, page 9.

[21] Except the first 50 miles of ferry flights. See § 288.9(c). MAC does not pay directly for the first 50 miles of ferry flights, but this mileage (though not its cost) is excluded in the carriers' submissions for rate reviews and thus the rates cover the cost of these miles.

ble reimbursement nor a shortfall in cost coverage. However, a mileage absorption or circuity factor is needed because of the differences between routings flown and the standard routings reflected in MAC pay mileages.

As a theoretical matter, the method used by DOD to derive an absorption factor is not unreasonable, albeit it fails to differentiate among services. But the DOD's results cannot be accepted, because of the lack of reliability in the reported Form 243 figures used in the computation. For example, while we can envision some circumstances where pay miles might exceed miles flown, in the reports for a number of carriers the MAC pay miles exceed the revenue miles flown by a very substantial margin. Further, the DOD and the carriers have pointed out other problems which impair our confidence in the figures. For this reason we will follow the technique of comparing: (1) The miles flown over the predominant routings used with (2) the miles over the standard routings used for payment purposes, as in the notice. These miles-flown figures represent the typical distances operated, according to the carrier submissions, and DOD has made no showing to the contrary, except by reference to the discredited figures from the Forms 243.

After correcting certain obvious errors discovered in the figures used for the notice we have recalculated the absorption factors, weighting the data by the fiscal year 1972 award points to account for volume differences. As shown in Appendix E, the absorption factors adopted by the Board are 1.7 percent and 1.6 percent for regular jets and stretched jets, respectively, in passenger service, and 4.9 percent and 2.3 percent for regular jets and stretched jets in cargo service. Appendix G shows the adjustments in the rates based on those factors.

Other cost adjustments—(1) *Cargo costs.* In the notice the Board included cost data for the American and TWA Boeing 707's in its computation of cargo costs, and several carriers have objected. Flying Tiger and Seaboard state that American submitted no cargo cost computations and argue that if a constructed forecast is used for that low cost carrier, cargo cost forecasts should be constructed for Airlift's DC–8–55 and B–707–320 aircraft, United's DC–8–55F's and Seaboard's DC–8–55F's. Seaboard also states that historically the difference between payments for cargo and passenger operations has been the element of passenger service expense and related adjustments (the basis employed in the notice), but that this is an imprecise approach since some costs in cargo service are greater than similar costs in passenger operations. Pan American complains that American's cargo costs are the lowest of any shown rather than being in line with other carriers offering similar aircraft, and that use of the constructed cost is not fair since the Board first adjusted the cost of passenger operations prior to use of the figures. TWA states that the reason it did not submit a forecast for cargo aircraft is that its cargo operations were very limited during the base period, but that a comparison for calendar year 1971 shows higher direct operating costs for cargo-configured aircraft than for passenger operations.

The carriers' objections are not well taken. We constructed cargo costs for American and TWA for the B–707's since both of those carriers were in fact participating in MAC cargo operations with those aircraft and both had submitted historical data and forecasts of costs for B–707 passenger operations, thus providing a cost base for projecting cargo costs. Contrary to Flying Tiger's assertions, none of the other carriers it mentioned submitted passenger costs for the aircraft types it cited, and thus similar costs bases were not available. The method of deriving cargo costs from data for passenger operations has long been used not only by the Board but by many carriers in MAC rate reviews. Thus there is merit in DOD's observation that if Seaboard is correct in its allegation that direct costs are higher for cargo operations than for passenger service, then passenger rates are inflated since they reflect historical costs of cargo operations which carriers have not correctly segregated. DOD goes on to note that for American's B–707–300's, the aircraft here involved, the direct costs in cargo service are less than those for passenger service, and that TWA had informed MAC in 1971, in connection with the instant rate review, that the costs levels for the B–707–300B passenger aircraft fairly represent cost levels of the B–707–331C and B–707–373C cargo aircraft. We would not draw any firm conclusion from either the unscreened American figures presented by DOD or the unscreened TWA data as adjusted by that carrier in its comments, other than to note that the relationship between direct costs for an aircraft type in cargo and in passenger service is by no means established by the limited data presented. In spite of Pan American's protestations we believe it imperative to screen historical and forecast costs before projecting them for MAC rate purposes. The method of projecting costs used in the notice is not unreasonable and the ton-mile costs so projected (6.69 cents for American and 6.79 cents for TWA) are not out of line with the costs for standard jets of other carriers (ranging from 6.76 cents to 9.49 cents).

(2) *Retroactive cost changes.* TWA has requested that we permit a retroactive adjustment for rate-making purposes to its flight equipment maintenance expense reported in its Form 41 reports for the year ended September 30, 1970, the base period used in the MAC rate review. The adjustment concerns a disparity, revealed in a 1972 audit, in the allocation of maintenance burden among operating entities reflected in TWA's reported results for the years 1968–71. A restatement of the carrier's figures based on an allocation formula adopted by TWA beginning January 1, 1972, would increase its MAC cost projections substantially. As we have determined in other instances involving attempts by TWA retroactively to change reported base year expenses, premised on after-the-fact judgments by the carrier, this restatement would not be warranted.[2]

(3) *Rounding.* TWA and Pan American have requested that the rates be expressed by using three digits to the right of the decimal place, rather than rounding to two digits as in the notice. In rate reviews prior to ER–699, establishing the current rate, we rounded to the nearest hundredth of a cent (two digits), but since the volumes of MAC services and the sums involved are so large and the additional computations call for but slight effort where only one user of the service is involved, it appeared reasonable to express the rates in thousandths of a cent (three digits) in ER–669. We are modifying the procedure used in the notice and reverting to the practice established in ER–669.

Commercial Backhaul Factor. One-way minimum rates are based upon the round trip rates, adjusted to reflect (1) the cost savings involved in return empty backhauls and (2) a reduction for backhaul mileage flown in commercial revenue operations. To develop a commercial backhaul factor the Board subtracted the return empty backhaul miles from the one-way mileage and divided by the total revenue aircraft miles. The factors proposed, 2.8 percent both for passenger trips and cargo trips, were applied to the one-way adjusted costs. The notice pointed out that to some extent the commercial backhaul miles computed on this basis reflected variances between outbound and inbound routings and perhaps problems in classification and reporting. However, the data did not permit a more direct derivation of the factor since the Form 243 reports did not contain the commercial backhaul mileage figure.

DOD complained that deficiencies in reporting made the mileage figures suspect, that the procedure employed frequently resulted in a negative derived factor for particular carriers, and that the percentages should be determined by dividing by the live one-way miles rather than the total revenue miles. It also argued that total backhaul miles should not exceed live one-way miles. After eliminating the figures for certain carriers because of asserted reporting discrepancies and removing the negative backhaul miles of other carriers, DOD derived commercial backhaul factors of 11.95 percent for passengers and 27.11 percent for cargo.

Several carriers admit that backhaul mileage reporting is deficient in various respects, but recommend using the factors developed by the Board as the most reliable available. They also argue that

[2] Nonpriority mail rates, Order 70–4–9, note 20, mimeo page 18 (April 1970); Transatlantic Final Mail Rate Case, 19 CAB 464, 471 ff. (1954). The reallocation of 1970 costs from domestic to international operations would be particularly inappropriate since the Form 41 expenses for that year formed part of the data base relied upon in the Domestic Passenger Fare Investigation.

the low yields of the commercial backhauls represent an offsetting factor. Braniff et al. state that the backhaul factor should not be a percentage of one-way miles, but total revenue miles, since the factor is applied to costs based on total revenue miles flown. Northwest argues that no commercial backhaul computation should be made since MAC can convert one-way trips to round trips on 24-hour notice and the effect of this option is to preclude contracts with commerical parties.

The Board agrees that the indirect dervation of the commercial backhaul factor suffered from a number of deficiencies. As the result of a change in the Form 243 effective January 1, 1972, we now have available, on a reported basis, commercial backhaul miles for the 6 months ended June 30, 1972. As shown in Appendix I,[23] we have used that data and computed commercial backhaul factors of 3.13 percent of the one-way passenger miles and 6.26 percent of the one-way cargo miles. DOD is correct in relating the backhaul mileage to the one-way mileage, since this commercial mileage is related to the one-way service for MAC and is applied to adjusted one-way costs. Although it is asserted by the carriers that lower promotional yields should be considered, no supporting data were supplied, and in any event, circuitous mileage associated with such service has been recognized. Such circuity may account for some cases where the live MAC mileage is exceeded by backhaul miles. Finally, we note that the 24-hour option adverted to by Northwest is not actually exercised with such frequency as to preclude, in fact, commercial use of backhaul flights. The factors set forth above appear to be reasonably representative of commercial backhaul mileage associated with MAC operations.

Convertible and Mixed Minimum Rates. The convertible and mixed rates proposed in the notice were computed in the same manner as in previous rate reviews. However, in DOD's initial comments we were advised that in April 1972 MAC had carried out a test program for the purpose of accumulating actual cost data as well as for testing the operational characteristics of the convertible aircraft. Cost data were submitted for 11 such conversions with partial data for a 12th conversion, and based upon a summary compiled from the unadjusted carrier data, DOD proposes the adoption of a fixed payment for each convertible trip. Since the conversion payment is not related to the length of the trip as is the case in the current convertible rates, DOD believes that this procedure will result in a more equitable convertible rate. Specifically, DOD proposes that the conversion compensation be made in addition to the live round trip Category B passenger rate for the passenger leg and the live round trip Category B cargo rate (after adjustment for ACL reduction due to the ferrying of passenger equipment) for the cargo leg. DOD's proposed conversion charges are as follows: Standard jets—$8,200; Stretched jets—$10,500; B–727—$5,200. DOD also proposes revised convertible cargo ACL's of 31.7 tons for standard jets, 39 tons for stretched jets, and 15 tons for B–727 aircraft.

Comments were submitted by Airlift, Flying Tiger, Pan American, Seaboard, and Braniff et al., all of which indicated a general agreement with DOD's approach. While these carriers desire a Board analysis of the data submitted by DOD, the only substantive reservation they indicated was the belief that additional compensation should be made for loss of utilization during the periods of converting from passenger to cargo or cargo to passenger configuration.

DOD's proposal appears to have a great deal of merit. Payment of a fixed conversion charge for convertible services seems to present a more precise manner of compensating the carriers than the present method, under which conversion costs are incorporated into the unit rates per passenger-mile or ton-mile. With regard to the carrier's contention that an additional payment should be made for downtime during conversion, we have analyzed the utilization data submitted to DOD by the carriers together with their conversion cost-data and their figures indicate that the average utilization for convertible trips is virtually the same as the overall utilization reflected in the notice. However, the Board is not persuaded that the fixed payment per plane converted, as proposed by DOD, presents the best solution to this matter. We note that the payments DOD proposes equate to approximately $50 per seat for each of the different aircraft types.

In consideration of all the circumstances, we believe that the adoption of a conversion charge of $50 per seat for each configuration change on each stage length will result in an equitable rate. While this charge applied to the full ACL will result in a slightly higher charge to MAC in the case of a full configuration change, it will afford MAC a greater degree of flexibility in those cases where MAC may desire a partial change in the configuration. Further, the application of the charge on this basis should resolve a problem posed by World, which was concerned over the numerous configuration changes necessary in its interisland services. In the case of the mixed rates, the application of this principle will eliminate the need for the computation of variable mixed rates as in past rate reviews. Instead, the fixed rates for mixed configuration trips will provide for the $50 per seat charge for each seat changed on each segment. The revised convertible cargo ACL's proposed by DOD appear reasonable and we will make the appropriate amendments to § 288.8.

Category B Minimum Rates for Small Turbine Aircraft

Set forth below are the existing minimum rates for small turbine aircraft, the rates proposed in the notice, and the revised fair and reasonable minimum rates adopted herein, together with the percentage differences between the current rates and the rates adopted.

	Current	Proposed	Adopted	Percent increase (decrease) from current
	Pacific Interisland			
Passengers, cents per passenger-mile:				
Round trip	2.578	2.56	2.567	(0.43)
1-way	4.876	4.89	4.902	0.53
Cargo, cents per ton-mile:				
Round trip	13.115	13.50	13.534	3.19
1-way	26.229	26.73	26.934	2.69
	All other			
Passengers, cents per passenger mile:				
Round trip	2.802	2.82	2.819	0.61
1-way	5.302	5.39	5.385	1.57
Cargo, cents per ton-mile				
Round trip	14.572	14.00	13.990	(3.99)
1-way	29.143	27.72	27.849	(4.47)

The foregoing rates reflect changes, indicated in the appendices, which are akin to those made for large turbine aircraft. The major contentions in the comments which are peculiar to the small turbine rates involve the aircraft carriers used for costing purposes. They are discussed below.

The rates proposed in the notice were based exclusively on the data for B–727 aircraft, with separate classifications for Pacific Interisland and for "All Other" service. The Board used costs for Airlift, Southern, and World to compute the Pacific Interisland rate. For the reasons set forth in the notice, it refused to use the costs of Convair equipment, B–707's, or L–100–20/30 turboprop aircraft or to establish separate rates or ACL's for those aircraft types.[24]

As an accommodation to Pan American, MAC has permitted that carrier to use its long-haul (B–707) aircraft on short-haul R. & R. routes at the higher seat-mile revenue of short-haul service. The carrier now claims that the small turbine rates should be paid for all operations falling within the short-haul category, which it defines as covering distances of 2,000 miles or less. We see no basis for extending the narrow exceptions for aircraft in recreation and rehabilitation service which insured that sufficient aircraft would be available for this special service between Viet Nam and certain named countries. To our knowledge there are no other contracts for B–707 service where the small turbine aircraft are flown and MAC has not endorsed the use of B–707's in short-haul service except in the R. & R. operations. The designation of 2,000 miles as a short-haul operation raises further problems. We will reject Pan American's claim.

On the other hand, we will grant

[23] Filed as part of the original document.

[24] The notice proposed to continue the current rates for turboprop and piston aircraft without change.

Modern's request that we continue to extend the Part 288 exemption to the CV-990 and include that aircraft in the schedule of minimum rates for category B service with small turbine aircraft. It was proposed to delete the CV-990 because DOD had not been using that equipment and did not want to include CV-990 costs in the rate computation, but the aircraft is clearly in the small turbine class. It has the same ACL as the B-727, and if the need should arise for the CV-990 in MAC service there appears to be no basis for requiring Modern to go through a new rule making or exemption procedure in order to receive Board authorization to provide the service.

The comments of Airlift et al. ask that Southern's cost be excluded from the Pacific Interisland rates for 1973, on the ground that that carrier is no longer providing the service. However, we are establishing a single set of rates, without term, and Southern not only performed services under contract in fiscal year 1972, but is continuing to participate in the expansion buy for fiscal year 1973. The rates for Pacific Interisland services will continue to reflect costs for the three carriers, adjusted to reflect documented increases in expense in conformance with our introductory remarks.

While the notice rejected Saturn's L-100-20/30 cost projections because they were based on experience too limited to form a reliable predicate for establishing separate MAC turbo-prop rates for that aircraft, it indicated that we would consider any relevant information submitted in the comments. Saturn has responded with a further submission of data and it asserts that MAC has had a continuing demand for the L-100-20/30 in international service. DOD opposes the establishment of separate rates and ACL, on the ground that the information is still not definitive enough to afford a basis for rates in international MAC service. Our review of the comments and Saturn's Forms 41 and 243 compels us to agree with DOD. The carrier has not reflected any significant amount of international MAC traffic in its reports. While it flew over 18,000 revenue-hours and over 6 million revenue-miles with this aircraft in the year ended March 31, 1972, 80 percent of the hours and miles were in domestic service, and less than 0.2 percent of the L-100-20/30 traffic was reported as military international traffic. Although the carrier's current submission may be based on a longer period of operations than heretofore, Saturn's international MAC traffic volume does not afford an adequate basis for projecting a forecast or establishing a rate for such operations.

Individually Ticketed and Waybilled Services

In our notice we proposed to establish minimum rates for all individually ticketed and waybilled services (category A and Z) at the level of one-way charters (category B); we rejected the proposal to establish a so-called category Y blocked space service on scheduled service at the round trip category B level; and we requested comments on the validity of continuing category X rates (for inbound transportation of passengers in fixed proportions to category A outbound cargo) at the round trip charter level.

1. *Category A and Z services.* There has been no objection to our proposal to maintain the category A and Z passenger rates at the same level as the one-way category B rates, and we shall continue that rate structure for passengers.

DOD objected to the proposed change in rate relationships for one-way cargo services, stating that the Board should adhere to its past practice of establishing separate outbound and inbound category A cargo rates at levels below the category B one-way cargo rates. It argues that the proposal will result in significantly higher rates for category A cargo, will render this service the most costly and least effective of the cargo choices available to it, and will result in its use being limited to the most unusual situations, thus frustrating the objective of having category A cargo contribute to the maintenance of scheduled cargo service. Asserting that it has never been shown that the rates per ton-mile of 12 cent outbound and 10 cent inbound which antedated the current rates were unjustifiably low, DOD recommends a return to those rate levels.

The carriers which commented on this issue, including those carriers which had sought in Docket 23579 to divorce category A and category Z rates from the rates for category B charters and to increase the former to levels exceeding those for category B service (as well as other carriers with scheduled international services), support the Board's proposal to set the floor for all category A and Z rates at the level for one-way charters. Flying Tiger and Pan American state that the reduction proposed in the notice in the standard weight per pallet (used in computing charges for cargo services) serves to offset the increase in the rate per ton-mile, and a Flying Tiger analysis indicates that the net result of the changes would be to reduce its yield on the category A cargo rate. Both Pan American and Flying Tiger recommend that the add-ons per pound for air and truck pickup[35] be eliminated, in order to increase the comparability of category A and category B one-way cargo rates.

It appears to us that the advantages of moving cargo on less-than-plane-load lots can be considerable, and that the benefits and costs of category A cargo service warrant an equalization of these rates with the one-way category B rates. With the change in standard pallet weights and the elimination of the pickup charges, the cost increase to DOD is at least largely offset and the rates will be comparable. It appears equitable to eliminate pickup charges and to amend Part 288 to reflect a change in the pallet weights, and we shall do so. No basis has been given for concluding that outbound cargo traffic volumes will be substantially different from inbound traffic volumes in the long term, and no reason why the inbound and the outbound rates should be different. The scheduled carriers appear satisfied that the rate relationships proposed will not interfere with the objective of having category A cargo contribute to the maintenance of scheduled cargo service.

Accordingly, the Board will adhere to its proposal to equate all category A and Z rates with one-way category B rates. We will also make all of the new minimum rates (except category Z rates, which are subject to tariff filing requirements) effective July 1, 1971. Our notice especially solicited views concerning the date of effectiveness of category A cargo rates because we believed that the sizable price changes linked to the change in structure may have affected the use of the service if known in advance, and DOD has responded by stating that much category A cargo service would not have been used if the revised rate relationship had been in effect. Pan American questions this assertion. But in any event, we are also making our countervailing pallet weight changes and elimination of pickup charges effective on that same date, and in view of that ameliorating circumstance the rate changes are of no different character than other changes which we are effectuating on July 1, 1971.

2. *"Category Y" service.* The notice tentatively rejected the category Y proposal as a service essentially the same as category A. Under the category Y proposal passengers would be carried in blocked space in scheduled commercial service at the round-trip category B rate. This service did not appear to warrant the round-trip rate provided for charters where the entire aircraft is contracted for on a round-trip basis. DOD contends that category Y service is the performance of what would otherwise be category B transportation by moving the traffic over scheduled service for an extended period of time. In fact, however, the category Y proposal is not at all akin to category B round-trip charters, since it is performed on the more costly scheduled services. Both DOD and those carriers seeking to operate under category Y rates request the authority to "test" this concept, but no amount of testing can change the nature of the service or of the rate requested: a round-trip full plane charter rate for one-way scheduled transportation of less-than-plane-load groups.[36]

No new argument has been made which serves to change the view set forth in the notice that the category Y rates

[35] Sec. 288.7(d)(4).

[36] Moreover, the economic unsoundness of the rate is underscored, in our view, by the inconsistent arguments of the two chief carrier proponents of category Y. On the one hand, TWA contends that the traffic will be carried "basically on a space-available basis," and that it will neither schedule additional capacity nor disenable higher fare traffic to serve category Y. On the other hand, Pan American argues that category Y traffic will permit greater scheduling of its regular service.

and rate relationships proposed by DOD and certain scheduled carriers were invalid in principle and unsound as a matter of economics. Pan American suggests that it would be willing to modify some of the conditions of category Y service, but tinkering with the details would not change the concept which we here reject.

3. *Category X.* Only DOD replied to our requests for comments on the question whether the category X concept continues to be valid. Category X rates cover the inbound transportation of passengers or property in fixed proportion to category A outbound cargo, pursuant to option provisions of DOD contracts. The rates for this service are currently equal to the round-trip charter rates. DOD indicates that while this service has not been utilized a great deal, category A cargo is now becoming essentially outbound and thus category X traffic will be increasing. But as evidence of this latest change DOD cites purchases of less than $85,000 of category X transportation in April and May of 1972. Fiscal year 1972 MAC volumes exceeded $400 million. More important, despite the fact that such traffic must be in fixed proportion to cargo moving in the opposite direction, the traffic remains essentially one-way passenger traffic, and the use of a rate based on round-trip levels is therefore unsound. Accordingly, we will eliminate the exemption for category X transportation from Part 288.

Ferry Rates

DOD proposes that the ferry rates be based on the category B cargo rate for all ferry miles, since some passenger-associated costs, such as food, full cabin crew salary, and insurance are not incurred in ferrying an aircraft. Currently, § 288.9 provides that minimum payments for ferry miles are to be based on the round-trip cargo rate where only cargo is carried on the live portion of the whole trip and are to be based on the round-trip passenger rate where passengers are carried on any portion of the whole trip. The rates are 75 percent of the live rates for ferry legs up to 1,500 miles and 100 percent of the live rates for longer ferry legs.

Several carriers have indicated that the cabin crews must be paid when being ferried with the aircraft and that the cargo rate would not be compensatory for passenger ferry flights. Flying Tiger argues that since the MAC ferry rate already provides a reduction of 25 percent for flights up to 1,500 miles to offset savings in food and passenger service, there is no basis for the further adjustment sought by DOD. Braniff et al. contend that ferry flights are comparable to the front-haul or back-haul operations of one-way charters, but that the cost savings are less. They question the 1,500 mile break-point and argue that the current ferry rates are not compensatory for these shorter flights, although some savings should be reflected in the rate for long ferry-hops. These carriers would eliminate the break-point, reduce the ferry rate discount to 8 percent for the passenger ferry, and eliminate that discount in the ferry cargo rate. We agree with DOD's basic premise that some cost savings are realized on ferry flights in some areas such as passenger food and insurance. However, we do have reservations as to the savings in cabin crew ferry costs, and we note that DOD has not shown that the present discount in the ferry rate is not sufficient to reflect the cost savings. In the absence of more definitive data we believe it appropriate to maintain the existing ferry rates at this time. However, we will explore the matter more fully in the course of the next rate review.

Standard Mileage

DOD states that the current nature of MAC contract airlift in the Pacific is such that much of it is not provided for in the routing table shown in § 288.10 (b), since MAC is routinely contracting for trips from the east coast and mid-continent points of the continental United States to points throughout the Pacific, including Australia and New Zealand. Accordingly, DOD proposes that in place of the existing table with its unavoidable limitation on the number of points that can practicably be covered, a mileage computation rule be adopted for the Pacific similar to the rule now applied to the Atlantic, where mileage for nonstop flights of 4,000 or more is computed over the lower of two commonly used routings. DOD also requests that the computation points of Shannon, Ireland and Lajes/Santa Maria, Azores, be deleted from the Atlantic rule in § 288.10(c) in order properly to accommodate such routes as those in the South Atlantic, for which Shannon and Lajes/Santa Maria are not realistic computation points.

Only two carriers submitted comments on DOD's proposal. Flying Tiger states that it has no objection to the proposal. Trans World takes issue with DOD's proposal with regard to routings that yield the shortest mileage, and suggests that pay miles be related to the "operational mileage" over which a carrier can realistically operate. However, standard pay mileages have for many years been based on the most direct feasible routing: the concept is not new, and the use of a circuitry or mileage absorption factor mitigates particular operational problems while avoiding difficulties of interpretation when payment computations are made. Since the introduction of the long-range jet aircraft into MAC service, the carriers engaging in transpacific services have the aircraft capability for operating over the North-Pacific route, and thus such routings cannot be construed as unrealistic. We note that some of the carriers actually operate over the mid-Pacific route, but this deviation from the standard mileages is purely voluntary on the part of the carriers involved. As stated in notice of proposed rule making EDR–133/PSDR–20, February 20, 1968, the Board believes that carriers should generally be given the option of flying transpacific charters over whatever routing they consider most favorable, but the routing so selected should not affect the compensation received. Rather, the compensation should be based on one mileage standard—namely, the shortest feasible routing. The same rationale applies in the Atlantic.

While we agree in principle with DOD's position and recognize the desirability of a rule covering more operations, we are reluctant to delete the table which sets forth the specific routings. However, it appears that the desired result can be achieved by retaining the table in its present form and expanding the language of § 288.10 to provide for the situations mentioned by DOD. Accordingly, the text of § 288.10 is being revised to provide that wherever the distance between airports for a nonstop flight or a route segment specified in a DOD contract is 4,000 miles or longer, the mileage shall be computed via routings indicated in the rule for service between specified points or, where routings are not so indicated, via the routings which yield the shortest mileage.

Price Stabilization

Although the Cost of Living Council has exempted from the price stabilization program rates for foreign air transportation which are established or approved by the Board, the minimum rates set forth in this amendment to Part 288 also apply to services performed for the military in overseas air transportation and in air transportation between the contiguous 48 States and Hawaii or Alaska, and hence the Board's price stabilization criteria set forth in Part 229 are applicable. As set forth above, we have subjected the carriers' cost submissions to rigorous analysis, both in the review preceding issuance of the notice and after receipt of the comments containing additional data and information. On the basis of the Board's review and analyses, some rates have been increased and some decreased,[27] but overall, based on revenues from military air transportation services for fiscal year 1972, the impact of the changes from current rates is an increase of approximately $10,581,000, or 2.66 percent, for all operations covered by this rate review.

The rate increases are cost based and do not reflect or allow future inflationary expectations. We disallowed anticipatory cost increases from costs projected by the carriers and rejected the notion that the rates should be based on trended costs: the only upward adjustments of base period costs accepted have been those reflecting annualizations of contractual obligations. In our view, the increases are the minimum necessary to assure continued, adequate, and safe service by air carriers for the DOD operations they cover. While the rate of return has been increased over the return used for fiscal year 1971, it is consistent with (though lower than) the rate of return benchmark found reasonable for domestic fare purposes prior to the stabilization program, and it con-

[27] See pp. 14 and 39, supra.

tinues a differential we have found appropriate to reflect the lesser degree of risk associated with operating MAC contracts. The rate increases will provide the carriers an opportunity to achieve the minimum rate of return needed to attract capital at reasonable costs and not impair their credit. Moreover, the labor costs reflected in the rates do not exceed those allowed by the Price Commission. We have recognized only those wage and salary increases falling within the Pay Board guidelines of (1) being no more than 5.5 percent per year or (2) being required by a contract which became binding before November 8, 1971. In the case of fringe benefits excluded from consideration as wages and salaries, we have followed the Pay Board's Release 51, February 23, 1972, and adopted the 0.7 percent of wage base standard for exempted benefits, plus the additional 1.5 percent for "catch-up" fringe benefits, as set forth in that guideline.

Finally, expected and obtainable productivity gains are taken into account in the rates, since the rates have been based on unit costs for MAC services and hence the impact on costs of operational and managerial efficiencies is considered as part of the rate review. However, since only quantitatively provable cost increases are recognized, we have not attempted to project speculative productivity gains. Rather, the screening of specific cost areas assures that maximum reasonable use of productive capacity is embodied in the unit costs. In the Board's judgment, the rate increases are consistent with the price stabilization program and the criteria embodied in Part 229 of the economic regulations.

AMENDMENTS

In consideration of the foregoing, the Board hereby amends Part 288 of the Economic regulations (14 CFR Part 288), effective July 1, 1971, as follows:

§ 288.1 [Amended]

1. Amend § 288.1 by deleting the fourth paragraph thereof (the definition of "Category X transportation").

§ 288.2 [Amended]

2. Amend § 288.2 by deleting the words "and X".

§ 288.6 [Amended]

3. Amend § 288.6 by deleting the words "and X".

4. Amend § 288.7(a)(1) to read as follows:

§ 288.7 Reasonable level of compensation.

* * * * *

(a) * * *

(1) Performed with turbine-powered aircraft:

Aircraft type	Passengers, per passenger-mile (cents)		Cargo, per ton mile (cents)		Convertible,[1] (cents)		Mixed passenger-cargo per revenue plane-mile [4]	
	Round trip	1-way	Round trip	1-way	Passenger leg, per passenger mile	Cargo leg, per ton mile	Round trip	1-way
Turboprops:								
CL-44	2.00	3.60	9.38	17.19				
L-382/L-100-10/20/30			10.65	19.64				
Regular turbojets	[2] 1.959	3.686	7.730	14.903	1.959	8.911		
Passengers—Pallets:								
165 and 0							$3.232	$6.082
117 and 3							3.113	5.805
105 and 4							3.083	5.848
93 and 5							3.053	5.802
81 and 6							3.023	5.755
63 and 7							2.978	5.685
51 and 8							2.948	5.638
0 and 12							2.821	5.440
DC-8F-61-63gg	1.959	3.686	7.730	14.903	1.959	8.911		
Passengers—Pallets:								
219 and 0							4.290	8.072
159 and 5							4.068	7.698
65 and 12							3.719	7.112
47 and 13							3.653	7.000
0 and 18							3.479	6.709
B-727—Pacific Interisland	[3] 2.567	[3] 4.902	13.534	26.934	2.567	16.241		
Passengers—Pallets:								
105 and 0							2.695	5.147
61 and 2							2.587	5.022
50 and 3							2.560	4.999
46 and 4							2.530	4.929
0 and 7							2.436	4.848
B-727—All other	[3] 2.819	[3] 5.385	13.990	27.840	2.819	16.788		
Passengers—Pallets:								
105 and 0							2.960	5.654
61 and 2							2.775	5.395
50 and 3							2.729	5.318
46 and 4							2.712	5.293
0 and 7							2.518	5.011

[1] Conversion charges for convertible flights or variable mixed flights shall be at the rate of $50 per seat changed on each segment.

[2] The minimum rate for operation of B-707 in recreation and rehabilitation (R. & R.) service between the Republic of South Vietnam, on the one hand, and Thailand, Malaysia, Singapore, the Republic of the Philippines, Hong Kong, and Taiwan, on the other, shall be 2.567¢ per passenger-mile.

[3] Also applies to CV-990 aircraft.

5. Amend § 288.7(d) (1) and (2) to read as follows:

(d) For Category A transportation:

(1) Passengers, 3.686 cents per passenger-mile.

(2) Cargo, 14.903 cents per ton-mile.

6. Amend § 288.7(d) by deleting and reserving subsection (4) thereof, as follows:

(4) [Reserved]

7. Amend § 288.7(d)(6) by changing the number "4,500" to read "3,750".

8. Delete and reserve § 288.7(e), as follows:

(e) [Reserved]

§ 288.8 [Amended]

9. Replace the table in § 288.8 (minimum aircraft loads) with the following:

Aircraft type	Number of passengers, all-passenger and convertible flights	Tons of cargo	
		All-cargo flights	Convertible flights
B-707-320-B/C	165	36.5	31.7
B-707-300 series	159		
B-707-138B	137		
B-707-100 series (other)	149		
DC-8F-61, -63	219	45	39.0
DC-8-62	165	39.2	
DC-8F	165	36.5	31.7
DC-8 (50 series)	149		
DC-8 (other)	147		
DC-9-30	98		
B-727	105	18	15.0
CV-990	105		
CL-44	148	29.35	--
L-382		29.7	
L-100-10/20/30		20.7	
L-1649A	95	18	15
L-1049-C/E/G/H	95	18	15
DC-7B/C/CF/F	95	18	15
L-1049A	88	15	12
DC-7	88	15	12
DC-6/A/B/C	83	13	12
DC-4	60	8	6

§ 288.10 [Amended]

10. Amend § 288.10(a) by adding after the first sentence thereof the following sentence: "If the direct nonstop airport-to-airport distance between the point of origin of the revenue flight to the point of destination of such flight, or between any pair of points comprising a route segment required to be served by the terms of the DOD contract, is 4,000 miles or more and no intermediate points are required to be served by the terms of the contract or are specified in paragraph (b) of this section, the mileage shall be computed via the routings which yield the shortest mileage."

11. Amend § 288.10 by deleting and reserving paragraph (c) thereof, as follows:

(c) [Reserved]

(Secs. 204, 403, and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, and 771, as amended; 49 U.S.C. 1324, 1373, and 1386)

NOTE: Appendices A–Q are filed as part of the original document.

By the Civil Aeronautics Board.

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

[FR Doc.73-167 Filed 1-3-73;8:45 am]

SUBCHAPTER F—POLICY STATEMENTS

[Reg. PS—50; Amdt. 29]

PART 399—STATEMENTS OF GENERAL POLICY

Military Exemptions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 29th day of December 1972.

On May 31, 1972, by notice of proposed rule making EDR–205A/PSDR–32A (37 FR 11344), the Board proposed, among other things, to amend Part 399, its Statements of General Policy, by changing the minimum rate for Category Z individually ticketed military transportation.

Comments in response to the notice, and reply comments, filed by a number of interested persons, are discussed in ER–786, which amends Part 288 of the Economic Regulations and is being issued concurrently herewith. For the reasons set forth in ER–786, which are incorporated by reference herein, the Civil Aeronautics Board hereby amends Part 399, Statements of General Policy (14 CFR Part 399), effective July 1, 1971, as follows:

Amend § 399.16(b) to read as follows:

§ 399.16 Military exemptions.

* * * * *

(b) The minimum charges considered fair and reasonable for the transportation of Catagory Z individually ticketed passengers in foreign and overseas air transportation and in air transportation between the 48 contiguous States, on the one hand, and Hawaii or Alaska, on the other hand, will be 3.686 cents per passenger-mile, applied to the shortest mileage between the commercial air carrier points as set forth in the current IATA mileage manual to compute point-to-point passenger fares.

(Secs. 204, 403, and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, and 771, as amended; 49 U.S.C. 1324, 1373, and 1386)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.73–166 Filed 1–3–73;8:45 am]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R–403; Order 440]

PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES

PART 204—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS C NATURAL GAS COMPANIES

PART 205—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS D NATURAL GAS COMPANIES

Full-Cost Accounting for Exploration and Development Costs; Correction

DECEMBER 12, 1972.

Revisions in Uniform Systems of Accounts for Natural Gas Companies (Classes A, B, C, and D) and Annual Report Form No. 2 to adopt full-cost accounting for exploration and development costs incurred by pipeline companies on natural gas leases acquired on or after October 8, 1969.

In the order Amending Uniform Systems of Accounts for Classes A, B, C, and D Natural Gas Companies and Annual Report Form No. 2, issued November 5, 1971, and published in the FEDERAL REGISTER November 18, 1971 (36 F.R. 21963): In ordering subparagraphs (A)4, (B)3, and (C)3 in the text of "Special Instructions-Costs Related to Leases Acquired After October 7, 1969" change "account 404.1, Amortization and Depletion of Producing Land and Land Rights" to read "account 404.1, Amortization and Depletion of Producing Natural Gas Land and Land Rights".

MARY B. KIDD,
Acting Secretary.

[FR Doc.73–112 Filed 1–3–73;8:45 am]

[Docket No. R–403; Order 440–A]

PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS A AND CLASS B NATURAL GAS COMPANIES

PART 204—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS C NATURAL GAS COMPANIES

PART 205—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS D NATURAL GAS COMPANIES

Full-Cost Accounting for Exploration and Development Costs; Correction

DECEMBER 12, 1972.

Revisions in Uniform Systems of Accounts for Natural Gas Companies (Classes A, B, C, and D) and Annual Report Form No. 2 to adopt full-cost accounting for exploration and development costs incurred by pipeline companies on natural gas leases acquired on or after October 8, 1969.

In the order clarifying and amending Order No. 440 and denying rehearing, issued January 5, 1972, and published in the FEDERAL REGISTER January 15, 1972 (37 FR 601): In ordering subparagraphs (A)12, (A)23, and (A31) in the text of "Special Instructions-Costs Related to Leases Acquired After October 7, 1969" change "account 404.1, Amortization and Depletion of Producing Land and Land Rights" to read "account 404.1, Amortization and Depletion of Producing Natural Gas Land and Land Rights".

MARY B. KIDD,
Acting Secretary.

[FR Doc.73–113 Filed 1–3–73;8:45 am]

Title 21—FOOD AND DRUGS

Chapter II—Bureau of Narcotics and Dangerous Drugs, Department of Justice

DRUG ABUSE PREVENTION AND CONTROL

During recent months, the need for several minor changes in the regulations implementing the Comprehensive Drug Abuse Prevention and Control Act of 1970 have been brought to the Bureau's attention.

1. *Bureau of Prisons.* Responsibility for medical care in Federal penitentiaries has been recently transferred from the Public Health Service to the U.S. Bureau of Prisons. In order to continue the exemptions afforded officials affected by this transfer, §§ 301.13(a)(1) and 301.25(a) are amended. This change was suggested by the Public Health Service and the Bureau of Prisons.

2. *Importation by researchers.* Section 301.22(b)(3) is amended to permit researchers to import controlled substances without a separate registration as an importer, if the intent and reasons for importation are set forth in the research protocol, and the legal requirements for importation, set forth in Part 312, are followed. In addition, the section is amended to conform to the new § 301.33.

3. *Registration regarding ocean vessels.* Section 301.28(a) is amended to conform to paragraph (d) of that section, so that the authorization granted in paragraph (a) includes the exception provided in paragraph (d). This change was suggested by the Public Health Service.

4. *Special procedures for applications.* On August 8, 1972, a notice of new procedures was published in the FEDERAL REGISTER (37 F.R. 15943) which detailed two special procedures to expedite the registration of pharmacies. At that time, the notice was not codified with the Bureau regulations; in response to requests, the Director has decided to codify the provisions of the August 8 announcement.

5. *Procedures regarding granting exclusions and exemptions of certain products.* The Bureau has previously published procedures for processing applications for exclusion of products containing controlled substances which can be sold over-the-counter without a prescription (§ 308.21(c)) and those which are packaged and/or adulterated in such a way as to eliminate any abuse of the controlled substance therein (§ 308.23(e)). This procedure included publishing a proposed rule making in the FEDERAL REGISTER, allowing at least 30 days for comments, then publishing a final order later in the FEDERAL REGISTER. In the many proposals made thus far (see 37 FR 867, 992, 17478, 23420, and 23551) the Bureau has not received any comments or objections, other than notice of typographical errors. The Director has determined that the cumbersome procedure should be revised to expedite the exclusion or exemption of these products. Therefore, §§ 308.21(c) and 308.23(e) are revised to make the order effective upon one publication in the FEDERAL REGISTER, with a provision for comments and objections after publication. If any comments or objections raise significant questions, then the order will be immediately suspended until the issues can be resolved. Thereafter, the order will be reinstated, revoked or revised depending on the determination of the issues. The Director finds that this procedure will afford affected persons

and the public with sufficient safeguards to protect the interests and safety of all.

6. *Administrative law judge.* Recently, the Civil Service Commission redesignated "hearing examiners" as "administrative law judges." Section 316.42(f) is amended to reflect this change.

Each of these changes is technical in nature and is not expected to generate any comments or objections from interested persons, because they ease the regulatory restrictions on registrants and adversely affect no registrant. In order to include these changes in the next codification of the Code of Federal Regulations, and thereby provide a complete and current book of regulations under the Controlled Substances Act, the Director has determined to make those changes effective before the end of 1972. Therefore, the Director finds that waiver of the usual period for comments and objections is consistent with the public health and safety, with the interests of affected persons, and with the need to provide a codified set of regulations to all registrants.

If any interested person desires to comment on or object to any of the changes made in this order, the Director will consider such comments and objections for purposes of amending or revoking any of these changes. All interested persons are invited to submit their comments and objections in writing with five copies to the Hearing Clerk, Office of Chief Counsel, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Room 611, 1405 I Street, NW., Washington, DC 20537.

Under the authority vested in the Attorney General by sections 201, 202, 301, 302, 303, 304, 501(b), and 505 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and redelegated to the Director, Bureau of Narcotics and Dangerous Drugs, by § 0.100 of Title 28 of the Code of Federal Regulations, the Director hereby orders that parts 301, 308, and 316 of Title 21 of the Code of Federal Regulations be amended as follows:

PART 301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

1. By amending § 301.13(a)(1) to read as follows:

§ 301.13 Persons exempt from fee.

(a) * * *

(1) Any official or agency of the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, Veterans' Administration, Public Health Service, or Bureau of Prisons who or which is authorized to procure or purchase controlled substances for official use; and

2. By amending § 301.22(b)(3) to read as follows:

* * * * *

§ 301.22 Separate registration for controlled activities.

(b) * * *

(3) A person registered to conduct research with a basic class of controlled substance listed in schedule I shall be authorized to manufacture or import such class if and to the extent that such manufacture or importation is set forth in the research protocol described in § 301.33 and to distribute such class to other persons registered or authorized to conduct research with such class or registered or authorized to conduct chemical analysis with controlled substances;

* * * * *

3. By amending § 301.25(a) by revising the first sentence to read as follows:

§ 301.25 Exemption of certain military and other personnel.

(a) The requirement of registration is waived for any official of the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service, or Bureau of Prisons who is authorized to prescribe, dispense, or administer, but not to procure or purchase, controlled substances in the course of his official duties.

* * * * *

4. By amending § 301.28(a) to read as follows:

§ 301.28 Registration regarding ocean vessels.

(a) If acquired by and dispensed under the general supervision of a medical officer described in paragraph (b) of this section, or the master of the vessel under the circumstances described in paragraph (d) of this section, controlled substances may be held for stocking, be maintained in, and dispensed from medicine chests, first aid packets, or dispensaries:

* * * * *

5. By adding a new § 301.38 to read as follows:

§ 301.38 Special procedures for certain applications.

(a) If, at the time of application for registration of a new pharmacy, the pharmacy has been issued a license from the appropriate State licensing agency, the applicant may include with his application an affidavit as to the existence of the State license in the following form:

AFFIDAVIT FOR NEW PHARMACY

I, _____, the _____
(Title of officer, official, partner, or other position)
of _____ (Corporation, partnership, or sole proprietor) doing business as _____ at _____,
(Store name) (Number and Street)
_____,
(City) (State) (Zip code)
hereby certify that said store was issued a pharmacy permit No. _____ by the _____
(Board of Pharmacy or Licensing Agency)
of _____ on _____.
(Date)

This statement is submitted in order to obtain a Bureau of Narcotics and Dangerous Drugs registration number. I understand that if any information is false, the Bureau may immediately suspend the registration for this store and commence proceedings to revoke under 21 U.S.C. 824(a) because of the danger to public health and safety. I further understand that any false information contained in this affidavit may subject me personally and the above-named corporation/partnership/business to prosecution under 21 U.S.C. 843, the penalties for conviction of which include imprisonment for up to 4 years, a fine of not more than $30,000 or both.

_____
Signature (Person who signs Application for Registration)

State of _____
County of _____

Subscribed to and sworn before me this _____ day of _____, 19_____.

_____
Notary Public

(b) Whenever the ownership of a pharmacy is being transferred from one person to another, if the transferee owns at least one other pharmacy licensed in the same State as the one the ownership of which is being transferred, the transferee may apply for registration prior to the date of transfer. The Director may register the applicant and authorize him to obtain controlled substances at the time of transfer. Such registration shall not authorize the transferee to dispense controlled substances until the pharmacy has been issued a valid State license. The transferee shall include with his application the following affidavit:

AFFIDAVIT FOR TRANSFER OF PHARMACY

I, _____, the _____
(Title of officer, official, partner or other position)
of _____, doing business as _____
(Corporation, partnership, or sole proprietor)
hereby certify:
(Store name)

(1) That said company was issued a pharmacy permit No. _____ by the _____
(Board of Pharamy or Licensing Agency)
of the State of _____ and a BNDD Registration Number _____ for a pharmacy located at _____
(Number and Street)
_____;
(City) (State) (Zip Code)

(2) That said company is acquiring the pharmacy business of _____ doing business as _____ with BNDD Registration Number _____ on or about _____ and that said company has applied (or will apply on _____ for a
(Date of Transfer) (Date)
pharmacy permit from the board of pharmacy (or licensing agency) of the State of _____ to do business as _____
(Store name)
at _____
(Number and Street)
_____
(City) (State) (Zip Code)

This statement is submitted in order to obtain a Bureau of Narcotics and Dangerous Drugs registration number.

I understand that if a BNDD registration number is issued, the pharmacy may acquire controlled substances but may not dispense them until a pharmacy permit or license is issued by the State board of pharmacy or licensing agency.

I understand that if any information is false, the Bureau may immediately suspend

the registration for this store and commence proceedings to revoke under 21 U.S.C. 824(a) because of the danger to public health and safety. I further understand that any false information contained in this affidavit may subject me personally to prosecution under 21 U.S.C. 843, the penalties for conviction of which include imprisonment for up to 4 years, a fine of not more than $30,000 or both.

Signature (Person who signs Application for Registration)

State of----------
County of----------
Subscribed to and sworn before me this ----------day of ----------, 19-------.

Notary Public

(c) The Director shall follow the normal procedures for approving an application to verify the statements in the affidavit. If the statements prove to be false, the Director may revoke the registration on the basis of section 304(a)(1) of the Act (21 U.S.C. 824(a)(1)) and suspend the registration immediately by pending revocation on the basis of section 304(d) of the Act (21 U.S.C. 824(d)). At the same time, the Director may seize and place under seal all controlled substances possessed by the applicant under section 304(f) of the Act (21 U.S.C. 824(f)). Intentional misuse of the affidavit procedure may subject the applicant to prosecution for fraud under section 403(a)(4) of the Act (21 U.S.C. 843(a)(4)), and obtaining controlled substances under a registration fraudulently gotten may subject the applicant to prosecution under section 403(a)(3) of the Act (21 U.S.C. 843(a)(3)). The penalties for conviction of either offense include imprisonment for up to 4 years, a fine not exceeding $30,000 or both.

PART 308—SCHEDULES OF CONTROLLED SUBSTANCES

6. By amending § 308.21(c) to read as follows:

§ 308.21 Schedule II.

* * * * *

(c) Within a reasonable period of time after the receipt of an application for an exemption under this section, the Director shall notify the applicant of his acceptance or nonacceptance of his application, and if not accepted, the reason therefor. The Director need not accept an application for filing if any of the requirements prescribed in this paragraph or requested pursuant to paragraph (d) of this section is lacking or is not set forth as to be readily understood. If the applicant desires, he may amend the application to meet the requirements of this paragraph and paragraph (c) of this section. If the application is accepted for filing, the Director shall issue and publish in the FEDERAL REGISTER his order on the application, which shall include a reference to the legal authority under which the order is issued and the findings of fact and conclusions of law upon which the order is based. This order shall specify the date on which it shall take effect. The Director shall permit any interested person to file written comments on or objections to the order within 60 days of the date of publication of his order in the FEDERAL REGISTER. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Director shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Director shall reinstate, revoke, or amend his original order as he determines appropriate.

* * * * *

7. By amending § 308.23(e) to read as follows:

§ 308.23 Exemption of certain chemical preparations; application.

* * * * *

(e) Within a reasonable period of time after the receipt of an application for an exemption under this section, the Director shall notify the applicant of his acceptance or nonacceptance of his application, and if not accepted, the reason therefor. The Director need not accept an application for filing if any of the requirements prescribed in paragraph (c) or requested pursuant to paragraph (d) is lacking or is not set forth as to be readily understood. If the applicant desires, he may amend the application to meet the requirements of paragraph (c) and (d) of this section. If the application is accepted for filing, the Director shall issue and publish in the FEDERAL REGISTER his order on the application, which shall include a reference to the legal authority under which the order is based. This order shall specify the date on which it shall take effect. The Director shall permit any interested person to file written comments on or objections to the order within 60 days of the date of publication of his order in the FEDERAL REGISTER. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Director shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Director shall reinstate, revoke, or amend his original order as he determines appropriate.

* * * * *

PART 316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

8. By amending § 316.42(f) to read as follows:

§ 316.42 Definitions.

* * * * *

(f) The term "presiding officer" means an administrative law judge qualified and appointed as provided in the Administrative Procedure Act (5 U.S.C. 556).

* * * * *

Effective date. This order is effective upon the date of its publication in the FEDERAL REGISTER (1-4-73). Any interested person may file written comments on or objections to any part of this order within 60 days of the date of publication of this order. If any comment or objection raises a significant issue regarding any finding of fact or conclusion of law upon which this order is based, the Director shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Director shall reinstate, revoke, or suspend, the Director shall reinstate, revoke, or amend this order as he determines appropriate. Comments and objections should be submitted in quintriplicate to the Hearing Clerk, Office of Chief Counsel, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Room 611, 1405 I Street NW., Washington, DC 20537.

Dated: December 22, 1972.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.73-17 Filed 1-3-73;8:45 am]

PART 308—SCHEDULES OF CONTROLLED SUBSTANCES

Excluded Nonnarcotic Substances

A notice was published in the FEDERAL REGISTER of November 3, 1972 (37 FR 23436) proposing that a product, Rynal, containing a nonnarcotic controlled substance (methamphetamine) be excluded from all schedules pursuant to section 201(g)(1) of the Controlled Substances Act (21 U.S.C. 811(g)(1)) and § 308.21 of Title 21 of the Code of Federal Regulations. No comments were filed regarding this proposal.

The Director hereby finds, based on information provided by the Food and Drug Administration, that Rynal may lawfully be sold over-the-counter without a prescription under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301) and must be excluded from all schedules of the Controlled Substances Act.

Therefore, under the authority vested in the Attorney General by sections 201(g)(1) and 501(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(g)(1) and 871(b)) and delegated to the Director of the Bureau of Narcotics and Dangerous Drugs by § 0.100 of Title 28 of the Code of Federal Regulations, the Director hereby orders that Part 308 of Title 21 of the Code of Federal Regulations be amended as follows:

By amending § 308.22 by adding the following product:

§ 308.22 Excluded substances.

* * * * *

Trade name or other designation	Composition	Manufacturer or supplier
* * *	* * *	* * *
Rynal.....	Solution for Spray: dl-Desoxyephedrine HCl 0.22%; antipyrine 0.28%; pyrilamine maleate 0.01%; methyl dodecylbenzyltrimethyl ammonium chloride 0.02%; glycerine dehydrated 1.50%.	Blaine Co.
* * *	* * *	* * *

Effective date. This order is effective upon the date of its publication in the FEDERAL REGISTER (1-4-72).

Dated: December 22, 1972.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.73-18 Filed 1-3-73;8:45 am]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER U—ELECTRIC POWER SYSTEM

PART 233—SAN CARLOS INDIAN IRRIGATION PROJECT, ARIZONA

Service Connections

The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

A notice of proposed rule making was published on page 19634 of the September 21, 1972, FEDERAL REGISTER (37 FR 19634) to amend § 233.10 of Part 233, Subchapter U, Chapter I, of Title 25 of the Code of Federal Regulations. The purpose of this amendment is to eliminate the need for the project to furnish a meter socket or meter base to consumers. The items are now standardized and, as a general practice in the electric utility industry, the consumer furnishes a complete meter loop. The regulations were proposed pursuant to 5 U.S.C. 301 (1970 ed.), section 5 of the Act of June 7, 1924 (43 Stat. 475-476), and the Act of March 7, 1928 (45 Stat. 210).

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulations. No objections have been received and the proposed regulations are hereby adopted without change and are set forth below.

The revised 25 CFR 233.10 shall become effective February 5, 1973.

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

DECEMBER 26, 1972.

§ 233.10 Service connections.

On each new service the consumer shall provide and maintain a service entrance at a location convenient to the lines of the project, and all connections from the service entrance to the meter base and from the meter base to the main line circuit breaker or distribution center. The meter will be furnished by the United States. The meter socket will be furnished and installed by the consumer and in a suitable location, preferably on the outside of the building, or service pole, where the meter will be accessible to the meter reader at all times. The meter socket shall not be more than 7 feet nor less than 5 feet above the ground or floor. The entire service installation must be satisfactory to the project engineer and must conform to the provisions then in force of the National Electrical Code of the National Board of Fire Underwriters for Electric Wiring and Apparatus. When alterations of a consumer's premises make it necessary to move an existing meter loop, the consumer may be required to install a meter socket in the new loop, located in conformity with the stipulations of this section. When an inspection is required by municipal ordinance, the project engineer shall require a certificate of inspection and approval by the municipal inspector before connecting a new service.

JOHN O. CROW,
Deputy Commissioner.

[FR Doc.73-140 Filed 1-3-73;8:45 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7246]

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

Consolidated Returns

On August 25, 1971, a notice of proposed rule making to amend the Income Tax Regulations (26 CFR Part 1) under section 1502 of the Internal Revenue Code of 1954, relating to consolidated returns, was published in the FEDERAL REGISTER (36 FR 16661). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 1.1502-12(g) as set forth in paragraph 4 of the notice of proposed rule making is changed as set forth below.

PAR. 1A. Paragraph (f)(2)(i) of § 1.1502-13 as set forth in paragraph 5 of the notice of proposed rule making is changed by revising the last sentence thereof and by adding two sentences at the end thereof, to read as set forth below.

PAR. 1B. Paragraph (a)(3) of § 1.1502-15 as set forth in paragraph 7 of the notice of proposed rule making is changed to read as set forth below.

PAR. 2. Paragraph (a)(6) of § 1.1502-19 as set forth in paragraph 9 of the notice of proposed rule making is changed by revising the first sentence thereof to read as set forth below.

PAR. 3. Paragraph (a) of § 1.1502-25 as set forth in paragraph 11 of the notice of proposed rule making is changed by revising the last sentence thereof to read as set forth below.

PAR. 5. Paragraph (b) of § 1.1502-42 in paragraph 13 of the notice of proposed rule making is changed by deleting paragraph (d)(10), by redesignating paragraph (d)(11) as paragraph (d)(10), by revising the last sentence of paragraph (f)(2), and by revising paragraph (g). The section as amended reads as set forth below.

PAR. 5. Paragraph (b) of § 1.1502.42 as set forth in paragraph 15 of the notice of proposed rule making is changed to read as set forth below.

(Secs. 1502, 7805, Internal Revenue Code of 1954, 68A Stat. 367, 917; 26 U.S.C. 1502, 7805)

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

Approved: December 29, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

PARAGRAPH 1. Section 1.1502-1(f)(2) is amended to read as follows:

§ 1.1502-1 Definitions.

* * * * *

(f) *Separate return limitation year.* * * *

(2) *Exceptions.* The term "separate return limitation year" shall not include—

(i) A separate return year of the corporation which is the common parent for the consolidated return year to which the tax attribute is to be carried (except as provided in § 1.1502-75(d)(2)(ii) and subparagraph (3) of this paragraph),

(ii) A separate return year of any corporation which was a member of the group for each day of such year, or

(iii) A separate return year of a predecessor of any member if such predecessor was a member of the group for each day of such year,

provided that an election under section 1562(a) (relating to the privilege to elect multiple surtax exemptions) was never effective (or is no longer effective as a result of a termination of such election) for such year. An election under section 1562(a) which is effective for a taxable year beginning in 1963 and ending in 1964 shall be disregarded.

* * * * *

PAR. 2. Section 1.1502-3 is amended by revising paragraph (a) (3) and (4) to read as follows:

§ 1.1502-3 Consolidated investment credit.

(a) *Determination of amount of consolidated credit.* * * *

(3) *Consolidated limitation based on amount of tax.* (i) Notwithstanding the amount of the consolidated credit earned for the taxable year, the consolidated

credit allowed by section 38 to the group for the consolidated return year is limited to—

(a) So much of the consolidated liability for tax as does not exceed $25,000, plus

(b) For taxable years ending on or before March 9, 1967, 25 percent of the consolidated liability for tax in excess of $25,000, or

(c) For taxable years ending after March 9, 1967, 50 percent of the consolidated liability for tax in excess of $25,000.

The $25,000 amount referred to in the preceding sentence shall be reduced by any part of such $25,000 amount apportioned under § 1.46–1 to component members of the controlled group (as defined in section 46(a)(5)) which do not join in the filing of the consolidated return. For further rules for computing the limitation based on amount of tax with respect to the suspension period (as defined in section 48(j)), see section 46(a)(2). The amount determined under this subparagraph is referred to in this section as the "consolidated limitation based on amount of tax."

(ii) If an organization to which section 593 applies or a cooperative organization described in section 1381(a) joins in the filing of the consolidated return, the $25,000 amount referred to in subdivision (i) of this subparagraph (reduced as provided in such subdivision) shall be apportioned equally among the members of the group filing the consolidated return. The amount so apportioned equally to any such organization shall then be decreased in accordance with the provisions of section 46(d). Finally, the sum of all such equal portions (as decreased under section 46(d)) of each member of the group shall be substituted for the $25,000 amount referred to in subdivision (i) of this subparagraph.

(4) *Consolidated liability for tax.* For purposes of subparagraph (3) of this paragraph, the consolidated liability for tax shall be the income tax imposed for the taxable year upon the group by chapter 1 of the Code, reduced by the consolidated foreign tax credit allowable under § 1.1502–4. The tax imposed by section 56 (relating to minimum tax for tax preferences), section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), and any additional tax imposed by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by chapter 1 of the Code. In addition, any increase in tax resulting from the application of section 47 (relating to certain dispositions, etc., of section 38 property) shall not be treated as tax imposed by chapter 1 for purposes of computing the consolidated liability for tax.

* * * * *

PAR. 3. Section 1.1502–11 is amended to read as follows:

§ 1.1502–11 Consolidated taxable income.

(a) *In general.* The consolidated taxable income for a consolidated return year shall be determined by taking into account—

(1) The separate taxable income of each member of the group (see § 1.1502–12 for the computation of separate taxable income);

(2) Any consolidated net operating loss deduction (see § 1.1502–21 for the computation of the consolidated net operating loss deduction);

(3) Any consolidated net capital gain (see § 1.1502–22 for the computation of the consolidated net capital gain);

(4) Any consolidated section 1231 net loss (see § 1.1502–23 for the computation of the consolidated section 1231 net loss);

(5) Any consolidated charitable contributions deduction (see § 1.1502–24 for the computation of the consolidated charitable contributions deduction);

(6) Any consolidated section 922 deduction (see § 1.1502–25 for the computation of the consolidated section 922 deduction);

(7) Any consolidated dividends received deduction (see § 1.1502–26 for the computation of the consolidated dividends received deduction); and

(8) Any consolidated section 247 deduction (see § 1.1502–27 for the computation of the consolidated section 247 deduction).

(b) *Disposition of stock of a subsidiary*—(1) *In general.* If there is a disposition (as defined in § 1.1502–19(b)) of stock (ignoring for this purpose stock which is limited and preferred as to dividends) of a subsidiary during the taxable year, the adjustments under § 1.1502–32(b) with respect to such stock and the amount of gain or loss on disposition shall be determined in accordance with this paragraph, and the amounts taken into account in computing consolidated taxable income shall be limited as provided in this paragraph.

(2) *Determination of amount of gain or loss on disposition.* For the purpose of determining gain or loss on disposition—

(i) Consolidated taxable income or consolidated net operating loss (and earnings and profits or deficit in earnings and profits) for the taxable year shall be determined tentatively without regard to gain or loss on disposition,

(ii) The adjustments under § 1.1502–32(b) with respect to the stock disposed of shall be based upon the amounts determined under subdivision (i) of this subparagraph, and

(iii) Gain (including any amount included in income under § 1.1502–19(a)) or loss on disposition shall be determined in accordance with such adjustments to basis.

(3) *Limitation on carryovers.* If this paragraph applies—

(i) The portion of any consolidated net capital or net operating loss carryover attributable to the subsidiary whose stock is disposed of, and

(ii) The portion of any net capital or net operating loss carryover from a separate return year of such subsidiary,

which may be carried to the taxable year shall not exceed the amount of any such carryover which could be carried to the taxable year if the tentative consolidated taxable income determined under subparagraph (2)(i) of this paragraph were consolidated taxable income for the year.

(4) *Limitation on loss.* If there is gain (including any amount included in income under § 1.1502–19(a)) on disposition—

(i) The amount of capital losses of the subsidiary whose stock is disposed of taken into account under § 1.1502–22 shall be reduced by an amount equal to the portion of any tentative consolidated net capital loss attributable to the subsidiary under § 1.1502–79(b)(2), and

(ii) The amount of the excess of deductions over gross income of such subsidiary taken into account under paragraph (a)(1) of this section and § 1.1502–21(f)(1) shall be reduced by an amount equal to the portion of any tentative consolidated net operating loss attributable to the subsidiary under § 1.1502–79(a)(3).

The amount of any loss or excess deductions not taken into account because of the limitations of subdivisions (i) and (ii) of this subparagraph shall be treated as a net capital or net operating loss sustained in the taxable year and shall be carried to those taxable years (consolidated or separate) to which a consolidated net capital or net operating loss could be carried under §§ 1.1502–21, 1.1502–22, and 1.1502–79, but the portion of such loss which may be carried to a prior year shall not exceed the portion of the tentative consolidated net capital or net operating loss attributable to the subsidiary which could be carried to such year if the tentative consolidated net capital or net operating loss determined under subparagraph (2)(i) of this paragraph were the consolidated net capital or net operating loss for the year.

(5) *Adjustments to stock not disposed of.* If some of the stock of a subsidiary is disposed of but the subsidiary remains a member, the adjustments under § 1.1502–32 with respect to stock not disposed of shall include an allocable portion of the amount treated as a net capital or net operating loss under subparagraph (4) of this paragraph which is not carried back and absorbed in a prior taxable year.

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

Example (1). (a) Assume that corporation P and its wholly owned subsidiary S, both incorporated on January 1, 1969, comprise an affiliated group and file a consolidated return for the taxable years 1969 and 1970. In 1969, the group has consolidated taxable income of $30 and a consolidated net capital loss of $100, of which $50 is attributable to S. On

January 1, 1970, the adjusted basis of the S stock is $300. In 1970, P has a net capital gain of $20 (computed without regard to any capital loss carryover and without regard to gain from the disposition of the S stock) and ordinary income of $30, and S has a deficit of $100. On December 31, 1970, P sells all of the stock of S for 280.

(b) Tentative consolidated taxable income consists of (1) net capital gain of zero ($20 capital gain reduced by $20 of the net capital loss carryover, of which $10 is attributable to S), and (2) a net operating loss of $70, all of which is attributable to S and $30 of which may be carried back and absorbed in 1969.

(c) Under § 1.1502-32 (b) and (e) and subparagraph (2)(ii) of this paragraph there is a net negative adjustment to the basis of the S stock of $70 (negative adjustments of $100 for the deficit and $10 for the portion of the consolidated net capital loss for 1969 attributable to S which is carried over and absorbed in the taxable year, and a positive adjustment of $40 for the portion of the consolidated net operating loss attributable to S which is not carried back and absorbed in 1969). Accordingly, the adjusted basis of the S stock is $230 and a gain of $50 is realized on the sale.

(d) Under subparagraph (3)(i) of this paragraph, the consolidated net capital loss carryover is limited to $60 (all of the portion attributable to P ($50), plus the amount attributable to S included in the tentative computation ($10) under subdivision (b)(1) of this example). Under subparagraph (4)(i) of this paragraph, the excess of deductions over income of S ($100) taken into account is reduced by an amount equal to the portion of the tentative consolidated net operating loss attributable to S ($70). Accordingly, consolidated taxable income for 1970 is computed as follows:

Consolidated net capital gain:		
Capital gain for 1970	$70 i.e., 50+20	
Capital loss carryover from 1969	60	$10
Income exclusive of capital gain:		
P	30	
S	(30) i.e. (100)−70	0
Consolidated taxable income		10

The amount by which the excess of deductions over income of S is reduced ($70) is treated as a net operating loss of S for the year; $30 of such amount is carried back and absorbed in 1969 and $40 may be carried over to a separate return year of S. In addition, S has a net capital loss carryover of $40 from 1969.

Example (2). (a) Assume that corporation P owns all 10 outstanding shares of corporation S and that P and S comprise an affiliated group which files a consolidated return for 1969, 1970, and 1971. Neither P nor S was in existence before January 1, 1969. In 1969, the group has consolidated taxable income of $100. On January 1, 1970, the adjusted basis of each of the 10 shares of S is $40. In 1970, P has a deficit of $80 (determined without regard to gain on the disposition of the S stock) and S has a deficit of $80. On December 31, 1970, P sells two shares of the S stock for $85 each.

(b) The tentative consolidated net operating loss for 1970 is $160 of which $80 is attributable to S. One hundred dollars of such tentative loss is carried back and absorbed in 1969 and of this amount the portion attributable to S is $50.

(c) Under § 1.1502-32 (b) and (e) and subparagraph (2)(ii) of this paragraph, there is a net negative adjustment to each of the two shares of S stock sold by P of $5, i.e., an allocable portion of an aggregate net negative adjustment of $50 (a negative adjustment of $80 for the deficit and a positive adjustment of $30 for the portion of the consolidated net operating loss attributable to S which is not carried back and absorbed in 1969). Accordingly, the adjusted basis of each of the two shares of S stock disposed of by P is $35 and a gain of $100 is realized on the sale of the two shares of stock.

(d) Under subparagraph (4)(ii) of this paragraph, the excess of deductions over income of S ($80) taken into account is reduced by an amount equal to the portion of the tentative consolidated net operating loss attributable to S ($80). Accordingly, consolidated taxable income for 1970 is computed as follows:

Consolidated net capital gain		$100
Income exclusive of capital gain:		
P	($80)	
S	0 i.e. (80)−80	(80)
Consolidated taxable income		20

The amount by which the excess of deductions over income of S is reduced ($80) is treated as a net operating loss of S for the taxable year. Because of the limitation of subparagraph (4) of this paragraph, only $50 of such loss may be carried back and absorbed in 1969, since the portion of such loss which may be carried back to a prior year may not exceed the portion of the tentative consolidated net operating loss attributable to S which was carried back to the prior year in the tentative computation under subparagraph (2)(i) of this paragraph. The remaining $30 may be carried over to 1971 and subsequent years.

(e) Under § 1.1502-32 (b) and (e) and subparagraph (5) of this paragraph, there is a negative adjustment of $5 to the basis of each of the remaining eight shares of S owned by P, i.e., an allocable portion of an aggregate net adjustment of $50 (see subdivision (c) of this example).

Example (3). (a) Assume that corporations P and S comprise an affiliated group and file a consolidated return for 1969. There is no income for years prior to 1969. In 1969, P has capital gain of $100 (determined without regard to loss on the disposition of the S stock) and S has a capital loss of $60. In addition to the capital loss, S has a deficit of $200. On January 1, 1969, the basis of the S stock is $400. On December 31, 1969, P sells all of the stock of S for $140.

(b) Tentative consolidated taxable income consists of (1) net capital gain of $40, and (2) a net operating loss of $160, all of which is attributable to S.

(c) Under § 1.1502-32 (b) and (e) and subparagraph (2) (ii) of this paragraph, there is a net negative adjustment to the basis of the S stock of $100 (a negative adjustment of $260 for the deficit and a positive adjustment of $160 for the portion of the consolidated net operating loss attributable to S, none of which is carried back to a prior year). Accordingly, the adjusted basis of the S stock is $300 and P realizes a loss of $160 on the sale.

(d) Consolidated taxable income for 1969 is computed as follows:

Consolidated net capital loss:		
P	($60) i.e., 100−(160)	
S	(60)	($120)
Income exclusive of capital gain:		
P	0	
S	(200)	(200)
Consolidated net operating loss		(200)

Sixty dollars of the consolidated net capital loss is attributable to S and the entire consolidated net operating loss is attributable to S. Since S is no longer a member of the group, such amounts are apportioned to S under § 1.1502-79 (a) and (b) and may be carried to a subsequent separate return year of S.

PAR. 4. Section 1.1502-12 is amended by revising paragraph (g) to read as follows:

§ 1.1502-12 Separate taxable income.

* * * * *

(g) In the computation of the deduction under section 167, property shall not lose its character as new property as a result of a transfer from one member to another member during a consolidated return year if—

(1) The transfer occurs on or before January 4, 1973, or

(2) The transfer occurs after January 4, 1973, and the transfer is a deferred intercompany transaction as defined in § 1.1502-13(a)(2) or the basis of the property in the hands of the transferee is determined (in whole or in part) by reference to its basis in the hands of the transferor;

* * * * *

PAR. 5. Section 1.1502-13 is amended by revising paragraph (e)(2), by revising that part of paragraph (f)(1) which precedes subdivision (i), and by revising paragraph (f)(2). The revised provisions read as follows:

§ 1.1502-13 Intercompany transactions.

* * * * *

(e) *Restoration of deferred gain or loss for installment obligations and sales.* * * *

(2) *Installment sales.* If—

(i) Property acquired in a deferred intercompany transaction is disposed of outside the group, and

(ii) The purchasing member-vendor reports its income on the installment method under section 453,

then on each date on which the purchasing member-vendor receives an installment payment the selling member shall take into account an amount equal to the deferred gain or loss attributable to such property (after taking into account any prior redeductions under paragraph (d)(3) of this section) multiplied by a fraction, the numerator of which is the installment payment received and the denominator of which is the total contract price. If the deferred gain includes any ordinary income, the ordinary income shall be taken into account first.

* * * * *

(f) *Restoration of deferred gain or loss on dispositions, etc.*—(1) *General rule.* The remaining balance (after taking into account any prior reductions under paragraphs (d)(3) and (e)(3) of this section) of the deferred gain or loss attributable to property, services, or other expenditure shall be taken into account by the selling member as of the earliest of the following dates:

* * * * *

(2) *Exceptions.* (i) Subparagraph (1) of this paragraph shall not apply solely because of a termination of the group (hereinafter referred to as the "terminating group") resulting from—

(*a*) The acquisition by a nonmember corporation of (*1*) the assets of the common parent in a reorganization described in subparagraph (A), (C), or (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met) of section 368(a)(1), or (2) stock of the common parent, or

(*b*) The acquisition (in a transaction to which § 1.1502–75(d)(3) applies) by a member of (*1*) the assets of a nonmember corporation in a reorganization referred to in (*a*) of this subdivision or (2) stock of a nonmember corporation,

if all the members of the terminating group (other than such common parent if its assets are acquired) immediately before the acquisition are members immediately after the acquisition of another group (hereinafter referred to as the "succeeding group") which files a consolidated return for the first taxable year ending after the date of acquisition. The members of the succeeding group shall succeed to any deferred gain or loss of members of the terminating group and to the status of such members as selling or purchasing members. This subdivision shall not apply with respect to acquisitions occurring before August 25, 1971, except that in the case of an acquisition occurring after April 16, 1968, and before August 25, 1971, this subdivision shall apply if the terminating group and the succeeding group elect to apply § 1.1502–18(c)(4) (notwithstanding the last sentence thereof) with respect to such acquisition. The election shall be made in a joint statement filed by the terminating and succeeding groups on or before March 5, 1973, with the Internal Revenue Service Center or Centers with which the terminating and succeeding groups filed their consolidated returns for the taxable year which includes the date of the acquisition. Such election shall be irrevocable.

(ii) Subparagraph (1)(iii) of this paragraph shall not apply in a case where—

(*a*) The selling member or the member which owns the property, as the case may be, ceases to be a member of the group by reason of an acquisition to which section 381(a) applies, and the acquiring corporation is a member, or

(*b*) The group is terminated, and immediately after such termination the corporation which was the common parent (or a corporation which was a member of the affiliated group and has succeeded to and become the owner of substantially all of the assets of such former parent) owns the property involved and is the selling member or is treated as the selling member under paragraph (c)(6) of this section.

Paragraphs (d) and (e) of this section and this paragraph shall apply to such selling member. Thus, for example, subparagraph (1)(iii) of this paragraph does not apply in a case where corporation P, the common parent of a group consisting of P and corporations S and T, sells an asset to S in a deferred intercompany transaction, and subsequently all of the assets of S are distributed to P in complete liquidation of S. Moreover, if, after the liquidation of S, P sold T, subparagraph (1)(iii) of this paragraph would not apply even though P ceased to be a member of the group.

* * * * *

PAR. 6. Section 1.1502–14 is amended by adding a new paragraph as follows:

§ 1.1502–14 Stock, bonds, and other obligations of members.

* * * * *

(f) *Acquisition of group.* Paragraphs (b)(3), (c), and (d)(2), (3), and (4)(ii) of this section shall not apply solely because of a termination of the group (hereinafter referred to as the "terminating group") resulting from—

(1) The acquisition by a nonmember corporation of (i) the assets of the common parent in a reorganization described in subparagraph (A), (C), or (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met) of section 368(a)(1), or (ii) stock of the common parent, or

(2) The acquisition (in a transaction to which § 1.1502–75(d)(3) applies) by a member of (i) the assets of a nonmember corporation in a reorganization referred to in subparagraph (1) of this paragraph, or (ii) stock of a nonmember corporation,

if all the members of the terminating group (other than such common parent if its assets are acquired) immediately before the acquisition are members immediately after the acquisition of another group (hereinafter referred to as the "succeeding group") which files a consolidated return for the first taxable year ending after the date of acquisition. The members of the succeeding group shall succeed to any deferred gain or loss of members of the terminating group and to the status of such members as distributing or distributee corporations. This paragraph shall not apply with respect to acquisitions occurring before August 25, 1971.

PAR. 7. Section 1.1502–15 is amended by revising paragraph (a)(2), (3), and (4) to read as follows:

§ 1.1502–15 Limitations on certain deductions.

(a) *Limitation on built-in deductions.* * * *

(2) *Built-in deductions.* (i) For purposes of this paragraph, the term "built-in deductions" for a consolidated return year means those deductions or losses of a corporation which are recognized in such year, or which are recognized in a separate return year and carried over in the form of a net operating or net capital loss to such year, but which are economically accrued in a separate return limitation year (as defined in § 1.1502–1(f)). Such term does not include deductions or losses incurred in rehabilitating such corporation. Thus, for example, assume P is the common parent of a group filing consolidated returns on the basis of a calendar year and that P purchases all of the stock of S on December 31, 1966. Assume further that on December 31, 1966, S owns a capital asset with an adjusted basis of $100 and a fair market value of $50. If the group files a consolidated return for 1967, and S sells the asset for $30, $50 of the $70 loss is treated as a built-in deduction, since it was economically accrued in a separate return limitation year. If S sells the asset for $80 instead of $30, the $20 loss is treated as a built-in deduction. On the other hand, if such asset is a depreciable asset and is not sold by S, depreciation deductions attributable to the $50 difference between basis and fair market value are treated as built-in deductions.

(ii) In determining, for purposes of subdivision (i) of this subparagraph, whether a deduction or loss with respect to any asset is economically accrued in a separate return limitation year, the term "predecessor" as used in § 1.1502–1(f)(1) shall include any transferor of such asset if the basis of the asset in the hands of the transferee is determined (in whole or in part) by reference to its basis in the hands of such transferor.

(3) *Transitional rule.* If the assets which produced the built-in deductions were acquired (either directly or by acquiring a new member) by the group on or before January 4, 1973, and the separate return limitation year in which such deductions were economically accrued ended before such date, then at the option of the taxpayer, the provisions of this paragraph before amendment by T.D. 7246 shall apply, and, in addition, if such assets were acquired on or before April 17, 1968, and the separate return limitation year in which the built-in deductions were economically accrued ended on or before such date, then at the option of the taxpayer, the provisions of § 1.1502–31A(b)(9) shall apply in lieu of this paragraph.

(4) *Exceptions.* (i) Subparagraphs (1), (2), and (3) of this paragraph shall not limit built-in deductions in a taxable year with respect to assets acquired (either directly or by acquiring a new member) by the group if—

(*a*) The group acquired the assets more than 10 years before the first day of such taxable year, or

(*b*) Immediately before the group acquired the assets, the aggregate of the adjusted basis of all assets (other than cash, marketable securities, and goodwill) acquired from the transferor or owned by the new member did not exceed the fair market value of all such assets by more than 15 percent.

(ii) For purposes of subdivision (i)(*b*) of this subparagraph, a security is not a marketable security if immediately before the group acquired the assets—

(*a*) The fair market value of the security is less than 95 percent of its adjusted basis, or

(*b*) The transferor or new member had held the security for at least 24 months, or

(c) The security is stock in a corporation at least 50 percent of the fair market value of the outstanding stock of which is owned by the transferor or new member.

* * * * *

PAR. 8. Section 1.1502–18 is amended by revising paragraph (a) and by adding paragraph (c)(4). The revised and added provisions read as follows:

§ 1.1502–18 Inventory adjustment.

(a) *Definition of intercompany profit amount.* For purposes of this section, the term "intercompany profit amount" for a taxable year means an amount equal to the profits of a corporation (other than those profits which such corporation has elected not to defer pursuant to § 1.1502–13(c)(3) or which have been taken into account pursuant to § 1.1502–13(f)(1)(viii)) arising in transactions with other members of the group with respect to goods which are, at the close of such corporation's taxable year, included in the inventories of any member of the group. See § 1.1502–13(c)(2) with respect to the determination of profits. See the last sentence of § 1.1502–13(f)(1)(i) for rules for determining which goods are considered to be disposed of outside the group and therefore not included in inventories of members.

* * * * *

(c) *Recovery of initial inventory amount.* * * *

(4) *Acquisition of group.* For purposes of this section, a member of a group shall not become a nonmember or be considered as filing a separate return solely because of a termination of the group (hereinafter referred to as the "terminating group") resulting from—

(i) The acquisition by a nonmember corporation of (*a*) the assets of the common parent in a reorganization described in subparagraph (A), (C), or (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met) of section 368(a)(1), or (*b*) stock of the common parent, or

(ii) The acquisition (in a transaction to which § 1.1502–75(d)(3) applies) by a member of (*a*) the assets of a nonmember corporation in a reorganization referred to in subdivision (i) of this subparagraph, or (*b*) stock of a nonmember corporation,

if all the members of the terminating group (other than such common parent if its assets are acquired) immediately before the acquisition are members immediately after the acquisition of another group (hereinafter referred to as the "succeeding group") which files a consolidated return for the first taxable year ending after the date of acquisition. The members of the succeeding group shall succeed to any initial inventory amount and to any unrecovered inventory amount of members of the terminating group. This subparagraph shall not apply with respect to acquisitions occurring before August 25, 1971.

* * * * *

PAR. 9. Section 1.1502–19 is amended by revising paragraph (a)(3), by adding subparagraphs (5) and (6) to paragraph (a), by revising examples (1) and (2) of paragraph (c)(2), by revising paragraph (e), and by revising paragraph (g). The revised and new provisions read as follows:

§ 1.1502–19 Excess losses.

(a) *Recognition of income.* * * *

(3) *Cancellation or redemption.* If stock of a subsidiary is considered to be disposed of under paragraph (b)(1)(ii) of this section other than in complete liquidation of such subsidiary, any amount which would otherwise be included in the income of the disposing member under subparagraph (1) of this paragraph shall be deferred and taken into account at the time provided in § 1.1502–14(b)(3).

* * * * *

(5) *Foreign expropriation losses.* If there is a disposition of stock of a subsidiary, subparagraph (1) of this paragraph shall not apply to the excess loss account with respect to such stock to the extent such excess loss account is attributable to a foreign expropriation loss occurring in a taxable year beginning before January 1, 1966, which is absorbed as part of a consolidated net capital or net operating loss carryover in a taxable year ending before January 1, 1971, and the regulations applicable to taxable years beginning before January 1, 1966, shall apply to such disposition.

(6) *Election to reduce basis of other investment.* If there is a disposition (as defined in paragraph (b) of this section after August 25, 1971, of stock of a subsidiary, all or any part of the excess loss account with respect to such stock may be applied to reduce the basis of any other stock or obligations of the subsidiary (whether or not evidenced by a security) held by the disposing member immediately before the disposition. Only the excess loss account which remains after such application shall be included in income under this paragraph. If subparagraph (4) of this paragraph applies to part of the excess loss account, such part must be applied to reduce the basis of stock or obligations under this subparagraph before the other part may be so applied.

* * * * *

(c) *Effect of chain ownership.* * * *

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

Example (1). (a) Assume that corporations P, S, T, and U first file a consolidated return for the taxable year beginning January 1, 1966. On that date, P owns all the stock of S with an adjusted basis of $15, S owns all the stock of T with an adjusted basis of $5, and T owns all the stock of U with an adjusted basis of $10. For the year 1966, the group has consolidated taxable income but U has a deficit in earnings and profits of $20. Under § 1.1502–32(b)(2), T reduces its basis with respect to the stock of U to zero and has an excess loss account of $10, S reduces its basis in T's stock to zero and has an excess loss account of $15, and P decreases its basis in S's stock to zero and has an excess loss account of $5.

(b) In 1967 the stock of U becomes worthless. T is considered as having disposed of such stock under paragraph (b) of this section and realizes income of $10. If the group has elected to adjust earnings and profits currently, T will have earnings and profits of $10 resulting from the disposition of the stock of U (see § 1.1502–33(c)(4)(ii)(b)); if the group has not so elected, T will have a deficit in earnings and profits of $10 resulting from the disposition (see § 1.1502–33(c)(4)(i)(b)). However, for purposes of the adjustment under § 1.1502–32(b) to the basis of stock owned by higher-tier members, T's earnings and profits on the disposition are $10 regardless of whether the group adjusts earnings and profits currently (see § 1.1502–32(d)(1)(i)). S's excess loss account with respect to T's stock will be reduced to $5 (see § 1.1502–32(b)(1)(i)). P's excess loss account with respect to S's stock will be reduced to zero and its basis for S's stock will be increased to $5 (see § 1.1502–32(b)(1)(i) or (iii)).

Example (2). Assume the same facts as in example (1) except that the stock of T, rather than the stock of U, becomes worthless and therefore S is considered as having disposed of its stock in T under paragraph (b) of this section and T is considered as having disposed of its stock in U. Since U is the lowest tier subsidiary, this section is applied first with respect to the excess loss account relating to the stock of U with the same result as in example (1). This section is then also applied with respect to the stock of T. Thus, in addition to the result in example (1), S will realize income of $5, and P's basis for S's stock will be increased by $5 to $10.

* * * * *

(e) *Nontaxable liquidations and reorganizations to which the subsidiary is a party.* If, in a consolidated return year, a member is the transferor or distributor corporation and another member is the acquiring corporation in a transaction to which section 381(a) applies, members owning stock in the transferor or distributor corporation shall not, by reason of such transaction (or by reason of an exchange under section 354 pursuant to such transaction), be considered for purposes of paragraph (b) of this section as having disposed of such stock. If the transaction is a distribution in liquidation to which section 334(b)(1) applies, the excess loss account in the stock of the distributor corporation shall be eliminated. If the transaction involves an exchange to which section 354 applies, the excess loss account in the stock of the transferor corporation surrendered in exchange shall be applied to reduce the basis (or to increase the excess loss account) of the stock received in the exchange or previously owned. If, immediately before a transfer described in section 381(a), the transferor corporation owned stock of the acquiring corporation, the excess loss account in such stock shall be eliminated. For example, assume that corporation P owns all of the stock of corporation S with an excess loss account of $20, and that S owns all of the stock of T with an excess loss account of $30. If S is merged into corporation U (another member) in a transaction described in section 368(a)(1)(A), P will apply the $20 excess loss account against and reduce the basis (or increase the excess loss account) of any stock of U which P owns or receives pursuant to the merger. However, if S is merged into T, the $30 excess loss ac-

count in the T stock is eliminated (and is not included in income), and the $20 excess loss account in the S stock becomes a $20 excess loss account in the T stock in the hands of P.

* * * * *

(g) *Acquisition of group*—(1) *In general.* Paragraph (b) of this section shall not apply solely because of a termination of the group (hereinafter referred to as the "terminating group") resulting from—

(i) The acquisition by a nonmember corporation of (*a*) the assets of the common parent in a reorganization described in subparagraph (A), (C), or (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met) of section 368(a)(1), or (*b*) stock of the common parent, or

(ii) The acquisition, in a transaction to which § 1.1502-75(d)(3) applies, by a member of (*a*) the assets of a nonmember corporation in a reorganization referred to in subdivision (i) of this subparagraph, or (*b*) stock of a nonmember corporation,

if all the members of the terminating group (other than such common parent if its assets are acquired) immediately before the acquisition are members immediately after the acquisition of another group (hereinafter referred to as the "succeeding group") which files a consolidated return for the first taxable year ending after the date of acquisition. The members of the succeeding group shall succeed to any excess loss accounts with respect to stock of members of the terminating group as of the date of acquisition. This paragraph shall not apply with respect to acquisitions occurring before August 25, 1971.

(2) *Adjustments*—(i) *In general.* If any stock of a member of the succeeding group is disposed of under this section, a higher tier limitation member (as defined in subdivision (ii) of this subparagraph) owning stock in the disposing member shall, in making the adjustment under § 1.1502-32(b) with respect to stock of such disposing member, take into account the increase in earning and profits attributable to inclusion of the excess loss account in the income of such member only to the extent that the amount of such excess loss account exceeds the amount of any excess loss account with respect to the stock disposed of at the time of the acquisition. If there are intervening members between the member disposing of stock under this section and a higher tier limitation member, and if a member owning stock in the disposing member is not a higher tier limitation member, then solely for the purpose of the adjustment under § 1.1502-32(b) by the higher tier limitation member with respect to stock of a subsidiary, the adjustments under § 1.1502-32(b) for such intervening members shall be computed as if members owning stock in the disposing member were higher tier limitation members.

(ii) *Limitation member.* A higher tier member of the succeeding group is a "higher tier limitation member" unless such member (*a*) was a member immediately before the acquisition of the same group as the member with respect to the stock of which the excess loss account existed, or (*b*) acquired the assets of the common parent of such group in a reorganization described in subparagraph (1) of this paragraph.

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

Example (1). (a) Assume there are two affiliated groups, one comprising P, S, and T, and the other comprising X and Y, both of which file consolidated returns for the calendar year 1971. P owns all the stock of S with an adjusted basis of $100, and S owns all the stock of T with an adjusted basis of zero and an excess loss account of $30. X owns all the stock of Y with an adjusted basis of $200. On January 1, 1972, Y acquires all the assets of P in exchange for 20 percent of the stock of X in a reorganization to which section 368(a)(1)(C) applies. As a result of the acquisition of the assets of P by Y, the P-S-T group terminates. X, Y, S, and T file a consolidated return for the first taxable year ending after the date of the acquisition.

(b) Paragraph (b) of this section does not apply, merely because of the termination of the P group, to include in S's income its excess loss account with respect to the stock of T.

(c) If T has a deficit in earnings and profits of $10 for 1972, S would increase its excess loss account with respect to the stock of T to $40. Y would decrease the basis of its S stock (which is a carryover of P's basis) to $90, and X would decrease the basis of its Y stock to $190.

(d) Assume that the stock of T becomes worthless in 1973. S would include $40 in income. For purposes of the adjustments under § 1.1502-32(b), S would have earnings and profits of $40 resulting from the disposition of the stock of T (amount realized, $40, minus the adjusted basis of zero determined by taking into account the adjustments under § 1.1502-32(e)). If S had no other earnings and profits for the year, Y (which is not a higher tier limitation member) would adjust its basis for the stock of S under § 1.1502-32(b)(1)(i) by the full amount of S's earnings and profits, thus increasing the basis of the S stock to $130. The adjustment by Y with respect to the stock of S would ordinarily be reflected under § 1.1502-32(b)(1)(i) or (iii) in the adjustment by X with respect to the stock of Y. However, X is a higher tier limitation member, and, solely for the purpose of determining the adjustment by X with respect to the stock of Y, the adjustment by Y with respect to the stock of S must be recomputed by including only $10 (i.e., the amount by which S's excess loss account in the stock of T, $40, exceeds the excess loss account with respect to such stock at the time of the acquisition, $30) in the adjustment under § 1.1502-32(b)(1)(i). Thus, if there were no other adjustments under § 1.1502-32(b) with respect to the stock of S and Y, X would make a positive adjustment under § 1.1502-32(b)(1)(i) or (iii) and (e)(2) of $10 with respect to the stock of Y, increasing the basis of such stock to $200. The basis of the stock of S held by Y is not affected by the recomputation.

Example (2). Assume the same facts as in example (1) except that the shareholders of P receive more than 50 percent of the stock of X so that the transaction is a reverse acquisition under § 1.1502-75(d)(3) with the X-Y group terminating and the P-S-T group surviving. The adjustments and limitations apply as in example (1).

Example (3). Assume the same facts as in example (1) except that subsequent to the acquisition T has earnings and profits of $100 in 1972 (thus eliminating the excess loss account with respect to the stock of T and increasing the basis of such stock to $70) and a deficit in earnings and profits of $110 in 1973, thereby decreasing the basis with respect to such stock to zero and creating an excess loss account of $40 which is included in S's income in 1973. The adjustments and limitations apply as in example (1).

PAR. 10. Section 1.1502-23 is amended to read as follows:

§ 1.1502-23 Consolidated section 1231 net gain or loss.

The consolidated section 1231 net gain or loss for the taxable year shall be determined by taking into account the aggregate of the gains and losses to which section 1231 applies of the members of the group for the consolidated return year. Section 1231 gains and losses on intercompany transactions shall be reflected as provided in § 1.1502-13. Section 1231 losses that are "built-in deductions" shall be subject to the limitations of §§ 1.1502-21(c) and 1.1502-22(c) as provided in § 1.1502-15(a).

PAR. 11. Section 1.1502-26(a) is amended to read as follows:

§ 1.1502-26 Consolidated dividends received deduction.

(a) *In general.* The consolidated dividends received deduction for the taxable year shall be the lesser of—

(1) The aggregate of the deductions of the members of the group allowable under sections 243(a)(1), 244(a), and 245 (computed without regard to the limitation provided in section 246(b)), or

(2) 85 percent of the consolidated taxable income computed without regard to the consolidated net operating loss deduction, consolidated section 247 deduction, the consolidated dividends received deduction, and any consolidated net capital loss carryback to the taxable year.

Subparagraph 2 of this paragraph shall not apply for any consolidated return year for which there is a consolidated net operating loss. (See paragraph (f) of § 1.1502-21 for the definition of a consolidated net operating loss.) If section 593 applies to one or more members and any member computes additions to the reserve for losses on loans for a taxable year beginning after July 11, 1969, under the percentage of income method provided by section 593(b)(2), the deduction otherwise computed under this section shall be reduced by an amount determined by multiplying such deduction (determined without regard to this sentence and without regard to dividends received by the common parent if such parent does not use the percentage of income method provided by section 593(b)(2)) by the applicable percentage of the member with the highest applicable percentage (determined under subparagraphs (A) and (B) of section 593(b)(2)).

* * * * *

PAR. 12. Section 1.1502-31(b)(2)(ii) is amended to read as follows:

§ 1.1502–31 Basis of property.

* * * * *

(b) *Basis after liquidation or intercompany distributions with respect to stock.* * * *

(2) *Liquidations and redemptions.* * * *

(ii) The aggregate basis of all property acquired in a distribution in cancellation or redemption of stock (as defined in § 1.1502–14(b)(1)) by a member to another member, other than a liquidation to which section 332 applies, shall be the same as the adjusted basis of the stock exchanged therefor (adjusted in accordance with the rules prescribed in § 1.1502–32(a)), increased by the amount of any liabilities of the distributing corporation assumed by the distributee or to which the property acquired is subject, and reduced by the amount of cash received in the distribution. Such aggregate basis shall be allocated among the assets received (except cash) in proportion to the fair market values of such assets on the date received.

PAR. 13. Section 1.1502–32 is amended by revising paragraph (b) (1)(iii) and (2)(iv), by adding paragraph (c)(3), by revising paragraph (d) (1), (8), and (9), by adding paragraph (d)(10), by revising paragraph (f), by revising paragraph (g), and by deleting examples (3) and (4) in paragraph (j). The revised and added provisions read as follows:

§ 1.1502–32 Investment adjustment.

* * * * *

(b) *Stock which is not limited and preferred as to dividends*—(1) *Postive adjustment.* * * *

(iii) If such subsidiary owns stock in another subsidiary and § 1.1502–33(c)(4)(i) applies to the taxable year, an allocable part of the net positive adjustment made by the higher tier subsidiary for the taxable year with respect to its stock in such other subsidiary.

(2) *Negative adjustment.* * * *

(iv) If such subsidiary owns stock in another subsidiary and § 1.1502–33(c)(4)(i) applies to the taxable year, an allocable part of the net negative adjustment made by the higher tier subsidiary for the taxable year with respect to its stock in such other subsidiary.

(c) *Limited and preferred stock.* * * *

(3) *Exception.* The negative adjustment under subparagraph (2)(i) of this paragraph shall not exceed—

(i) The sum of the positive adjustments under subparagraph (1) of this paragraph for all prior years, minus

(ii) The sum of the negative adjustments under subparagraph (2)(i) of this paragraph for all prior years.

The amount by which the adjustment under subparagraph (2)(i) of this paragraph (determined without regard to this subparagraph) exceeds the amount of such adjustment determined with regard to this subparagraph shall be treated for purposes of paragraph (b)(2)(iii)(*a*) of this section as a distribution with respect to stock which is not limited and preferred as to dividends.

(d) *Operating rules.* For purposes of paragraphs (b) and (c) of this section—

(1) *Earnings and profits.* (i) The earnings and profits (or deficit in earnings and profits) of a member shall be determined under § 1.1502–33, except that—

(*a*) The earnings and profits of a member resulting from the disposition of stock of a subsidiary shall be determined in accordance with § 1.1502–33(c)(4)(ii)(*b*) whether or not such section otherwise applies,

(*b*) Section 1.1502–33(c)(4)(ii)(*c*)(2) and (3) shall not apply, and

(*c*) In computing the earnings and profits of a member resulting from the disposition of stock or an obligation to which § 1.1502–19(a)(6) applies, the adjusted basis of such stock or obligation shall be determined by taking into account any adjustments under § 1.1502–19(a)(6).

(ii) The undistributed earnings and profits for the taxable year shall first be allocated to all the outstanding stock (including the stock held by nonmembers) which is limited and preferred as to dividends in an amount equal to the excess, if any, of—

(*a*) The cumulative dividends in arrears (determined as of the last day of the subsidiary's taxable year) for all consolidated return years beginning after December 31, 1965, over

(*b*) The accumulated earnings and profits of the subsidiary as of the first day of the taxable year,

but such amount shall not exceed the accumulated earnings and profits of the subsidiary as of the last day of the taxable year. The balance, if any of the undistributed earnings and profits, and any net positive adjustment made by such subsidiary with respect to lower tier subsidiaries, for the taxable year shall be allocated among all the outstanding stock of such subsidiary (including stock held by nonmembers) which is not limited and preferred as to dividends.

* * * * *

(8) *Undistributed earnings and profits.* For purposes of this section, the term "undistributed earnings and profits for the taxable year" means earnings and profits for the taxable year after diminution by reason of distribution of dividends (as defined in § 1.1502–14(a)(1)).

(9) *Preaffiliation year.* The term "preaffiliation year" of a subsidiary means any taxable year which includes at least 1 day on which such subsidiary was not a member of the group, and each taxable year preceding such year.

(10) *Prior consolidated return years beginning after December 31, 1965.* The term "prior consolidated return years beginning after December 31, 1965" shall not include consolidated return years of a corporation which precede the most recent separate return year of such corporation. Thus, if P and its wholly owned subsidiary, S, filed a consolidated return for 1966, separate returns for 1967, and a consolidated return for 1968, P's basis in S's stock is not reduced under paragraph (b)(2)(iii) or (c)(2) of this section because of distributions by S after 1967 out of earnings and profits accumulated in 1966.

* * * * *

(f) *Special rules*—(1) *Transitional rules.* (i) If any subsidiary joined in filing (or was required to join in filing) a consolidated return for a taxable year beginning before January 1, 1966 (whether or not with the same group), then for purposes of determining the basis of stock of such subsidiary as of the first day of the first taxable year to which this section applies, § 1.1502–34A(b)(2), and (c) shall be applied with respect to the stock (other than stock which is limited and preferred as to dividends) of such subsidiary owned by each member as if such stock were disposed of on such date. If the amount of deductions for losses availed of under § 1.1502–34A (b)(2) or (c)(2) exceeds the sum of the aggregate bases of such stock owned by all members, such excess shall be treated as an excess loss account with respect to such stock. See § 1.1502–19(a)(4) with respect to the treatment of such excess loss account.

(ii) No adjustments to the basis of a subsidiary's stock shall be made under paragraph (b)(2)(ii) of this section on account of losses sustained in taxable years beginning before January 1, 1966, to the extent that the basis of such stocks would have been higher as of the beginning of the first taxable year beginning after December 31, 1965, if this section had applied to taxable years beginning before January 1, 1966. For example, assume that subsidiary S was organized in 1961 with $100 capital by the parent of a group filing consolidated returns on a calendar year basis, that S earned $200 in 1961, had no income or losses in 1962 through 1964, and had a deficit of $225 in 1965 that was not absorbed by the parent in 1965 or prior years but was carried over to and absorbed in 1966. The basis of the S stock on January 1, 1966, is $100, but if § 1.1502–32 had applied for the years 1961 through 1965, the basis of the S stock on January 1, 1966, would have been $300. Therefore, to the extent of $200 there is no basis adjustment under paragraph (b)(2)(ii) of this section on account of the absorption, and the adjustment is only $25 ($225 minus $200).

(2) *Deemed dividend.* If all the stock of a subsidiary is owned on each day of the subsidiary's taxable year by members, then at the election of the group, such subsidiary shall be treated for all tax purposes as having made a distribution on the first day of such taxable year in an amount equal to, and out of, its accumulated earnings and profits on the day preceding such day. Each member owning stock in such subsidiary shall be treated for all tax purposes as having received an allocable share of such distribution, and as having immediately contributed such allocable share to the capital of the subsidiary. The election shall be made by submitting a statement, on or before the due date (includ-

ing any extensions of time) of the consolidated return for such year, to the Internal Revenue Service Center with which the group files such return.

(g) *Adjustment on disposition*—(1) *Separate return year ending on or before January 4, 1973.* A member owning stock in a subsidiary shall, on the first day of the first separate return year ending on or before January 4, 1973, of the member or of the subsidiary, whichever occurs first, decrease its basis for such stock by the lesser of—

(i) The accumulated earnings and profits of the subsidiary, or

(ii) The excess, with respect to such stock, of—

(*a*) The net positive adjustments under paragraph (e)(2) of this section for all consolidated return years, over

(*b*) The net negative adjustments under paragraph (e)(1) of this section for all consolidated return years.

(2) *Separate return year ending after January 4, 1973.* A member owning stock in a subsidiary shall, on the first day of the first separate return year ending after January 4, 1973, of the member or of the subsidiary, whichever occurs first, decrease its basis for such stock by the excess, with respect to such stock, of

(i) The net positive adjustments under paragraph (e)(2) of this section for all consolidated return years, over

(ii) The net negative adjustments under paragraph (e)(1), plus any decreases under paragraph (f)(1)(i), of this section, for all consolidated return years.

If the amount referred to in the preceding sentence exceeds the basis of such stock, the amount of the excess shall, as of the day immediately preceding such first day, be included in the income of such member as income described in § 1.1502–19(a).

(3) *Example.* Assume that in 1967 corporation P organizes corporation S, investing $500 for all of S's stock. For the taxable year 1967, S has earnings and profits of $100, thus increasing P's basis in S's stock to $600 on the last day of 1967. On December 31, 1967, P sells one-half of its stock in S to a nonmember for $370. P recognizes a gain of $70 on such sale, and on January 1, 1968, P's basis for its remaining stock in S is reduced by $50 to $250.

* * * * *

PAR. 14. Section 1.1502–33(c)(4) is amended to read as follows:

§ 1.1502–33 Earnings and profits.

* * * * *

(c) *Stock and obligations.* * * *

(4) *Investment adjustment*—(i) *Taxable years beginning before January 1, 1976.* Except as provided in subdivision (iii) of this subparagraph, for taxable years beginning before January 1, 1976—

(*a*) Adjustments made by a member under § 1.1502–32(e) (1) and (2), and (g) shall not be reflected in the earnings and profits of such member.

(*b*) For purposes of computing the earnings and profits of a member resulting from the disposition of stock of a subsidiary, the adjusted basis of such stock shall be—

(*1*) The adjusted basis determined without regard to adjustments under § 1.1502–32(e) (1) and (2), and (g), plus

(*2*) The amount of any excess loss account includible in income by such member under § 1.1502–19(a)(1) on such disposition.

(ii) *Taxable years beginning after December 31, 1975.* For taxable years beginning after December 31, 1975—

(*a*) There shall be reflected in the earnings and profits of each member for a taxable year an amount equal to any increase or decrease for such taxable year pursuant to § 1.1502–32(e) (1) and (2), and (g) in such member's basis or excess loss account for its stock in a subsidiary.

(*b*) For purposes of computing the earnings and profits of a member resulting from the disposition of stock of a subsidiary, the adjusted basis of such stock shall be determined by taking into account any adjustments under § 1.1502–32(e) (1) and (2), and (g).

(*c*) If subdivision (i) of this subparagraph applies for one or more taxable years before this subdivision applies—

(*1*) For purposes of computing the earnings and profits of a member resulting from the disposition of stock of a subsidiary, the adjusted basis of such stock shall be determined by taking into account any adjustments under § 1.1502–32(e) (1) and (2), and (g) for all consolidated return years;

(*2*) The negative adjustment applicable under § 1.1502–32 (b)(2)(iii)(*a*) or (c)(2)(i) to distributions made in years for which this subdivision applies out of earnings and profits accumulated in years for which this subdivision did not apply shall be eliminated in computing earnings and profits; and

(*3*) The earnings and profits of a member disposing of stock of a subsidiary shall be (*i*) increased by an amount equal to the excess of the positive adjustments with respect to such stock under § 1.1502–32 (b)(1) or (c)(1) for all years for which this subdivision did not apply, over the sum of the negative adjustments under § 1.1502–32 (b)(2) or (c)(2) for all such years plus any adjustments under § 1.1502–32 (b)(2)(iii)(*a*) or (c)(2)(i) which are described in (*c*)(2) of this subdivision, or (*ii*) decreased by an amount equal to the excess of the sum of the negative adjustments with respect to such stock under § 1.1502–32 (b)(2) or (c)(2) for all years for which this subdivision did not apply plus any adjustments under § 1.1502–32(b)(2)(iii)(*a*) or (c)(2)(i) which are described in (*c*)(2) of this subdivision, over the positive adjustments with respect to such stock under § 1.1502–32 (b)(1) or (c)(1) for all years for which this subdivision did not apply.

(iii) *Election to adjust currently.* For any taxable year beginning before January 1, 1976, the group may elect to apply the provisions of subdivision (ii) of this subparagraph. Such election shall be made by submitting a statement, on or before the due date (including any extensions of time) of the consolidated return for the first taxable year for which the election is to apply, to the internal revenue officer with whom the group files such return. However, such election may be made for any taxable year beginning after December 31, 1965, within 60 days after July 3, 1968, if it is made in conjunction with an election under paragraph (d) of this section. If an election is made under this subdivision for any taxable year, it may not thereafter be revoked and shall apply for all subsequent taxable years beginning before January 1, 1976.

(iv) *Example.* The application of subdivisions (i) and (ii) of this subparagraph may be illustrated by the following example:

Example. (a) Corporation P forms a wholly owned subsidiary, S, on January 1, 1966, with a capital contribution of $100, and the P-S group files consolidated returns for calendar years 1966 and 1967. S earns $100 in 1966 and has no earnings and profits or deficit in 1967. During 1967 S distributes a $50 dividend to P. On December 31, 1967, P sells all of the stock of S for $150.

(b) If the group has not elected under subdivision (iii) of this subparagraph, the $100 earned by S is not reflected in P's earnings and profits in 1966. However, P's earnings and profits are increased by $50 in 1967, since the dividend is reflected in earnings and profits under paragraph (c)(1) of this section and the corresponding negative adjustment under § 1.1502–32(b)(2)(iii)(*a*) is not reflected in earnings and profits. P's earnings and profits are further increased by $50 on the sale of the S stock since, for purposes of computing earnings and profits, the basis of such stock is $100 (the original basis without regard to adjustments under § 1.1502–32(e) (1) and (2)).

(c) If the group has elected under subdivision (iii) of this subparagraph, for 1966, the $100 earned by S, a net positive adjustment under § 1.1502–32(e)(2), is reflected in the earnings and profits of P for 1966. No additional earnings and profits result from the distribution in 1967, since there is a $50 increase under paragraph (c)(1) of this section, and the corresponding $50 negative adjustment under § 1.1502–32(b)(2)(iii)(*a*) is reflected as a decrease in earnings and profits. The subsequent sale of the S stock for $150 does not affect P's earnings and profits since the basis is $150 ($100 original basis plus $100 earnings and profits, minus the $50 distribution out of earnings and profits accumulated in consolidated return years beginning after December 31, 1965).

(d) If the group first elected under subdivision (iii) of this subparagraph for 1967 (so that subdivision (i) was applicable for 1966), the $100 earned by S in 1966 is not reflected in P's earnings and profits in 1966. However, P's earnings and profits are increased by $50 in 1967, since the dividend is reflected in earnings and profits under paragraph (c)(1) of this section, and the corresponding negative adjustment under § 1.1502–32(b)(2)(iii)(*a*) is eliminated under subdivision (ii)(*c*) of this subparagraph in computing earnings and profits. P's earnings and profits are further increased by $50 on the sale of the S stock, the amount by which the positive adjustment ($100) under § 1.1502–32(b)(1) for years for which subdivision (ii) did not apply exceeds the sum of the negative adjustments under § 1.1502–32(b)(2) for such years (zero) and the negative adjustment ($50) under § 1.1502–32(b)(2)(iii)(*a*) for years for which subdivision (ii) did apply.

(v) *Transitional rule.* (*a*) Adjustments under § 1.1502–32(f)(1) shall not be reflected in earnings and profits.

(*b*) For purposes of computing the earnings and profits of a member on the disposition of stock (or an obligation to which § 1.1502–19(a)(4) applies) of a subsidiary, the adjusted basis of such stock (or obligation) shall be (*1*) the adjusted basis determined without regard to adjustments under §§ 1.1502–32(f)(1), plus (2) the amount of any excess loss account includable in income by such member under § 1.1502–19(a)(4) on such disposition.

(vi) *Stock or obligations with reduced basis.* (*a*) Adjustments under § 1.1502–19(a)(6) shall not be reflected in earnings and profits.

(*b*) For purposes of computing the earnings and profits of a member on the disposition of stock or an obligation to which § 1.1502–19(a)(6) applies, the adjusted basis of such stock or obligation shall be determined by taking into account any adjustments under § 1.1502–19(a)(6) except such adjustments which were made for a taxable year to which subdivision (i) of this subparagraph applies.

* * * * *

PAR. 15. There is inserted after § 1.1502–41 the following new section:

§ 1.1502–42 Mutual savings banks, domestic building and loan associations, and cooperative banks.

In the case of mutual savings banks, domestic building and loan associations and cooperative banks—

(a) In computing for purposes of section 593(b)(1)(B)(ii) total deposits or withdrawable accounts at the close of the taxable year, the total deposits or withdrawable accounts of other members shall be excluded, and

(b) For purposes of section 593(b)(2), a member's taxable income shall be the amount computed under § 1.1502–27(b) (computed without regard to the amount of any addition to the reserve for bad debts of any member determined under section 593(b)(2)). In the case of a taxable year beginning before July 12, 1969, such amount shall be computed without regard to any net operating loss carryback.

PAR. 16. Section 1.1502–75 is amended by revising paragraph (d)(2)(ii), by adding subdivisions (iii) and (iv) to paragraph (d)(2), by adding a sentence at the end of subdivision (i) of paragraph (d)(3), by adding titles to subdivisions (ii) and (iii) of paragraph (d)(3), by adding subdivisions (iv), (v), and (vi) to paragraph (d)(3), by reserving paragraph (i), and by adding paragraph (j). The revised and added provisions read as follows:

§ 1.1502–75 Filing of consolidated returns.

* * * * *

(d) *When group remains in existence.* * * *

(2) *Common parent no longer in existence.* * * *

(ii) *Transfer of assets to subsidiary.* The group shall be considered as remaining in existence notwithstanding that the common parent is no longer in existence if the members of the affiliated group succeed to and become the owners of substantially all of the assets of such former parent and there remains one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation and which was a member of the group prior to the date such former parent ceases to exist. For purposes of applying paragraph (f)(2)(i) of § 1.1502–1 to separate return years ending on or before the date on which the former parent ceases to exist, such former parent, and not the new common parent, shall be considered to be the corporation described in such paragraph.

(iii) *Taxable years.* If a transfer of assets described in subdivision (ii) of this subparagraph is an acquisition to which section 381(a) applies and if the group files a consolidated return for the taxable year in which the acquisition occurs, then for purposes of section 381—

(*a*) The former common parent shall not close its taxable year merely because of the acquisition, and all taxable years of such former parent ending on or before the date of acquisition shall be treated as taxable years of the acquiring corporation, and

(*b*) The corporation acquiring the assets shall close its taxable year as of the date of acquisition, and all taxable years of such corporation ending on or before the date of acquisition shall be treated as taxable years of the transferor corporation.

(iv) *Exception.* With respect to acquisitions occurring before January 1, 1971, subdivision (iii) of this subparagraph shall not apply if the group, in its income tax return, treats the taxable year of the former common parent as having closed as of the date of acquisition.

(3) *Reverse acquisitions*—(i) *In general.* * * * For purposes of determining under (*a*) of this subdivision whether the second corporation becomes (or would become) a member of the group of which the first corporation is the common parent, and for purposes of determining whether the former stockholders of the second corporation own more than 50 percent of the outstanding stock of the first corporation, there shall be taken into account any acquisitions or redemptions of the stock of either corporation which are pursuant to a plan of acquisition described in (*a*) or (*b*) of this subdivision.

(ii) *Prior ownership of stock.* * * *

(iii) *Election.* * * *

(iv) *Transfer of assets to subsidiary.* This subparagraph shall not apply to a transaction to which subparagraph (2)(ii) of this paragraph applies.

(v) *Taxable years.* If, in a transaction described in subdivision (i) of this subparagraph, the first corporation files a consolidated return for the first taxable year ending after the date of acquisition, then—

(*a*) The first corporation, and each corporation which, immediately before the acquisition, is a member of the group of which the first corporation is the common parent, shall close its taxable year as of the date of acquisition, and each such corporation shall, immediately after the acquisition, change to the taxable year of the second corporation, and

(*b*) If the acquisition is a transaction described in section 381(a)(2), then for purposes of section 381—

(*1*) All taxable years ending on or before the date of acquisition, of the first corporation and each corporation which, immediately before the acquisition, is a member of the group of which the first corporation is the common parent, shall be treated as taxable years of the transferor corporation, and

(2) The second corporation shall not close its taxable year merely because of such acquisition, and all taxable years ending on or before the date of acquisition, of the second corporation and each corporation which, immediately before the acquisition, is a member of any group of which the second corporation is the common parent, shall be treated as taxable years of the acquiring corporation.

(vi) *Exception.* With respect to acquisitions occurring before April 17, 1968, subdivision (v) of this subparagraph shall not apply if the parties to the transaction, in their income tax returns, treat subdivision (i) as not affecting the closing of taxable years or the operation of section 381.

* * * * *

(i) [Reserved]

(j) *Statements and schedules for subsidiaries.* The statement of gross income and deductions and the schedules required by the instructions on the return shall be prepared and filed in columnar form so that the details of the items of gross income, deductions, and credits for each member may be readily audited. Such statements and schedules shall include in columnar form a reconciliation of surplus for each corporation, and a reconciliation of consolidated surplus. Consolidated balance sheets as of the beginning and close of the taxable year of the group, taken from the books of the members, shall accompany the consolidated return and shall be prepared in a form similar to that required for reconciliation of surplus.

PAR. 17. Section 1.1502–76(b) is amended by revising subparagraphs (1) and (5)(i) to read as follows:

§ 1.1502–76 Taxable year of members of group.

* * * * *

(b) *Income to be included in returns for taxable year*—(1) *Inclusion of income in consolidated return.* The consolidated return of a group must include the income of the common parent for that corporation's entire taxable year (excluding any portion of such taxable year for which its income is properly included in the consolidated return of another group) and, except as provided in subparagraph (5) of this paragraph, the income of each subsidiary for the portion of such taxable year during which it was a mem-

ber of the group. If § 1.1502-75(d)(2)(ii) applies to a group, then for purposes of this paragraph, the former common parent shall be deemed to continue in existence and shall be regarded as the common parent for the entire taxable year in which the acquisition occurs. If § 1.1502-75(d)(3)(v) applies to a group, then for purposes of the application of this paragraph (other than to a group which ceases to exist as a result of the application of § 1.1502-75(d)(3)(i)), the second corporation (whether or not it remains in existence) shall be treated as the common parent for the entire taxable year of such corporation in which the acquisition occurs, and the first corporation shall be treated as a subsidiary for the portion of such taxable year subsequent to the acquisition.

* * * * *

(5) *Period of 30 days or less may be disregarded.* * * *

(i) If within a period of 30 days after the beginning of a corporation's taxable year (determined without regard to the required change to the parent's taxable year) it becomes a member of a group which files a consolidated return for a taxable year which includes such period, then such corporation may at its option be considered to have become a member of the group as of the beginning of the first day of such corporation's taxable year, or

* * * * *

PAR. 18. Section 1.1502-78 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 1.1502-78 Tentative carryback adjustments.

(a) *General rule.* If a group has a consolidated net operating loss, a consolidated net capital loss, or a consolidated unused investment credit for any taxable year, then any application under section 6411 for a tentative carryback adjustment of the taxes for a consolidated return year or years preceding such year shall be made by the common parent corporation to the extent such loss or unused investment credit is not apportioned to a corporation for a separate return year pursuant to § 1.1502-79 (a), (b), or (c). In the case of the portion of a consolidated net operating loss or consolidated net capital loss or consolidated unused investment credit to which the preceding sentence does not apply, and in the case of a net capital or net operating loss or unused investment credit arising in a separate return year which may be carried back to a consolidated return year, the corporation or corporations to which any such loss or credit is attributable shall make any application under section 6411.

(b) *Special rules*—(1) *Payment of refund.* Any refund allowable under an application referred to in paragraph (a) of this section shall be made directly to and in the name of the corporation filing the application, except that in all cases where a loss is deducted from the consolidated taxable income or a credit is allowed in computing the consolidated tax liability for a consolidated return year, any refund shall be made directly to and in the name of the common parent corporation. The payment of any such refund shall discharge any liability of the Government with respect to such refund.

* * * * *

[FR Doc.72-22452 Filed 12-29-72;2:06 pm]

[T.D. 7247]

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

PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

Withholding of Tax Imposed on Foreign Private Foundations

On November 10, 1972, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 1443(b) of the Internal Revenue Code of 1954 to conform the regulations to changes made by section 101(j)(22)(B) of the Tax Reform Act of 1969 (83 Stat. 528) was published in the FEDERAL REGISTER (37 F.R. 23921). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted.

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

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

Approved: December 29, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

In order to provide rules for the withholding of the tax imposed by section 4948(a) of the Code, the Income Tax Regulations (26 CFR Part 1) under section 1443(b) of the Internal Revenue Code of 1954, as amended by section 101(j)(22)(B) of the Tax Reform Act of 1969 (83 Stat. 528), relating to income subject to section 4948, are hereby amended. Temporary Treasury Regulation 13.14, 35 F.R. 17331 (T.D. 7067, 1970) is repealed.

Section 1.1443-1 is amended by adding thereto a new paragraph (b). This added provision reads as follows:

§ 1.1443-1 Foreign tax-exempt organizations.

* * * * *

(b) *Income subject to section 4948*—(1) *In general*—(i) *Application of withholding provisions.* Except as provided in subdivision (ii) of this subparagraph, in the case of a foreign private foundation which is subject to the tax imposed by section 4948(a) and the regulations thereunder, the withholding provisions of Chapter 3 of the Code and the regulations thereunder shall apply with respect to the gross investment income (as defined in section 4940(c)(2)) of such foundation from sources within the United States (within the meaning of section 861 and the regulations thereunder) as if the excise tax imposed by section 4948(a) were a tax imposed by Chapter 3 of the Code, except that the deduction and withholding shall be at the rate of 4 percent. The withholding requirements imposed by this paragraph are in addition to the requirements otherwise applicable to a withholding agent, such as the depositary requirements of section 6302 and the regulations thereunder. Similarly, the requirements of this paragraph do not obviate a private foundation's obligation to file any return required by law with respect to such an organization, such as the form the foundation is required to file under section 6033 for the taxable year.

(ii) *Special rule with respect to certain tax treaties.* Whenever there exists a tax treaty between the United States and a foreign country, and a foreign private foundation which is subject to the tax imposed by section 4948(a) and the regulations thereunder is a resident of such country or is otherwise entitled to the benefits of such treaty (whether or not such benefits are available to all residents), if the treaty provides that any item or items (or all items with respect to an organization exempt from income taxation) of gross investment income (within the meaning of section 4940(c)(2)) shall be exempt from income tax, the withholding provisions of Chapter 3 of the Code and the regulations thereunder shall not apply to such item or items.

(2) *Return on Form 1042.* Every withholding agent required to deduct and withhold any amount by virtue of the provisions of this paragraph shall make a return of the amount required to be deducted and withheld by completing and filing a Form 1042 with the Internal Revenue Service in accordance with the instructions accompanying that form and submitting the balance due (if any). In addition, in any case in which any amount is so withheld, the withholding agent shall prepare and submit to the foreign private foundation one of the copies of the Form 1042S showing the tax withheld under this paragraph in addition to any tax otherwise shown on such form.

(3) *Claims for refund and credits.* Claims for refund of or credit for amounts overpaid shall be made on a Form 843 or 1042 or other appropriate form, which shall be filed with the Mid-Atlantic Service Center on or after January 1, 1973. Claims filed prior to January 1, 1973, shall be filed with the Director of International Operations. In determining whether a claim for refund is appropriate and, if appropriate, who should make the claim, the provisions of section 1464 and the regulations thereunder shall apply.

(4) *Identification of foreign private foundations; general rule.* (i) Except as provided in subparagraph (6) of this paragraph, where a foreign organiza-

tion does not have a ruling or determination letter that it is an organization described in section 509(a) (1), (2), (3), or (4), any person required under section 1443(b) and this paragraph to deduct and withhold any tax imposed by section 4948(a) on such foreign organization (if it were a private foundation) shall not be liable for such tax if prior to the day on which the person deposits or pays to the Internal Revenue Service any amount required to be withheld, such person has made a good faith determination that the foreign organization is an organization described in section 509 (a) (1), (2), (3), or (4). For purposes of this subdivision, such a "good faith determination" ordinarily will be considered as made where the determination is based on an affidavit of the foreign organization or an opinion of counsel (of the withholding agent or the foreign organization) that the foreign organization is an organization described in section 509(a) (1), (2), (3), or (4). Such an affidavit or opinion must set forth sufficient facts concerning the operations and support of the foreign organization for the Internal Revenue Service to determine that such organization would be likely to qualify as an organization described in section 509(a) (1), (2), (3), or (4).

(ii) For special transitional rules relating to the identification of foreign private foundations, see subparagraph (5) of this paragraph.

(iii) Nothing in this paragraph relieves any foreign private foundation of the liability for the tax (including interest and penalties) imposed by section 4948(a).

(5) *Special transitional rules relating to identification of foreign private foundations.* (i) Any person required under section 1443(b) and this paragraph to deduct and withhold any tax imposed by section 4948(a) on any foreign organization for any period after December 31, 1969, and before the 90th day after publication of final regulations under section 508 in the FEDERAL REGISTER shall not be liable for such tax if such person receives a certified statement from the foreign organization prior to the day on which the person deposits or pays to the Internal Revenue Service any amount required to be withheld stating that either—

(*a*) Such foreign organization has properly filed the notice described in section 508(b) and the regulations thereunder and has not been notified by the Commissioner or his delegate by the 30th day after the day on which the notice is filed that such notice has failed to establish that such foreign organization is not a private foundation, or

(*b*) The presumption contained in section 508(b) does not apply to such foreign organization by reason of section 508(c) and the regulations thereunder.

(ii) If a certified statement described in subdivision (i) of this subparagraph is not received prior to the day on which a deposit or payment of any amount withheld in accordance with the provisions of this paragraph must be made by any person required to deduct and withhold any tax imposed by section 4948(a) with respect to any foreign organization, except as provided in subparagraph (4) of this paragraph such person shall be liable for all such tax imposed (including interest and penalties) for the period being returned by such person on Form 1042, to the extent that such person incurs liability to the foreign organization for gross investment income, as defined in section 4940(c)(2).

(iii) Any foreign organization to which section 508 by reason of section 4948(b) does not apply because such organization has received substantially all of its support (other than gross investment income, as defined in section 4940 (c)(2)) from sources outside the United States may nevertheless receive the benefits of subdivision (i) of this subparagraph by following the procedure set forth in such subdivision.

(6) *Effect of notice by Internal Revenue Service concerning organization's statement.* Subparagraphs (4) and (5) of this paragraph shall have no effect with respect to a withholding agent as to a particular foreign organization on or after the earlier (i) the date on which such agent acquires knowledge that the Internal Revenue Service has given notice to such foreign organization that its notice or statement has failed to establish that it is not a private foundation, (ii) the date on which the Internal Revenue Service makes notice to the public that such foreign organization has failed to establish that it is not a private foundation, or (iii) the date on which the Internal Revenue Service makes notice to the public that such foreign organization is a private foundation.

[FR Doc.72-22461 Filed 12-29-72;5:03 pm]

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7249]

PART 42—FOUNDATION EXCISE TAXES

Operating Foundations

On January 5, 1971, notice of proposed rule making in order to conform the Excise Tax Regulations (26 CFR Part 53) to section 4942(j)(3) of the Internal Revenue Code of 1954, relating to operating foundations, as added by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 506) was published in the FEDERAL REGISTER (36 F.R. 107). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted as set forth below:

PARAGRAPH 1. Section 53.4942(b), as set forth in the notice of proposed rule making, is deleted.

PAR. 2. Sections 53.4942(b)-1 through 53.4942(b)-6, as set forth in the notice of proposed rule making, are revised by deleting §§ 53.4942(b)-4 through 53.4942 (b)-6 and by amending §§ 53.4942(b)-1 through 53.4942(b)-3. These amended sections are inserted immediately following § 53.4942(a)-3 and read as follows:

Sec.

§ 53.4942(b)-1 Operating foundations.

(a) *In general.* For purposes of section 4942 and the regulations thereunder, the term "operating foundation" means any private foundation which makes qualifying distributions (within the meaning of paragraph (a)(2) of § 53.4942(a)-3) directly for the active conduct of activities constituting its charitable, educational, or other similar exempt purpose equal in value to substantially all of its adjusted net income (as defined in paragraph (d) of § 53.4942(a)-2) and which, in addition, satisfies either the assets test set forth in paragraph (a) of § 53.4942(b)-2, the endowment test set forth in paragraph (b) of such section, or the support test set forth in paragraph (c) of such section.

(b) *Active conduct of activities constituting the exempt purpose*—(1) *In general.* For purposes of this section, except as provided in subparagraph (2) or (3) of this paragraph, qualifying distributions are not made by a foundation "directly for the active conduct of activities constituting its charitable, educational, or other similar exempt purpose" unless such qualifying distributions are used by the foundation itself, rather than by or through one or more grantee organizations which receive such qualifying distributions directly or indirectly from such foundation. Thus, grants made to other organizations to assist them in conducting activities which help to accomplish their charitable, educational, or other similar exempt purpose are considered an indirect, rather than direct, means of carrying out activities constituting the charitable, educational, or other similar exempt purpose of the grantor foundation, regardless of the fact that the exempt activities of the grantee organization may assist the grantor foundation in carrying out its own exempt activities. However, amounts paid to acquire or maintain assets which are used directly in the conduct of the foundation's exempt activities, such as the operating assets of a museum, public park, or historic site, are considered direct expenditures for the active conduct of the foundation's exempt activities. Likewise, administrative expenses (such as staff salaries and traveling expenses) and other operating costs necessary to conduct the foundation's exempt activities (regardless of whether they are "directly for the active conduct" of such exempt activities) shall be treated as qualifying distributions expended directly for the active conduct of such exempt activities if such expenses and costs are reasonable in amount. Conversely, administrative expenses and operating costs which are not attributable to exempt activities, such as expenses in connection with the production of invest-

ment income, are not treated as such qualifying distributions. Expenses attributable to both exempt and nonexempt activities shall be allocated to each such activity on a reasonable and consistently applied basis. Any amount set aside by a foundation for a specific project, such as the acquisition and restoration, or construction, of additional buildings or facilities which are to be used by the foundation directly for the active conduct of the foundation's exempt activities, shall be deemed to be qualifying distributions expended directly for the active conduct of the foundation's exempt activities if the initial setting aside of the funds constitutes a set-aside within the meaning of paragraph (b) of § 53.4942 (a)-3.

(2) *Payments to individual beneficiaries*—(i) *In general.* If a foundation makes or awards grants, scholarships, or other payments to individual beneficiaries (including program related investments within the meaning of section 4944 (c) made to individuals or corporate enterprises) to support active programs conducted to carry out the foundation's charitable, educational, or other similar exempt purpose, such grants, scholarships, or other payments will be treated as qualifying distributions made directly for the active conduct of exempt activities for purposes of paragrarph (a) of this section only if the foundation, apart from the making or awarding of the grants, scholarships, or other payments, otherwise maintains some significant involvement (as defined in subdivision (ii) of this subparagraph) in the active programs in support of which such grants, scholarships, or other payments were made or awarded. Whether the making or awarding of grants, scholarships, or other payments constitutes qualifying distributions made directly for the active conduct of the foundation's exempt activities is to be determined on the basis of the facts and circumstances of each particular case. The test applied is a qualitative, rather than a strictly quantitative, one. Therefore, if the foundation maintains a significant involvement (as defined in subdivision (ii) of this subparagraph) it will not fail to meet the general rule of subparagraph (1) of this paragraph solely because more of its funds are devoted to the making or awarding of grants, scholarships, or other payments than to the active programs which such grants, scholarships, or other payments support. However, if a foundation does no more than select, screen, and investigate applicants for grants or scholarships, pursuant to which the recipients perform their work or studies alone or exclusively under the direction of some other organization, such grants or scholarships will not be treated as qualifying distributions made directly for the active conduct of the foundation's exempt activities. The administrative expenses of such screening and investigation (as opposed to the grants or scholarships themselves) may be treated as qualifying distributions made directly for the active conduct of the foundation's exempt activities.

(ii) *Definition.* For purposes of this subparagraph, a foundation will be considered as maintaining a "significant involvement" in a charitable, educational, or other similar exempt activity in connection with which grants, scholarships, or other payments are made or awarded if—

(A) An exempt purpose of the foundation is the relief of poverty or human distress, and its exempt activities are designed to ameliorate conditions among a poor or distressed class of persons or in an area subject to poverty or national disaster (such as providing food or clothing to indigents or residents of a disaster area), the making or awarding of the grants or other payments to accomplish such exempt purpose is direct and without the assistance of an intervening organization or agency, and the foundation maintains a salaried or voluntary staff of administrators, researchers, or other personnel who supervise and direct the activities described in this subdivision (A) on a continuing basis; or

(B) The foundation has developed some specialized skills, expertise, or involvement in a particular discipline or substantive area (such as scientific or medical research, social work, education, or the social sciences), it maintains a salaried staff of administrators, researchers, or other personnel who supervise or conduct programs or activities which support and advance the foundation's work in its particular area of interest, and, as a part of such programs or activities, the foundation makes or awards grants, scholarships, or other payments to individuals to encourage and further their involvement in the foundation's particular area of interest and in some segment of the programs or activities carried on by the foundation (such as grants under which the recipients, in addition to independent study, attend classes, seminars, or conferences sponsored or conducted by the foundation, or grants to engage in social work or scientific research projects which are under the general direction and supervision of the foundation).

(3) *Payment of section 4940 tax.* For purposes of section 4942(j)(3) (A) and (B)(ii), payment of the tax imposed upon a foundation under section 4940 shall be considered a qualifying distribution which is made directly for the active conduct of activities constituting the foundation's charitable, educational, or other similar exempt purpose.

(c) *Substantially all.* For purposes of this section, the term "substantially all" shall mean 85 percent or more. Thus, if a foundation makes qualifying distributions directly for the active conduct of activities constituting its charitable, educational, or other similar exempt purpose in an amount equal to at least 85 percent of its adjusted net income, it will be considered as satisfying the income test described in this section even if it makes grants to organizations or engages in other activities with the remainder of its adjusted net income and with other funds. In determining whether the amount of qualifying distributions made directly for the active conduct of such exempt activities equals at least 85 percent of a foundation's adjusted net income, a foundation is not required to trace the source of such expenditures to determine whether they were derived from income or from contributions.

(d) *Examples.* The provisions of this section may be illustrated by the following examples. It is assumed that none of the organizations described in these examples is described in section 509(a)(1), (2), or (3).

Example (1). N, an exempt museum described in section 501(c)(3), was founded by the gift of an endowment from a single contributor. N uses 90 percent of its adjusted net income to operate the museum. If N satisfies one of the tests set forth in § 53.4942(b)-2 it may be classified as an operating foundation since substantially all of the qualifying distributions made by N are used directly for the active conduct of N's exempt activities within the meaning of paragraph (b)(1) of this section.

Example (2). M, an exempt organization described in section 501(c)(3), was created to improve conditions in a particular urban ghetto. M receives its funds primarily from a limited number of wealthy contributors interested in helping carry out its exempt purpose. M's program consists of making a survey of the problems of the ghetto to determine the areas in which its funds may be applied most effectively. Approximately 10 percent of M's adjusted net income is used to conduct this survey. The balance of its income is used to make grants to other nonprofit organizations doing work in the ghetto in those areas determined to have the greatest likelihood of resulting in improved conditions. Under these circumstances, since only 10 percent of M's adjusted net income may be considered as constituting qualifying distributions made directly for the active conduct of M's exempt activities, M cannot qualify as an operating foundation.

Example (3). Assume the facts as stated in example (2), except that M uses the remaining 90 percent of its adjusted net income for the following purposes: (1) M maintains a salaried staff of social workers and researchers who analyze its surveys and make recommendations as to methods for improving ghetto conditions; (2) M makes grants to independent social scientists who assist in these analyses and recommendations; (3) M publishes periodic reports indicating the results of its surveys and recommendations; (4) M makes grants to social workers and others who act as advisers to nonprofit organizations, as well as small business enterprises, functioning in the community (these advisers acting under the general direction of M attempt to implement M's recommendations through their advice and assistance to the nonprofit organizations and small business enterprises); and (5) M makes grants to other social scientists who study and report on the success of the various enterprises which attempt to implement M's recommendations. Under these circumstances, M satisfies the requirements of paragraph (b)(2) of this section, and the various grants it makes constitute qualifying distributions made directly for the active conduct of its exempt activities. Thus, if M satisfies one of the tests set forth in § 53.4942(b)-2 it may be classified as an operating foundation.

Example (4). P, an exempt educational organization described in section 501(c)(3), was created for the purpose of training

teachers for institutions of higher education. Each year P awards a substantial number of fellowships to students for graduate study leading toward their M.A. or Ph. D. degrees. The applicants for these fellowships are carefully screened by P's staff, and only those applicants who indicate a strong interest in teaching in colleges or universities are chosen. P publishes and circulates various pamphlets encouraging a development of interest in college teaching and describing its fellowships. P also conducts annual summer seminars which are attended by its fellowship recipients, its staff, consultants, and other interested parties. The purpose of these seminars is to foster and encourage the development of college teaching. P publishes a report of the seminar proceedings along with related studies written by those who attended. Despite the fact that a substantial portion of P's adjusted net income is devoted to granting fellowships, its commitment to encouraging individuals to become teachers at institutions of higher learning, its maintenance of a staff and programs designed to further this purpose, and the granting of fellowships to encourage involvement both in its own seminars and in its exempt purpose indicate a significant involvement by P beyond the mere granting of fellowships. Thus, the fellowship grants made by P constitute qualifying distributions made directly for the active conduct of P's exempt activities within the meaning of paragraph (b)(2) of this section.

Example (5). Q, an exempt organization described in section 501(c)(3), is composed of professional organizations interested in different branches of one academic discipline. Q trains its own professional staff, conducts its own program of research, selects research topics, screens and investigates grant recipients, makes grants to those selected, and sets up and conducts conferences and seminars for the grantees. Q has particular knowledge and skill in the given discipline, carries on activities to advance its study of that discipline, and makes grants to individuals to enable them to participate in activities which it conducts in carrying out its exempt purpose. Under these circumstances, Q's grants constitute qualifying distributions made directly for the active conduct of Q's exempt activities within the meaning of paragraph (b)(2) of this section.

Example (6). R, an exempt medical research organization described in section 501(c)(3), was created to study and perform research concerning heart disease. R has its own research center in which it carries on a broad number of research projects in the field of heart disease with its own professional staff. Physicians and scientists who are interested in special projects in this area present the plans for their projects to R. The directors of R study these plans and decide if the project is feasible and will further the work being done by R. If it is, R makes a grant to the individual to enable him to carry out his project, either at R's facilities or elsewhere. Reports of the progress of the project are made periodically to R, and R exercises a certain amount of supervision over the project. The resulting findings of these projects are usually published by R. Under these circumstances, the grants made by R constitute qualifying distributions made directly for the active conduct of R's exempt activities within the meaning of paragraph (b)(2) of this section.

Example (7). S, an exempt organization described in section 501(c)(3), maintains a large library of manuscripts and other historical reference material relating to the history and development of the region in which the collection is located. S makes a limited number of annual grants to enable post-doctoral scholars and doctoral candidates to use its library. Sometimes S obtains the right to publish the scholar's work, although this is not a prerequisite to the receipt of a grant. The primary criterion for selection of grant recipients is the usefulness of the library's resources to the applicant's field of study. Under these circumstances, the grants made by S constitute qualifying distributions made directly for the active conduct of S's exempt activities within the meaning of paragraph (b)(2) of this section.

Example (8). T, an exempt charitable organization described in section 501(c)(3), was created by the members of one family for the purpose of relieving poverty and human suffering. T has a large salaried staff of employees who operate offices in various areas throughout the country. Its employees make gifts of food and clothing to poor persons in the area serviced by each office. On occasion, T also provides temporary relief in the form of food and clothing to persons in areas stricken by natural disasters. If conditions improve in one poverty area, T transfers the resources of the office in that area to another poverty area. Under these circumstances, the gifts of food and clothing made by T constitute qualifying distributions made directly for the active conduct of T's exempt activities within the meaning of paragraph (b)(2) of this section.

Example (9). U, an exempt scientific organization described in section 501(c)(3), was created for the principal purpose of studying the effects of early childhood brain damage. U conducts an active and continuous research program in this area through a salaried staff of scientists and physicians. As part of its research program, U awards scholarships to young people suffering mild brain damage to enable them to attend special schools equipped to handle such problems. The recipients are periodically tested to determine the effect of such schooling upon them. Under these circumstances, the scholarships awarded by U constitute qualifying distributions made directly for the active conduct of U's exempt activities within the meaning of paragraph (b)(2) of this section.

Example (10). O, an exempt charitable organization described in section 501(c)(3), was created for the purpose of giving scholarships to children of the employees of X Corporation who meet the standards set by O. O not only screens and investigates each applicant to make sure that he complies with the academic and financial requirements set for scholarship recipients, but also administers an examination which each applicant must take—90 percent of O's adjusted net income is used in awarding these scholarships to the chosen applicants. O does not conduct any activities of an educational nature on its own. Under these circumstances, O is not using substantially all of its adjusted net income directly for the active conduct of its exempt activities within the meaning of paragraph (b) of this section. Thus, O is not an operating foundation because it fails to satisfy the income test set forth in paragraph (a) of this section.

§ 53.4942(b)–2 Alternative tests.

(a) *Assets test*—(1) *In general.* A private foundation will satisfy the assets test under the provisions of this paragraph if substantially more than half of the foundation's assets:

(i) Are devoted directly (A) to the active conduct of activities constituting the foundation's charitable, educational, or other similar exempt purpose, (B) to functionally related businesses (as defined in paragraph (c)(3)(iii) of § 53.4942(a)–2), or (C) to any combination thereof;

(ii) Are stock of a corporation which is controlled by the foundation (within the meaning of section 368(c)) and substantially all the assets of which (within the meaning of paragraph (c) of § 53.4942(b)–1) are so devoted; or

(iii) Are in part assets which are described in subdivision (i) of this subparagraph and in part stock which is described in subdivision (ii) of this subparagraph.

(2) *Qualifying assets*—(i) *In general.* For purposes of subparagraph (1) of this paragraph, an asset is "devoted directly to the active conduct of activities constituting the foundation's charitable, educational, or other similar exempt purpose" only if the asset is actually used by the foundation directly for the active conduct of activities constituting its charitable, educational, or other similar exempt purpose. Thus, such assets as real estate, physical facilities or objects (such as museum assets, classroom fixtures and equipment, and research facilities), and intangible assets (such as patents, copyrights, and trademarks) will be considered qualifying assets for purposes of this paragraph to the extent they are used directly for the active conduct of the foundation's exempt activities. However, assets which are held for the production of income, for investment, or for some other similar use (for example, stocks, bonds, interest-bearing notes, endowment funds, or, generally, leased real estate) are not devoted directly to the active conduct of the foundation's exempt activities, even though the income derived from such assets is used to carry out such exempt activities. Whether an asset is held for the production of income, for investment, or for some other similar use rather than being used for the active conduct of the foundation's exempt activities is a question of fact. For example, an office building used for the purpose of providing offices for employees engaged in the management of endowment funds of the foundation is not devoted to the active conduct of the foundation's exempt activities. However, where property is used both for exempt purposes and for other purposes, if such exempt use represents 95 percent or more of the total use, such property shall be considered to be used exclusively for an exempt purpose. Property acquired by a foundation to be used in carrying out the foundation's exempt purpose may be considered as devoted directly to the active conduct of such purpose even though the property, in whole or in part, is leased for a limited period of time during which arrangements are made for its conversion to the use for which it was acquired, provided such income-producing use of the property does not exceed a reasonable period of time. Generally, 1 year shall be deemed to be a reasonable period of time for purposes of the immediately preceding sentence. Similarly, where property is leased by a foundation in carrying out its exempt purpose and where the rental income de-

rived from such property by the foundation is less than the amount which would be required to be charged in order to recover the cost of purchase and maintenance of such property (taking into account the deductions permitted by paragraph (d)(4) of § 53.4942(a)–2), such property shall be considered devoted directly to the active conduct of the foundation's exempt activities.

(ii) *Limitations.* (A) Assets which are held for the purpose of extending credit or making funds available to members of a charitable class (including any interest in a program related-investment, except as provided in paragraph (b)(2) of § 53.4942(b)–1) are not considered assets devoted directly to the active conduct of activities constituting the foundation's charitable, educational, or other similar exempt purpose. For example, assets which are set aside in special reserve accounts to guarantee student loans made by lending institutions will not be considered assets devoted directly to the active conduct of the foundation's exempt activities.

(B) Any amount set aside by a foundation within the meaning of paragraph (b)(1) of § 53.4942(b)–1 shall not be treated as an asset devoted directly to the active conduct of the foundation's exempt activities.

(3) *Assets held for less than a taxable year.* For purposes of this paragraph, any asset which is held by a foundation for part of a taxable year shall be taken into account for such taxable year by multiplying the fair market value of such asset (as determined pursuant to subparagraph (4) of this paragraph) by a fraction, the numerator of which is the number of days in such taxable year that the foundation held such asset and the denominator of which is the number of days in such taxable year.

(4) *Valuation.* For purposes of this paragraph, all assets shall be valued at their fair market value. Fair market value shall be determined in accordance with the rules set forth in paragraph (c)(4) of § 53.4942(a)–2, except in the case of assets which are devoted directly to the active conduct of the foundation's exempt activities and for which neither a ready market nor standard valuation methods exist (such as historical objects or buildings, certain works of art, and botanical gardens). In such cases, the historical cost (unadjusted for depreciation) shall be considered equal to fair market value unless the foundation demonstrates that fair market value is other than cost. In any case in which the foundation so demonstrates that the fair market value of an asset is other than historical cost, such substituted valuation may be used for the taxable year for which such new valuation is demonstrated and for each of the succeeding 4 taxable years if the valuation methods and procedures prescribed by paragraph (c)(4)(iv)(B) of § 53.4942(a)–2 are followed.

(5) *Substantially more than half.* For purposes of this paragraph, the term "substantially more than half" shall mean 65 percent or more.

(6) *Examples.* The provisions of this paragraph may be illustrated by the following examples. It is assumed that none of the organizations described in these examples is described in section 509(a)(1), (2), or (3).

Example (1). W, an exempt organization described in section 501(c)(3), is devoted to the maintenance and operation of a historic area for the benefit of the general public. W has acquired and erected facilities for lodging and other visitor accommodations in such area, which W operates through a wholly owned, separately incorporated, taxable entity. These facilities comprise substantially all of the subsidiary's assets. The operation of such accommodations constitutes a functionally related business within the meaning of paragraph (c)(3)(iii) of § 53.4942(a)–2. Under these circumstances, the stock of the subsidiary will be considered as part of W's assets which may be taken into account by W in determining whether it satisfies the assets test described in this paragraph.

Example (2). M, an exempt conservation organization described in section 501(c)(3), is devoted to acquiring, preserving, and otherwise making available for public use geographically diversified areas of natural beauty. M has acquired and erected facilities for lodging and other visitor accommodations in national park areas. The operation of such accommodations constitutes a functionally related business within the meaning of paragraph (c)(3)(iii) of § 53.4942(a)–2. Therefore, M's assets which are directly devoted to such visitor accommodations may be taken into account by M in determining whether it satisfies the assets test described in this paragraph.

Example (3). P, an exempt organization described in section 501(c)(3), is devoted to acquiring and restoring historic houses. To insure that the restored houses will be kept in the restored condition, and to make the houses more readily available for public display, P rents the houses rather than sells them once they have been restored. The rental income derived by P is substantially less than the amount which would be required to be charged in order to recover the cost of purchase, restoration, and maintenance of such houses. Therefore, such houses may be taken into account by P in determining whether it satisfies the assets test described in this paragraph.

Example (4). Z, an exempt organization described in section 501(c)(3), is devoted to improving the public's understanding of Renaissance art. Z's principal assets are a number of paintings of this period which it circulates on an active and continuing basis to museums and schools for public display. These paintings constitute 80 percent of Z's assets. Under these circumstances, although Z does not have a building in which it displays these paintings, such paintings are devoted directly to the active conduct of activities constituting Z's exempt purpose. Therefore, Z has satisfied the assets test described in this paragraph.

(b) *Endowment test*—(1) *In general.* A foundation will satisfy the endowment test under the provisions of this paragraph if it normally makes qualifying distributions (within the meaning of paragraph (a)(2) of § 53.4942(a)–3) directly for the active conduct of activities constituting its charitable, educational, or other similar exempt purpose in an amount not less than two-thirds of its minimum investment return (as defined in paragraph (c) of § 53.4942(a)–2). In determining whether the amount of such qualifying distributions is not less than an amount equal to two-thirds of the foundation's minimum investment return, the foundation is not required to trace the source of such expenditures to determine whether they were derived from investment income or from contributions.

(2) *Definitions.* For purposes of this paragraph, the phrase "directly for the active conduct of activities constituting the foundation's charitable, educational, or other similar exempt purpose" shall have the same meaning as in paragraph (b) of § 53.4942(b)–1.

(3) *Example.* This paragraph may be illustrated by the following example:

Example. X, an exempt organization described in section 501(c)(3) and not described in section 509(a)(1), (2), or (3), was created on July 15, 1970. X uses the cash receipts and disbursements method of accounting. For 1971, the fair market value of X's assets not described in paragraph (c)(2) or (3) of § 53.4942(a)–2 is $400,000. X makes qualifying distributions for 1971 directly for the active conduct of its exempt activities of $17,000. For 1971 two-thirds of X's minimum investment return is $16,000 (6 percent × $400,000 = $24,000; ⅔ × $24,000 = $16,000). Under these circumstances, X has satisfied the endowment test described in this paragraph for 1971. However, if X's qualifying distributions for 1971 directly for the active conduct of its exempt activities were only $15,000, X would not satisfy the endowment test for 1971, unless the fair market value of its assets not described in paragraph (c)(2) or (3) of § 53.4942(a)–2 were no greater than $375,000 (6 percent × $375,000 = $22,500; ⅔ × $22,500 = $15,000).

(c) *Support test*—(1) *In general.* A foundation will satisfy the support test under the provisions of this paragraph if:

(i) Substantially all of its support (other than gross investment income as defined in section 509(e)) is normally received from the general public and from five or more exempt organizations which are not described in section 4946(a)(1)(H) with respect to each other or the recipient foundation;

(ii) Not more than 25 percent of its support (other than gross investment income) is normally received from any one such exempt organization; and

(iii) Not more than half of its support is normally received from gross investment income.

(2) *Definitions and special rules.* For purposes of this paragraph—

(i) *Support.* The term "support" shall have the same meaning as in section 509(d).

(ii) *Substantially all.* The term "substantially all" shall have the same meaning as in paragraph (c) of § 53.4942(b)–1.

(iii) *Support from exempt organizations.* The support received from any one exempt organization may be counted towards satisfaction of the support test described in this paragraph only if the foundation receives support from no fewer than five exempt organizations. For example, a foundation which normally receives 20 percent of its support (other than gross investment income) from each of five exempt organizations

may qualify under this paragraph even though it receives no support from the general public. However, if a foundation normally received 10 percent of its support from each of three exempt organizations and the balance of its support from sources other than exempt organizations, such support could not be taken into account in determining whether the foundation had satisfied the support test set forth in this paragraph.

(iv) *Support from the general public.* "Support" received from an individual, or from a trust or corporation (other than an exempt organization), shall be taken into account as support from the general public only to the extent that the total amount of the support received from any such individual, trust, or corporation during the period for determining the normal sources of the foundation's support (as set forth in § 53.4942(b)-3) does not exceed 1 percent of the foundation's total support (other than gross investment income) for such period. In applying this 1-percent limitation, all support received by the foundation from any person and from any other person or persons standing in a relationship to such person which is described in section 4946(a)(1) (C) through (G) and the regulations thereunder shall be treated as received from one person. For purposes of this paragraph, support received from a governmental unit described in section 170(c)(1) shall be treated as support received from the general public, but shall not be subject to the 1-percent limitation.

§ 53.4942(b)-3 Determination of compliance with operating foundation tests.

(a) *In general.* A foundation may satisfy the income test and either the assets, endowment, or support test by satisfying such tests for any 3 taxable years during a 4-year period consisting of the taxable year in question and the three immediately preceding taxable years or on the basis of an aggregation of all pertinent amounts of income or assets held, received, or distributed during such 4-year period. A foundation may not use one method for satisfying the income test described in paragraph (a) of § 53.4942(b)-1 and another for satisfying either the assets, endowment, or support test described in § 53.4942(b)-2. Thus, if a foundation satisfies the income test on the 3-out-of-4-year basis for a particular taxable year, it may not use the aggregation method for satisfying either the assets, endowment, or support test for such particular taxable year. However, the fact that a foundation has chosen one method for satisfying the tests under §§ 53.4942(b)-1 and 53.4942(b)-2 for 1 taxable year will not preclude it from satisfying such tests for a subsequent taxable year by the alternate method. If a foundation fails to satisfy the income test and either the assets, endowment, or support test for a particular taxable year under either the 3-out-of-4-year method or the aggregation method, it shall be treated as a nonoperating foundation for such taxable year and for all subsequent taxable years until it satisfies the tests set forth in §§ 53.4942(b)-1 and 53.4942(b)-2 for a taxable year occurring after the taxable year in which it was treated as a nonoperating foundation.

(b) *New organizations*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, an organization organized after December 31, 1969, will be treated as an operating foundation only if it has satisfied the tests set forth in §§ 53.4942(b)-1 and 53.4942(b)-2 for its first taxable year of existence. If an organization satisfies such tests for its 1st taxable year, it will be treated as an operating foundation from the beginning of such taxable year. If such is the case, the organization will be treated as an operating foundation for its 2d and 3d taxable years of existence only if it satisfies the tests set forth in §§ 53.4942(b)-1 and 53.4942(b)-2 by the aggregation method for all such taxable years that it has been in existence.

(2) *Special rule.* An organization organized after December 31, 1969, will be treated as an operating foundation prior to the end of its 1st taxable year if such organization has made a good faith determination that it is likely to satisfy the income test set forth in paragraph (a) of § 53.4942(b)-1 and one of the tests set forth in § 53.4942(b)-2 for such 1st taxable year pursuant to subparagraph (1) of this paragraph. Such a "good faith determination" ordinarily will be considered as made where the determination is based on an affidavit or opinion of counsel of such organization that such requirements will be satisfied. Such an affidavit or opinion must set forth sufficient facts concerning the operations and support of such organization for the Commissioner to be able to determine that such organization is likely to satisfy such requirements. An organization which, pursuant to this subparagraph, has been treated as an operating foundation for its 1st taxable year, but actually fails to qualify as an operating foundation under subparagraph (1) of this paragraph for such taxable year, will be treated as a private foundation which is not an operating foundation as of the 1st day of its 2d taxable year for purposes of making any determination under the internal revenue laws with respect to such organization. The preceding sentence shall not apply if such organization establishes to the satisfaction of the Commisioner that it is likely to qualify as an operating foundation on the basis of its 2d, 3d, and 4th taxable years. Thus, if such an organization fails to qualify as an operating foundation in its 2d, 3d, or 4th taxable year after having failed in its 1st taxable year, it will be treated as a private foundation which is not an operating foundation as of the 1st day of such 2d, 3d, or 4th taxable year in which it fails to qualify as an operating foundation, except as otherwise provided by paragraph (d) of this section. Such status as a private foundation which is not an operating foundation will continue until such time as the organization is able to satisfy the tests set forth in §§ 53.4942(b)-1 and 53.4942(b)-2 by either the 3-out-of-4-year method or the aggregation method. For the status of grants or contributions made to such an organization with respect to sections 170 and 4942, see paragraph (d) of this section.

(c) *Transitional rule for existing organizations.* An organization organized before December 31, 1969 (including organizations deemed to be so organized by virtue of the principles of paragraph (e)(2) of § 53.4942(a)-2), but which is unable to satisfy the tests under §§ 53.4942(b)-1 and 53.4942(b)-2 for its first taxable year beginning after December 31, 1969 on the basis of its operations for taxable years prior to such taxable year by either the 3-out-of-4-year method or the aggregation method, will be treated as a new organization for purposes of paragraph (b) of this section only if:

(1) The organization changes its methods of operation prior to its first taxable year beginning after December 31, 1972 to conform to the requirements of §§ 53.4942(b)-1 and 53.4942(b)-2;

(2) The organization has made a good faith determination (within the meaning of paragraph (b)(2) of the section) that it is likely to satisfy the tests set forth in §§ 53.4942(b)-1 and 53.4942(b)-2 prior to its first taxable year beginning after December 31, 1972 on the basis of its income or assets held, received, or distributed during its taxable years beginning in 1970 through 1972; and

(3) Such good faith determination is attached to the return the organization is required to file under section 6033 for its taxable year beginning in 1972.

(d) *Treatment of contributions*—(1) *In general.* The status of grants or contributions made to an operating foundation with respect to sections 170 and 4942 will not be affected until notice of change of status of such organization is made to the public (such as by publication in the Internal Revenue Bulletin), unless the grant or contribution was made after:

(i) The act or failure to act that resulted in the organization's inability to satisfy the requirements of §§ 53.4942(b)-1 and 53.4942(b)-2, and the grantor or contributor was responsible for, or was aware of, such act or failure to act, or

(ii) The grantor or contributor acquired knowledge that the Commissioner has given notice to such organization that it would be deleted from classification as an operating foundation.

(2) *Exception.* For purposes of subparagraph (1)(i) of this paragraph, a grantor or contributor will not be considered to be responsible for, or aware of, the act or failure to act that resulted

in the grantee organization's inability to satisfy the requirements of §§ 53.4942(b)-1 and 53.4942(b)-2 if such grantor or contributor has made his grant or contribution in reliance upon a written statement by the grantee organization that such grant or contribution would not result in the inability of such grantee organization to qualify as an operating foundation. Such a statement must be signed by a foundation manager (as defined in section 4946(b)) of the grantee organization and must set forth sufficient facts concerning the operations and support of such grantee organization to assure a reasonably prudent man that his grant or contribution will not result in the grantee organization's inability to qualify as an operating foundation.

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

JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: December 29, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc.72-22463 Filed 12-29-72;5:06 pm]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Consolidated Return Regulations

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by February 5, 1973. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by February 5, 1973. In such case, a public hearing will be held and notice of time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in sections 1502 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 637, 917; 26 U.S.C. 1502, 7805).

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

In order to reflect the amendments made by section 512 of the Tax Reform Act of 1969 and section 106 of the Revenue Act of 1971, and to make other miscellaneous amendments, the Income Tax Regulations (26 CFR Part 1) under section 1502 of the Internal Revenue Code of 1954 are amended as follows:

PARAGRAPH 1. Section 1.1502–3 is amended as follows:

(1) A new sentence is added as flush material at the end of paragraph (c)(2). (2) New subparagraph (3) is added to paragraph (c). (3) New examples (4) and (5) are added to paragraph (d). (4) A new sentence is added as flush material at the end of paragraph (e)(2). (5) New subparagraph (3) is added to paragraph (e). The new and revised provisions are set forth below:

§ 1.1502–3 Consolidated investment credit.

* * * * *

(c) *Limitation on investment credit carryovers and carrybacks from separate return limitation years.* * * *

(2) *Computation of limitation.* * * * In the case of an unused credit arising in a separate return limitation year ending before January 1, 1971, which is an investment credit carryover to a consolidated return year beginning after December 31, 1970, the amount determined under this subparagraph shall be computed without regard to subdivision (ii) (*a*) of this subparagraph.

(3) *Treatment as unused credit arising in separate return limitation year.* If the amount of an investment credit carryover from a separate return limitation year of a member ending before January 1, 1971, which is added to the amount allowable as a credit for a consolidated return year beginning after December 31, 1970, exceeds the amount of such carryover which could be so added were it not for the last sentence of subparagraph (2) of this paragraph, then an amount of credit earned by such member for the taxable year equal to such excess shall not be taken into account for purposes of computing the consolidated credit earned. Instead, such amount shall be treated as an unused credit of such member arising in a separate return limitation year of such member.

(d) *Examples.* * * *

Example (4). (i) Corporation P acquires all the outstanding stock of corporation S on January 1, 1972, and the P–S group files a consolidated return for the calendar year 1972. S has an unused credit of $40 for 1970 which is an investment credit carryover to 1972. P has no unused credits for 1970 and prior years, and neither P nor S has a credit earned or tax liability in 1971. In 1972, P and S each has a credit earned of $50. The limitation based on amount of tax of the group for 1972 is $100 and such limitation recomputed by excluding the items of income, deductions, and foreign tax credit of S is $25.

(ii) Under section 46(b), the amount of S's unused credit from 1970 which may be added to the amount allowable as a credit for 1972 is determined without regard to the credit earned by P and S for 1972. However, since 1970 is a separate return limitation year of S, the amount of the 1970 carryover of S which may be added to the amount allowable as a credit for 1972 is limited to the amount determined under paragraph (c)(2) of this section. The amount determined under such paragraph for 1972 is $75 (the excess of (*a*) the limitation based on amount of tax of the group, $100, minus such limitation recomputed by excluding the items of income, deductions, and foreign tax credit of S, $25, over (*b*) the unused credits attributable to S which may be carried to 1972 arising in years prior to 1970, zero). Thus, all $40 of S's carryover from 1970 may be added to the amount allowable in 1972.

(iii) If the last sentence of paragraph (c)(2) of this section did not apply, the amount determined under such paragraph would be $25 (the excess of the subdivision (i) amount, $75, over the subdivision (ii) amount, $50). Thus, as a result of the application of the last sentence of paragraph (c)(2) of this section, an additional $15 of the 1970 carryover of S is added to the amount allowable for 1972. Consequently, the amount of credit earned by S for 1972 ($50) which may be taken into account in computing the consolidated credit earned is only $35. The $15 not taken into account as part of the consolidated credit earned for 1972 is treated as an unused credit of S arising in a separate return limitation year and therefore in subsequent years will be subject to the limitation of paragraph (c) of this section.

(iv) The credit earned by the group which may be taken into account in computing consolidated credit earned for 1972 is $85 ($50 from P and $35 from S). Of this amount, only $60, the excess of $100 (the limitation based on amount of tax for 1972) over $40 (the unused credit for 1970 which may be added to the amount allowable for 1972) may be added to the amount allowable for 1972. Therefore, the consolidated unused credit for 1972 is $25.

Example (5). The facts are the same as in example (4) except that in addition P has an unused credit of $120 in 1970 which is an investment credit carryover to 1972. Under paragraph (b)(2) of this section, $75 of P's carryover and $25 of S's carryover is absorbed in 1972. Since the amount of S's carryover which is added to the amount allowable for 1972 does not exceed the amount which could be so added without regard to the last sentence of paragraph (c)(2), all of the credit earned by S for 1972 is taken into account in computing the consolidated credit earned for 1972.

* * * * *

(e) *Limitation on investment credit carryovers where there has been a consolidated return change of ownership.* * * *

(2) *Computation of limitation.* * * * In the case of an unused credit arising in a taxable year ending before January 1, 1971, which is an investment credit carryover to a taxable year beginning after December 31, 1970, the amount determined under this subparagraph shall be computed without regard to subdivision (i) of this subparagraph.

(3) *Treatment as unused credit arising prior to year of change.* If the aggregate amount of investment credit carryovers from a taxable year ending before January 1, 1971, which is added to the amount allowable as a credit for any year of change beginning after December 31, 1970, or any subsequent year, exceeds the amount of such carryovers which could be so added were it not for the last sentence of subparagraph (2) of this paragraph, then an aggregate amount of the credit earned by the old members for such taxable year beginning after December 31, 1970, equal to such excess shall not be taken into account for purposes of computing the consolidated credit earned for such taxable

year. Instead, such amount shall be treated as an unused credit of the old members for such year and, solely for the purpose of applying the limitation of subparagraph (2) of this paragraph, as arising in a taxable year prior to the year of change. The amount of credit earned by each of the old members which is not taken into account is a pro rata share of the aggregate amount of the credit earned by old members which is not taken into account.

* * * * *

PAR. 2. Section 1.1502–4(d)(1) is amended by revising subdivisions (ii) and (iv) thereof to read as follows:

§ 1.1502–4 Consolidated foreign tax credit.

* * * * *

(d) *Computation of limitation on credit.* * * *

(1) *Computation of taxable income from foreign sources.* * * *

(ii) Any such foreign source net capital gain (determined without regard to any net capital loss carryover or carryback);

* * * * *

(iv) The portion of any consolidated net capital loss carryover or carryback attributable to such foreign source income which is absorbed in the taxable year.

* * * * *

PAR. 3. Section 1.1502–5 is amended by adding a sentence at the end of paragraph (a)(2) and by revising examples (1), (2), and (3) of paragraph (c). The new and revised provisions read as follows:

§ 1.1502–5 Estimated tax.

(a) *General rule.* * * *

(2) *Estimated tax on a separate basis.* * * * Notwithstanding the first sentence of this subparagraph, in the case of a taxable year ending before [the date of publication of this regulation as a Treasury decision] the group may file its declaration of estimated tax on a consolidated basis for the first and second taxable years for which it files a consolidated return and in such case shall be treated as a single corporation for purposes of sections 6016 and 6154.

* * * * *

(c) *Examples.* * * *

Example (1). Corporations P and S–1 file a consolidated return for the first time for calendar year 1973. P and S–1 also file consolidated returns for 1974 and 1975. For 1973 and 1974 P and S–1 must file separate declarations of estimated tax, and they are entitled to separate $100,000 exemptions. For 1975, however, the group must compute its estimated tax on a consolidated basis, and it is limited to a single $100,000 exemption. In determining whether P and S–1 come within the exception provided in section 6655(d)(1) for 1975, the "tax shown on the return" is the tax shown on the consolidated return for 1974.

Example (2). Assume the same facts as in example (1). Assume further that corporation S–2 was a member of the group during 1974, and joined in the filing of the consolidated return for such year, but ceased to be a member of the group on September 15, 1975. In determining whether the group (which no longer includes S–2) comes within the exception provided in section 6655(d)(1) for 1975, the "tax shown on the return" is the tax shown on the consolidated return for 1974.

Example (3). Assume the same facts as in example (1). Assume further that corporation S–2 becomes a member of the group on June 1, 1975, and joins in the filing of the consolidated return for 1975. In determining whether the group (which now includes S–2) comes within the exception provided in section 6655(d)(1) for 1975, the "tax shown on the return" is the tax shown on the consolidated return for 1974. Any tax of S–2 for any separate return year is not included as a part of the "tax shown on the return" for purposes of applying section 6655(d)(1).

* * * * *

PAR. 4. Section 1.1502–22 is amended as follows: (1) Paragraph (a)(1) (i) and (iii) is revised. (2) Paragraph (b)(1) is revised. (3) The title of paragraph (c) is revised. (4) Paragraph (c)(2)(i) is revised. The revised provisions are set forth below:

§ 1.1502–22 Consolidated net capital gain or loss.

(a) *Computation—(1) Consolidated net capital gain.* * * *

(i) The aggregate of the capital gains and losses (determined without regard to gains or losses to which section 1231 applies or net capital loss carryovers or carrybacks) of the members of the group for the consolidated return year.

* * * * *

(iii) The consolidated net capital loss carryovers or carrybacks to such year (as determined under paragraph (b) of this section).

* * * * *

(b) *Consolidated net capital loss carryovers and carrybacks—(1) In general.* The consolidated net capital loss carryovers and carrybacks to the taxable year shall consist of any consolidated net capital losses of the group, plus any net capital losses of members of the group arising in separate return years of such members, which may be carried over or back to the taxable year under the principles of section 1212(a). However, such consolidated carryovers and carrybacks shall not include any consolidated net capital loss apportioned to a corporation for a separate return year pursuant to paragraph (b) of § 1.1502–79 and shall be subject to the limitations contained in paragraphs (c) and (d) of this section. For purposes of section 1212(a)(1), the portion of any consolidated net capital loss for any taxable year attributable to a foreign expropriation capital loss is the amount of the foreign expropriation capital losses of all the members for such year (but not in excess of the consolidated net capital loss for such year).

* * * * *

(c) *Limitation on net capital loss carryovers and carrybacks from separate return limitation years.* * * *

(2) *Computation of limitation.* * * *

(i) The consolidated net capital gain for the taxable year (computed without regard to any net capital loss carryovers or carrybacks), minus such consolidated net capital gain for the taxable year recomputed by excluding the capital gains and losses and the gains and losses to which section 1231 applies of such member, over

* * * * *

PAR. 5. Section 1.1502–24(c) is amended to read as follows:

§ 1.1502–24 Consolidated charitable contributions deduction.

* * * * *

(c) *Adjusted consolidated taxable income.* For purposes of this section, the adjusted consolidated taxable income of the group for any consolidated return year shall be the consolidated taxable income computed without regard to this section, section 242, section 243(a)(2) and (3), §§ 1.1502–25, 1.1502–26, and 1.1502–27, and without regard to any consolidated net operating or net capital loss carrybacks to such year.

PAR. 6. Section 1.1502–25(c)(2) is amended by revising subdivisions (ii) and (iv) thereof to read as follows:

§ 1.1502–25 Consolidated section 922 deduction.

* * * * *

(c) *Portion of consolidated taxable income attributable to Western Hemisphere trade corporations.* * * *

(2) *Taxable income.* * * *

(ii) Such member's net capital gain (determined without regard to any net capital loss carryover or carryback attributable to such member);

* * * * *

(iv) The portion of any consolidated net capital loss carryover or carryback attributable to such member which is absorbed in the taxable year.

* * * * *

PAR. 7. Section 1.1502–27(b) is amended by revising subparagraphs (2) and (4) to read as follows:

§ 1.1502–27 Consolidated section 247 deduction.

* * * * *

(b) *Computation of taxable income.* * * *

(2) Such member's net capital gain (determined without regard to any net capital loss carryover or carryback attributable to such member);

* * * * *

(4) The portion of any consolidated net capital loss carryover or carryback attributable to such member which is absorbed in the taxable year.

PAR. 8. Section 1.1502–32 is amended as follows: (1) Paragraph (b)(2)(iii)(b) is revised. (2) New subdivision (c) is added to paragraph (b)(2)(iii). (3) Paragraph (c)(2)(ii) is revised. (4) New subdivision (iii) is added to paragraph (c)(2). The new and revised provisions read as follows:

§ 1.1502–32 **Investment adjustment.**

* * * * *

(b) *Stock which is not limited and preferred as to dividends.* * * *

(2) *Negative adjustment.* * * *

(iii) * * *

(b) Accumulated in preaffiliation years of the subsidiary, if the distribution occurs on or before [the date of publication of this regulation as a Treasury decision]; or

(c) Accumulated in separate return limitation years of the subsidiary, if the distribution occurs after [the date of publication of this regulation as a Treasury decision]; and

* * * * *

(c) *Limited and preferred stock.* * * *

(2) *Negative adjustment.* * * *

(ii) Accumulated in preaffiliation years of the subsidiary, if the distribution occurs on or before [the date of publication of this regulation as a Treasury decision]; or

(iii) Accumulated in separate return limitation years of the subsidiary, if the distribution occurs after [the date of publication of this regulation as a Treasury decision].

* * * * *

PAR. 9. Section 1.1502–41(b) is amended to read as follows:

§ 1.1502–41 **Determination of consolidated net long term capital gain and consolidated net short term capital loss.**

* * * * *

(b) *Consolidated net short term capital loss.* The consolidated net short term capital loss shall be determined by taking into account (1) those gains and losses to which paragraph (a)(1) of § 1.1502–22 applies which are treated as short term under section 1222, and (2) the consolidated net capital loss carryovers and carrybacks to the taxable year (as determined under paragraph (b) of § 1.1502–22).

PAR. 10. Section 1.1502–42 is amended to read as follows:

§ 1.1502–42 **Mutual savings banks, domestic building and loan associations, and cooperative banks.**

(a) *In general.* The provisions of this section shall apply to mutual savings banks, domestic building and loan associations, and cooperative banks.

(b) *Total deposits.* In computing for purposes of section 593(b)(1)(B)(ii) total deposits or withdrawable accounts at the close of the taxable year, the total deposits or withdrawable accounts of other members shall be excluded.

(c) *Taxable income.* (1) In the case of a taxable year the due date for the return of which is on or before (the date of publication of this regulation as a Treasury decision), a member's taxable income for purposes of section 593(b)(2) shall be the amount computed under § 1.1502–27(b) (computed without regard to the amount of any addition to the reserve for bad debts of any member determined under section 593(b)(2)). In the case of a taxable year beginning before July 12, 1969, such amount shall be computed without regard to any net operating loss carryback.

(2) In the case of a taxable year the due date for the return of which is after [the date of publication of this regulation as a Treasury decision], a member's taxable income for purposes of section 593(b)(2) shall be the portion of consolidated taxable income attributable to such member. For purposes of this subparagraph, the portion of the consolidated taxable income attributable to a member is an amount equal to the consolidated taxable income (computed without regard to the amount of any additions to reserves for bad debts under section 593(b)(2)) multiplied by a fraction, the numerator of which is the taxable income of the member and the denominator of which is the sum of the taxable incomes of all members of the group. For purposes of the preceding sentence, the taxable income of a member shall be the separate taxable income determined under § 1.1502–12, adjusted for the following items taken into account in the computation of consolidated taxable income:

(i) The portion of the consolidated net operating loss deductions, the consolidated charitable contributions deduction, and the consolidated dividends received deduction, attributable to such member;

(ii) Such member's net capital gain (determined without regard to any net capital loss carryover or carryback attributable to such member);

(iii) Such member's net capital loss and section 1231 net loss, reduced by the portion of the consolidated net capital loss attributable to such member; and

(iv) The portion of any consolidated net capital loss carryover or carryback attributable to such member which is absorbed in the taxable year.

If the computation of the taxable income of a member under this subparagraph results in an excess of deductions over gross income, then for purposes of this subparagraph such member's taxable income shall be zero.

PAR. 11. Section 1.1502–79 is amended by revising paragraph (b)(1) and (2)(i) to read as follows:

§ 1.1502–79 **Separate return years.**

* * * * *

(b) *Carryover and carryback of consolidated net capital loss to separate return years*—(1) *In general.* If a consolidated net capital loss can be carried under the principles of section 1212(a) and paragraph (b) of § 1.1502–22 to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such consolidated net capital loss arose, then the portion of such consolidated net capital loss attributable to such corporation (as determined under subparagraph (2) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of paragraph (a) (1), (2), and (3) of this section and shall be a net capital loss carryback or carryover to such separate return year.

(2) *Portion of consolidated net capital loss attributable to a member.* * * *

(i) Such member's net capital gain or loss (determined without regard to any net capital loss carryover or carryback); and

* * * * *

[FR Doc.72-22453 Filed 12-29-72;2:06 p.m.]

Internal Revenue Service

[26 CFR Parts 1, 20, 25, 301]

INCOME, ESTATE, AND GIFT TAXES

Priority of Lien; Release of Lien or Discharge of Property

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by February 20, 1973. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by February 20, 1973. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

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

In order to conform the Income Tax Regulations, the Estate Tax Regulations, the Gift Tax Regulations and the Regulations on Procedure and Administration (26 CFR Parts 1, 20, 25, and 301) under sections 545, 6323, and 6325 of the Internal Revenue Code of 1954 to section 236 of the Revenue Act of 1964 (78 Stat. 127), section 17(a) of Public Law 89–493 (80 Stat. 263), and sections 101 and 103 of the Federal Tax Lien Act of 1966 (80 Stat. 1125 and 1133), such regulations are amended as set forth hereinafter. Section 301.6323(g)–1 of the regulations hereby adopted supersedes those provisions of §§ 400.1 and 400.1–1 of this chapter relating to section 101(a) of the Federal Tax Lien Act of 1966 which were prescribed by T.D. 6932, approved Octo-

ber 13, 1967 (32 F.R. 14385). Section 301.6325-1 hereby adopted supersedes those provisions of §§ 400.2 and 400.2-1 of this chapter relating to section 103(a) of such Act which were prescribed by T.D. 6944, approved January 17, 1968 (33 F.R. 732).

A. Part 1, Income Tax Regulations, of 26 CFR Chapter I, is amended as follows:

PARAGRAPH 1. Paragraph (i)(1) of § 1.545-2 is amended to read as follows:

§ 1.545-2 Adjustments to taxable income.

* * * * *

(i) *Amount if a lien in favor of the United States.* (1) If notices of lien are filed in the manner provided in section 6323(f), the amount of the liability to the United States outstanding at the close of the taxable year, and secured by such liens which are in effect at that time, shall be allowed as a deduction in computing undistributed personal holding company income. However, the amount of such deduction which may be allowed for any taxable year shall not exceed the taxable income (as adjusted for purposes of determining the undistributed personal holding company income, but without regard to the deduction under section 545(b)(9)) for such year. The fact that the amount of, or any part of, the outstanding obligation to the United States was deducted for 1 taxable year does not prevent its deduction for a subsequent taxable year to the extent the obligation is still outstanding at the close of the subsequent taxable year and is secured by a lien, notice of which has been filed.

* * * * *

B. Part 20, Estate Tax Regulations, of 26 CFR Chapter I, is amended as follows:

PAR. 2. Section 20.6323 is amended by revising sections (a) through (e), by adding subsections (f) through (i), and by revising the historical note. These revised and added provisions read as follows:

§ 20.6323 Statutory provisions; validity and priority against certain persons.

SEC. 6323. *Validity and priority against certain persons*—(a) *Purchases, holders of security interests, mechanics's lienors, and judgment lien creditors.* The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

(b) *Protection for certain interests even though notice filed.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) *Securities.* With respect to a security (as defined in subsection (h)(4))—

(A) As against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) As against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) *Motor vehicles.* With respect to a motor vehicle (as defined in subsection (h)(3), as against a purchaser of such motor vehicle, if—

(A) At the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) Before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) *Personal property purchased at retail.* With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) *Personal property purchased in casual sale.* With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) *Personal property subject to possessory lien.* With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) *Real property tax and special assessment liens.* With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) A tax of general application levied by any taxing authority based upon the value of such property;

(B) A special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) Charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) *Residential property subject to a mechanic's lien for certain repairs and improvements.* With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

(8) *Attorneys' liens.* With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) *Certain insurance contracts.* With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) Before such organization had actual notice or knowledge of the existence of such lien;

(B) After such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) After satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) *Passbook loans.* With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

(c) *Protection for certain commercial transactions financing agreements, etc.*—(1) *In general.* To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) Is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) A commercial transactions financing agreement,

(ii) A real property construction or improvement financing agreement, or

(iii) An obligatory disbursement agreement, and

(B) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) *Commercial transactions financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) To make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) To purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) *Commercial financing security defined.* The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) *Purchaser treated as acquiring security interest.* A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) *Real property construction or improvement financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "real property construction or improvement financing

agreement" means an agreement to make cash disbursements to finance—

(i) The construction or improvement of real property,

(ii) A contract to construct or improve real property, or

(iii) The raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only—

(i) In the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) In the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) In the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) *Obligatory disbursement agreement.* For purposes of this subsection—

(A) *Definition.* The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) *Special rules for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract between the taxpayer and another person—

(i) The term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was insured, and

(ii) If the contract the performance of which was insured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such insured contract.

(d) *45-day period for making disbursements.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) Is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) *Priority of interest and expenses.* If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) Any interest or carrying charges upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured, and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) *Place for filing notice; form*—(1) *Place for filing.* The notice referred to in subsection (a) shall be filed—

(A) *Under State laws*—(i) *Real property.* In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) *With clerk of district court.* In the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) *With recorder of deeds of the District of Columbia.* In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) *Situs of property subject to lien.* For purposes of paragraph (1), property shall be deemed to be situated—

(A) *Real property.* In the case of real property, at its physical location; or

(B) *Personal property.* In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) *Form.* The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

(g) *Refiling of notice.* For purposes of this section—

(1) *General rule.* Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) *Place for filing.* A notice of lien refiled during the required refiling period shall be effective only—

(A) If such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) In any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) *Required refiling period.* In the case of any notice of lien, the term "required refiling period" means—

(A) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) *Transitional rule.* Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) *Definitions.* For purposes of this section and section 6324—

(1) *Security interest.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) *Mechanic's lienor.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) *Motor vehicle.* The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) *Security.* The term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) *Tax lien filing.* The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) *Purchaser.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) A lease of property,

(B) A written executory contract to purchase or lease property,

(C) An option to purchase or lease property or any interest therein, or

(D) An option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) *Special rules*—(1) *Actual notice or knowledge.* For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) *Subrogation.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

[Sec. 6323 as amended by sec. 236 (a) and (c)(1), Rev. Act 1964 (78 Stat. 127); sec. 17(a), Act of July 5, 1966 (Public Law 89-493, 80 Stat. 263); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125).]

PAR. 3. Section 20.6323-1 is amended to read as follows:

§ 20.6323-1 Validity and priority against certain persons.

For regulations concerning the validity of the lien imposed by section 6321 against certain persons, see §§ 301.6323 (a)-1 through 301.6323 (i)-1 of this chapter (Regulations on Procedure and Administration).

PAR. 4. Section 20.6325 is amended by revising subsections (a) through (e), by adding subsections (f) through (h), and by revising the historical note. These revised and added provisions read as follows:

§ 20.6325 Statutory provisions; release of lien or discharge of property.

Sec. 6325. *Release of lien or discharge of property*—(a) *Release of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) *Bond accepted.* There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

(b) *Discharge of property*—(1) *Property double the amount of the liability.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

(2) *Part payment; interest of United States valueless.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) There is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

(B) The Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

(3) *Substitution of proceeds of sale.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

(c) *Estate or gift tax.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

(d) *Subordination of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) There is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

(2) The Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

(e) *Nonattachment of lien.* If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

(f) *Effect of certificate*—(1) *Conclusiveness.* Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

(A) In the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

(B) In the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

(C) In the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

(D) In the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

(2) *Revocation of certificate of release or nonattachment.* If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

(A) By mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

(B) By filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

(3) *Certificates void under certain conditions.* Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

(g) *Filing of certificates and notices.* If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

(h) *Cross reference.* For provisions relating to bonds, see chapter 73 (sec. 7101 and following).

[Sec. 6325 as amended by sec. 77, Technical Amendments Act 1958 (72 Stat. 1662); sec. 103, Federal Tax Lien Act 1966 (80 Stat. 1133)]

C. Part 25, Gift Tax Regulations, of 26 CFR Chapter I is amended as follows:

PAR. 5. Section 25.6323 is amended by revising subsections (a) through (e), by adding subsections (f) through (i), and by revising the historical note. These revised and amended provisions read as follows:

§ 25.6323 Statutory provisions; validity and priority against certain persons.

SEC. 6323. *Validity and priority against certain persons*—(a) *Purchases, holders of security interests, mechanic's lienors, and judgment lien creditors.* The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

(b) *Protection for certain interests even though notice filed.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) *Securities.* With respect to a security (as defined in subsection (h)(4))—

(A) As against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) As against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) *Motor vehicles.* With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

(A) At the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) Before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) *Personal property purchased at retail.* With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) *Personal property purchased in casual sale.* With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) *Personal property subject to possessory lien.* With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) *Real property tax and special assessment liens.* With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) A tax of general application levied by any taxing authority based upon the value of such property;

(B) A special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) Charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) *Residential property subject to a mechanic's lien for certain repairs and improvements.* With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

(8) *Attorneys' liens.* With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) *Certain insurance contracts.* With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) Before such organization had actual notice or knowledge of the existence of such lien;

(B) After such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) After satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) *Passbook loans.* With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

(c) *Protection for certain commercial transactions financing agreements, etc.*—(1) *In general.* To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) Is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) A commercial transactions financing agreement,

(ii) A real property construction or improvement financing agreement, or

(iii) An obligatory disbursement agreement, and

(B) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) *Commercial transactions financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) To make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) To purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) *Limitation on qualified property.* The term "qualified property," when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) *Commercial financing security defined.* The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) *Purchaser treated as acquiring security interest.* A person who satisfies subparagraph (A) by reason or clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) *Real property construction or improvement financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) The construction or improvement of real property,

(ii) A contract to construct or improve real property, or

(iii) The raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) *Limitation on qualified property.* The term "qualified property," when used with respect to a real property construction or improvement financing agreement, includes only—

(i) In the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) In the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) In the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) *Obligatory disbursement agreement.* For purposes of this subsection—

(A) *Definition.* The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made

by reason of the intervention of the rights of a person other than the taxpayer.

(B) *Limitation on qualified property.* The term "qualified property," when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) *Special rules for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract between the taxpayer and another person—

(i) The term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was insured, and

(ii) If the contract the performance of which was insured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such insured contract.

(d) *Forty-five-day period for making disbursements.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) Is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) *Priority of interest and expenses.* If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) Any interest or carrying charges upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligations secured, and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) *Place for filing notice; form*—(1) *Place for filing.* The notice referred to in subsection (a) shall be filed—

(A) *Under State laws*—(i) *Real property.* In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) *With clerk of district court.* In the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) *With recorder of deeds of the District Columbia.* In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) *Situs of property subject to lien.* For purposes of paragraph (1), property shall be deemed to be situated—

(A) *Real property.* In the case of real property, at its physical location; or

(B) *Personal property.* In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) *Form.* The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

(g) *Refiling of notice.* For purposes of this section—

(1) *General rule.* Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) *Place for filing.* A notice of lien refiled during the required refiling period shall be effective only—

(A) If such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) In any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) *Required refiling period.* In the case of any notice of lien, the term "required refiling period" means—

(A) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) *Transitional rule.* Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) *Definitions.* For purposes of this section and section 6324—

(1) *Security interest.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) *Mechanic's lienor.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) *Motor vehicle.* The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) *Security.* The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) *Tax lien filing.* The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) *Purchaser.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) A lease of property,

(B) A written executory contract to purchase or lease property,

(C) An option to purchase or lease property or any interest therein, or

(D) An option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) *Special rules*—(1) *Actual notice or knowledge.* For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) *Subrogation.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regula-

tions the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

[Sec. 6323 as amended by sec. 236 (a) and (c)(1), Rev. Act 1964 (78 Stat. 127); sec. 17(a), Act of July 5, 1966 (Public Law 89-493, 80 Stat. 263); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

PAR. 6. Section 25.6323-1 is amended to read as follows:

§ 25.6323-1 Validity and priority against certain persons.

For regulations concerning the validity of the lien imposed by section 6321 against certain persons, see §§ 301.6323(a)-1 through 301.6323(i)-1 of this chapter (Regulations on Procedure and Administration).

D. Part 301, Regulations on Procedure and Administration, of 26 CFR Chapter I is amended as follows:

PAR 7. Sections 301.6323 and 301.6323-1 are deleted, and immediately following § 301.6322, there are added the following new sections:

§ 301.6323(a) Statutory provisions; validity and priority against certain persons; purchasers, holders of security interests, mechanic's lienors, judgment lien creditors.

SEC. 6323. *Validity and priority against certain persons*—(a) *Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.* The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

[Sec. 6323(a) as amended by sec. 236(c)(1), Rev. Act 1964 (78 Stat. 127); sec. 17(a), Act of July 5, 1966 (Public Law 89-493, 80 Stat. 263); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(a)-1 Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.

(a) *Invalidity of lien without notice.* The lien imposed by section 6321 is not valid against any purchaser (as defined in paragraph (f) of § 301.6323(h)-1), holder of a security interest (as defined in paragraph (a) of § 301.6323(h)-1), mechanic's lienor (as defined in paragraph (b) of § 301.6323(h)-1), or judgment lien creditor (as defined in paragraph (g) of § 301.6323(h)-1) until a notice of lien is filed in accordance with § 301.6323(f)-1. Except as provided by section 6323, if a person becomes a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor after a notice of lien is filed in accordance with § 301.6323(f)-1, the interest acquired by such person is subject to the lien imposed by section 6321.

(b) *Cross references.* For provisions relating to the protection afforded a security interest arising after tax lien filing, which interest is covered by a commercial transactions financing agreement, real property construction or improvement financing agreement, or an obligatory disbursement agreement, see §§ 301.6323(c)-1, 301.6323(c)-2, and 301.6323(c)-3, respectively. For provisions relating to the protection afforded to a security interest coming into existence by virtue of disbursements made before the 46th day after the date of tax lien filing, see § 301.6323(d)-1. For provisions relating to priority afforded to interest and certain other expenses with respect to a lien or security interest having priority over the lien imposed by section 6321, see § 301.6323(e)-1. For provisions relating to certain other security interests arising after tax lien filing, see § 301.6323(b)-1.

§ 301.6323(b) Statutory provisions; validity and priority against certain persons; protection for certain interests even though notice filed.

SEC. 6323. *Validity and priority against certain persons.* * * *

(b) *Protection for certain interests even though notice filed.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) *Securities.* With respect to a security (as defined in subsection (h)(4))—

(A) As against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) As against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) *Motor vehicles.* With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

(A) At the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) Before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) *Personal property purchased at retail.* With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) *Personal property purchased in casual sale.* With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) *Personal property subject to possessory lien.* With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) *Real property tax and special assessment liens.* With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) A tax of general application levied by any taxing authority based upon the value of such property;

(B) A special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) Charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) *Residential property subject to a mechanic's lien for certain repairs and improvements.* With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

(8) *Attorneys' liens.* With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) *Certain insurance contracts.* With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) Before such organization had actual notice or knowledge of the existence of such lien;

(B) After such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) After satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) *Passbook loans.* With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

[Sec. 6323(b) as amended by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(b)-1 Protection for certain interests even though notice filed.

(a) *Securities*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a security (as defined in paragraph (d) of § 301.6323(h)-1) against—

(i) A purchaser (as defined in paragraph (f) of § 301.6323(h)-1) of the security who at the time of purchase did not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1) of the existence of the lien;

(ii) A holder of a security interest (as defined in paragraph (a) of § 301.6323(h)-1) in the security who did not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1) of

the existence of the lien at the time the security interest came into existence or at the time such security interest was acquired from a previous holder for a consideration in money or money's worth; or

(iii) A transferee of an interest protected under subdivision (i) or (ii) of this subparagraph to the same extent the lien is invalid against his transferor.

For purposes of subdivision (iii) of this subparagraph, no person can improve his position with respect to the lien by reacquiring the interest from an intervening purchaser or holder of a security interest against whom the lien is invalid.

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

Example (1). On May 1, 1969, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to A's delinquent tax liability. On May 20, 1969, A sells 100 shares of common stock in X corporation to B, who, on the date of the sale, does not have actual notice or knowledge of the existence of the lien. Because B purchased the stock without actual notice or knowledge of the lien, under subdivision (i) of subparagraph (1) of this paragraph, the stock purchased by B is not subject to the lien.

Example (2). Assume the same facts as in example (1) except that on May 30, 1969, B sells the 100 shares of common stock in X corporation to C who on May 5, 1969, had actual notice of the existence of the tax lien against A. Because the X stock when purchased by B was not subject to the lien, under subdivision (iii) of subparagraph (1) of this paragraph, the stock purchased by C is not subject to the lien. C succeeds to B's rights, even though C had actual notice of the lien before B's purchase.

Example (3). On June 1, 1970, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to D's delinquent tax liability. D owns 20 $1,000 bonds issued by the Y company. On June 10, 1970, D obtains a loan from M bank for $5,000 using the Y company bonds as collateral. At the time the loan is made M bank does not have actual notice or knowledge of the existence of the tax lien. Because M bank did not have actual notice or knowledge of the lien when the security interest came into existence, under subdivision (ii) of subparagraph (1) of this paragraph, the tax lien is not valid against M bank to the extent of its security interest.

Example (4). Assume the same facts as in example (3) except that on June 19, 1970, M bank assigns the chose in action and its security interest to N, who had actual notice or knowledge of the existence of the lien on June 1, 1970. Because the security interest was not subject to the lien to the extent of M bank's security interest, the security interest held by N is to the same extent entitled to priority over the tax lien because N succeeds to M bank's rights. See subdivision (iii) of subparagraph (1) of this paragraph.

Example (5). On July 1, 1970, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to E's delinquent tax liability. E owns 100 $1,000 bonds issued by the Y company. On July 5, 1970, E borrows $4,000 from F and delivers the bonds to F as collateral for the loan. At the time the loan is made, F has actual knowledge of the existence of the tax lien and, therefore, holds the security interest subject to the lien on the bonds. On July 10, 1970, F sells the security interest to G for $4,000 and delivers the Y company bonds pledged as collateral. G does not have actual notice or knowledge of the existence of the lien on July 10, 1970. Because G did not have actual notice or knowledge of the lien at the time he purchased the security interest, under subdivision (ii) of subparagraph (1) of this paragraph, the tax lien is not valid against G to the extent of his security interest.

Example (6). Assume the same facts as in example (5) except that, instead of purchasing the security interest from F on July 10, 1970, G lends $4,000 to F and takes a security interest in F's security interest in the bonds on that date. Because G became the holder of a security interest in a security interest after notice of lien was filed and does not directly have a security interest in a security, the security interest held by G is not entitled to a priority over the tax lien under the provisions of subparagraph (1) of this paragraph.

(b) *Motor vehicles*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a purchaser (as defined in paragraph (f) of § 301.6323(h)–1) of a motor vehicle (as defined in paragraph (c) of § 301.6323(h)–1) if—

(i) At the time of the purchase, the purchaser did not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)–1) of the existence of the lien, and

(ii) Before the purchaser obtains such notice or knowledge, he has acquired actual possession of the motor vehicle and has not thereafter relinquished actual possession to the seller or his agent.

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

Example (1). A, a delinquent taxpayer against whom a notice of tax lien has been filed in accordance with § 301.6323(f)–1, sells his automobile (which qualifies as a motor vehicle under paragraph (c) of § 301.6323(h)–1) to B, an automobile dealer. B takes actual possession of the automobile and does not thereafter relinquish actual possession to the seller or his agent. Subsequent to his purchase, B learns of the existence of the tax lien against A. Even though notice of lien was filed before the purchase, the lien is not valid against B, because B did not know of the existence of the lien before the purchase and before acquiring actual possession of the vehicle.

Example (2). C is a wholesaler of used automobiles. A notice of lien has been filed with respect to C's delinquent tax liability in accordance with § 301.6323(f)–1. Subsequent to such filing, D, a used automobile dealer, purchases and takes actual possession of 20 automobiles (which qualify as motor vehicles under the provisions of paragraph (c) of § 301.6323(h)–1) from C at an auction and places them on his lot for sale. C does not reacquire possession of any of the automobiles. At the time of his purchase, D does not have actual notice or knowledge of the existence of the lien against C. Even though notice of lien was filed before D's purchase, the lien was not valid against D because D did not know of the existence of the lien before the purchase and before acquiring actual possession of the vehicles.

(3) *Cross reference.* For provisions relating to additional circumstances in which the lien imposed by section 6321 may not be valid against the purchaser of tangible personal property (including a motor vehicle) purchased at retail, see paragraph (c) of this section.

(c) *Personal property purchased at retail*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a purchaser (as defined in paragraph (f) of § 301.6323(h)–1 of tangible personal property purchased at a retail sale (as defined in subparagraph (2) of this paragraph) unless at the time of purchase the purchaser intends the purchase to (or knows that the purchase will) hinder, evade, or defeat the collection of any tax imposed by the Internal Revenue Code of 1954.

(2) *Definition of retail sale.* For purposes of this paragraph, the term "retail sale" means a sale, made in the ordinary course of the seller's trade or business, of tangible personal property of which the seller is the owner. Such term includes a sale in customary retail quantities by a seller who is going out of business, but does not include a bulk sale or an auction sale in which goods are offered in quantities substantially greater than are customary in the ordinary course of the seller's trade or business or an auction sale of goods the owner of which is not in the business of selling such goods.

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

Example. A purchases a refrigerator from the M company, a retail appliance dealer. Prior to such purchase, a notice of lien was filed with respect to M's delinquent tax liability in accordance with § 301.6323(f)–1. At the time of the purchase A knows of the existence of the lien. However, A does not intend the purchase to hinder, evade, or defeat the collection of any Internal Revenue tax, and A does not have any reason to believe that the purchase will affect the collection of any Internal Revenue tax. Even though notice of lien was filed before the purchase, the lien is not valid against A because A in good faith purchased the refrigerator at retail in the ordinary course of the M company's business.

(d) *Personal property purchased in casual sale*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a purchaser (as defined in § 301.6323(h)–1(f)) of household goods, personal effects, or other tangible personal property of a type described in § 301.6334–1 (which includes wearing apparel; school books; fuel, provisions, furniture, arms for personal use; livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than $250 (excluding interest and expenses described in § 301.6323(e)–1). For purposes of this paragraph, a casual sale is a sale not made in the ordinary course of the seller's trade or business.

(2) *Limitation.* This paragraph applies only if the purchaser does not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)–1)—

(i) Of the existence of the tax lien, or

(ii) That the sale is one of a series of sales.

For purposes of subdivision (ii) of this subparagraph, a sale is one of a series of sales if the seller plans to dispose of, in separate transactions, substantially all of his household goods, personal effects, and other tangible personal property described in § 301.6334–1.

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

Example (1). A, an attorney's widow, sells a set of law books for $200 to B, for B's own use. Prior to the sale a notice of lien was filed with respect to A's delinquent tax liability in accordance with § 301.6323(f)–1. B has no actual notice or knowledge of the tax lien. In addition, B does not know that the sale is one of a series of sales. Because the sale is a casual sale for less than $250 and involves books of a profession (tangible personal property of a type described in § 301.6334–1, irrespective of the fact that A has never engaged in the legal profession), the tax lien is not valid against B even though a notice of lien was filed prior to the time of B's purchase.

Example (2). Assume the same facts as in example (1) except that B purchases the books for resale in his second-hand bookstore. Because B purchased the books for resale, he purchased the books subject to the lien.

Example (3). In an advertisement appearing in a local newspaper, E indicates that substantially all of his household property is for sale. In response to the advertisement, F purchases E's dining room furniture for $200. Prior to the sale a notice of lien was filed with respect to E's delinquent tax liability in accordance with § 301.6323(f)–1. Because such an advertisement contemplates a series of sales to dispose of substantially all of E's household articles, F has notice that the sale is one of a series of sales and, therefore, purchases the dining room furniture subject to the lien.

Example (4). In an advertisement appearing in a local newspaper, G indicates that he is offering for sale a lawn mower, a used television set, a desk, a refrigerator, and certain used dining room furniture. In response to the advertisement, H purchases the dining room furniture for $200. H does not receive any information which would impart notice of a lien, or that the sale is one of a series of sales, beyond the information contained in the advertisement. Prior to the sale a notice of lien was filed with respect to G's delinquent tax liability in accordance with § 301.6323(f)–1. Because H had no actual notice or knowledge that substantially all of G's household goods was being sold, or that the sale is one of a series of sales and because the sale is a casual sale for less than $250, H does not purchase the dining room furniture subject to the lien. The household goods are of a type described in § 301.6334–1 (a)(2) irrespective of whether G is the head of a family or whether all such household goods offered for sale exceed $500 in value.

(e) *Personal property subject to possessory liens.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a holder of a lien on tangible personal property which under local law secures the reasonable price of the repair or improvement of the property if the property is, and has been, continuously in the possession of the holder of the lien from the time the possessory lien arose. For example, if local law gives an automobile repairman the right to retain possession of an automobile he has repaired as security for payment of the repair bill and the repairman retains continuous possession of the automobile until his lien is satisfied, a tax lien filed in accordance with § 301.6323(f)(1) which has attached to the automobile will not be valid to the extent of the reasonable price of the repairs. It is immaterial that the notice of tax lien was filed before the repairman undertook his work or that he knew of the lien before undertaking the work.

(f) *Real property tax and special assessment liens*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against the holder of another lien upon the real property (regardless of when such other lien arises), if such other lien is entitled under local law to priority over security interests in real property which are prior in time and if such other lien on real property secures payment of—

(i) A tax of general application levied by any taxing authority based upon the value of the property;

(ii) A special assessment imposed directly upon the property by any taxing authority, if the assessment is imposed for the purpose of defraying the cost of any public improvement; or

(iii) Charges for utilities or public services furnished to the property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

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

Example (1). A owns Blackacre in the city of M. A notice of lien affecting Blackacre is filed in accordance with § 301.6323(f)–1. Subsequent to the filing of the notice of lien, the city of M acquires a lien against Blackacre to secure payment of real estate taxes. Such taxes are levied against all property in the city in proportion to the value of the property. Under local law, the holder of a lien for real property taxes is entitled to priority over a security interest in real property even though the security interest is prior in time. Because the real property tax lien held by the city of M secures payment of a tax of general application and is entitled to priority over security interests which are prior in time, the lien held by the city of M is entitled to priority over the Federal tax lien with respect to Blackacre.

Example (2). B owns Whiteacre in N county. A notice of lien affecting Whiteacre is filed in accordance with § 301.6323(f)–1. Subsequent to the filing of the notice of lien, N county constructs a sidewalk, paves the street, and installs water and sewer lines adjacent to Whiteacre. In order to defray the cost of these improvements, N county imposes upon Whiteacre a special assessment which under local law results in a lien upon Whiteacre that is entitled to priority over security interests that are prior in time. Because the special assessment lien is (i) entitled under local law to priority over security interests which are prior in time, and (ii) imposed directly upon real property to defray the cost of a public improvement, the special assessment lien has priority over the Federal tax lien with respect to Whiteacre.

Example (3). C owns Greenacre in town O. A notice of lien affecting Greenacre is filed in accordance with § 301.6323(f)–1. Town O furnishes water and electricity to Greenacre and periodically collects a fee for these services. Subsequent to the filing of the notice of lien, town O supplies water and electricity to Greenacre, and C fails to pay the charges for these services. Under local law, town O acquires a lien to secure charges for the services, and this lien has priority over security interests which are prior in time. Because the lien of town O (i) is for services furnished to the real property and (ii) has priority over earlier security interests, town O's lien has priority over the Federal tax lien with respect to Greenacre.

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a mechanic's lienor (as defined in § 301.6323(h)–1(b)) who holds a lien for the repair or improvement of a personal residence if—

(i) The residence is occupied by the owner and contains no more than four dwelling units, and

(ii) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in § 301.6323(e)–1) is not more than $1,000.

For purposes of subdivision (ii) of this subparagraph, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the $1,000 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes his work or that he knew of the lien before undertaking the work.

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

Example (1). A owns a building containing four apartments, one of which he occupies as his personal residence. A notice of lien which affects the building is filed in accordance with § 301.6323(f)–1. Thereafter A enters into a contract with B in the amount of $800, which includes labor and materials, to repair the roof of the building. B purchases roofing shingles from C for $300. B completes the work and A fails to pay B for the agreed amount. In turn, B fails to pay C for the shingles. Under local law, B and C acquire mechanic's liens on A's building. Because the contract price on the prime contract with A is not more than $1,000 and under local law B and C acquire mechanic's liens on A's building, the liens of B and C have priority over the Federal tax lien.

Example (2). Assume the same facts as in example (1), except that the amount of the prime contract between A and B is $1,100. Because the amount of the prime contract with the owner, A, is in excess of $1,000, the tax lien has priority over the entire amount of each of the mechanic's liens of B and C, even though the amount of the contract between B and C is $300.

Example (3). Assume the same facts as in example (1), except that A and B do not agree in advance upon the amount due under the prime contract but agree that B will perform the work for the cost of materials and labor plus 10 percent of such cost. When the work is completed, it is determined that the total amount due is $850. Because the prime contract price is not more than $1,000 and under local law B and C acquire mechanic's liens on A's residence, the liens of B and C have priority over the Federal tax lien.

(h) *Attorneys' liens*—(1) *In general.* Even though notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against an attorney who, under local law, holds a lien upon, or a contract enforceable against, a judgment or other amount in settlement of a claim or of a cause of action. The priority afforded an attorney's lien under this paragraph shall not exceed the amount of the attorney's reasonable compensation for obtaining the judgment or procuring the settlement. For purposes of this paragraph, reasonable compensation means the amount customarily allowed under local law for an attorney's services for litigating or settling a similar case or administrative claim. However, reasonable compensation shall be determined on the basis of the facts and circumstances of each individual case. It is immaterial that the notice of tax lien is filed before the attorney undertakes his work or that the attorney knows of the tax lien before undertaking his work. This paragraph does not apply to an attorney's lien which may arise from the defense of a claim or cause of action against a taxpayer except to the extent such lien is held upon a judgment or other amount arising from the adjudication or settlement of a counterclaim in favor of the taxpayer. In the case of suits against the taxpayer, see § 301.6325–1(d)(2) for rules relating to the subordination of the tax lien to facilitate tax collection.

(2) *Claim or cause of action against the United States.* Paragraph (h)(1) of this section does not apply to an attorney's lien with respect to—

(i) Any judgment or other fund resulting from the successful litigation or settlement of an administrative claim or cause of action against the United States to the extent that the United States, under any legal or equitable right, offsets its liability under the judgment or settlement against any liability of the taxpayer to the United States, or

(ii) Any amount credited against any liability of the taxpayer in accordance with section 6402.

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

Example (1). A notice of lien is filed against A in accordance with § 301.6323(f)–1. Subsequently, A is struck by an automobile and retains B, an attorney to institute suit on A's behalf against the operator of the automobile. B knows of the tax lien before he begins his work. Under local law, B is entitled to a lien upon any recovery in order to secure payment of his fee. A is awarded damages of $10,000. B charges a fee of $3,000 which is the fee customarily allowed under local law in similar cases and which is found to be reasonable under the circumstances of this particular case. Because, under local law, B holds a lien for the amount of his reasonable compensation for obtaining the judgment, B's lien has priority over the Federal tax lien.

Example (2). Assume the same facts as in example (1), except that before suit is instituted A and the owner of the automobile settle out of court for $7,500. B charges a reasonable and customary fee of $1,800 for procuring the settlement and under local law holds a lien upon the settlement in order to secure payment of the fee. Because, under local law, B holds a lien for the amount of his reasonable compensation for obtaining the settlement, B has priority over the Federal tax lien.

Example (3). In accordance with § 301.6323(f)–1, a notice of lien in the amount of $8,000 is filed against C, a contractor. Subsequently C retains D, an attorney, to initiate legal proceedings to recover the amount allegedly due him for construction work he has performed for the United States. C and D enter into an agreement which provides that D will receive a reasonable and customary fee of $2,500 as compensation for his services. Under local law, the agreement will give rise to a lien which is enforceable by D against any amount recovered in the suit. C is successful in the suit and is awarded $10,000. D claims $2,500 of the proceeds as his fee. The United States, however, exercises its right of set-off and applies $8,000 of the $10,000 award to satisfy C's tax liability. Because the $10,000 award resulted from the successful litigation of a cause of action against the United States, B's contract for attorney's fees is not enforceable against the amount recovered to the extent the United States offsets its liability under the judgment against C's tax liability. It is immaterial that D had no notice or knowledge of the tax lien at the time he began work on the case.

(i) *Certain insurance contracts*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid with respect to a life insurance, endowment, or annuity contract, against an organization which is the insurer under the contract, at any time—

(i) Before the insuring organization has actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)–1) of the existence of the tax lien,

(ii) After the insuring organization has actual notice or knowledge of the lien (as defined in paragraph (a) of § 301.6323(i)-1), with respect to advances (including contractual interest thereon as provided in paragraph (a) of § 301.6323(e)–1) required to be made automatically to maintain the contract in force under an agreement entered into before the insuring organization had such actual notice or knowledge, or

(iii) After the satisfaction of a levy pursuant to section 6332(b), unless and until the district director delivers to the insuring organization a notice (for example, another notice of levy, a letter, etc.), executed after the date of such satisfaction, that the lien exists.

Delivery of the notice described in subdivision (iii) of this subparagraph may be made by any means, including regular mail, and delivery of the notice shall be effective only from the time of actual receipt of the notification by the insuring organization. The provisions of this paragraph are applicable to matured as well as unmatured insurance contracts.

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

Example (1). On May 1, 1964, the X insurance company issues a life insurance policy to A. On June 1, 1970, a tax assessment is made against A, and on June 2, 1970, a notice of lien with respect to the assessment is filed in accordance with § 301.6323(f)–1. On July 1, 1970, without actual notice or knowledge of the tax lien, the X company makes a "policy loan" to A. Under subparagraph (1)(i) of this paragraph, the loan, including interest (in accordance with the provisions of paragraph (a) of § 301.6323(e)–1), will have priority over the tax lien because X company did not have actual notice or knowledge of the tax lien at the time the policy loan was made.

Example (2). On May 1, 1964, B enters into a life insurance contract with the Y insurance company. Under one of the provisions of the contract, in the event a premium is not paid, Y is to advance out of the cash loan value of the policy the amount of an unpaid premium in order to maintain the contract in force. The contract also provides for interest on any advances so made. On June 1, 1971, a tax assessment is made against B, and on June 2, 1971, in accordance with section 6323(f)–1, a notice of lien is filed. On July 1, 1971, B fails to pay the premium due on that date, and Y makes an automatic premium loan to keep the policy in force. At the time the automatic premium loan is made, Y had actual knowledge of the tax lien. Under subparagraph (1)(ii) of this paragraph, the lien is not valid against Y with respect to the advance (and the contractual interest thereon), because the advance was required to be made automatically under an agreement entered into before Y had actual notice or knowledge of the tax lien.

Example (3). On May 1, 1964, C enters into a life insurance contract with the Z insurance company. On January 4, 1971, an assessment is made against C for $5,000 unpaid income taxes, and on January 11, 1971, in accordance with § 301.6323(f)–1, a notice of lien is filed. On January 29, 1971, a notice of levy with respect to C's delinquent tax is served on Z company. The amount which C could have had advanced to him from Z company under the contract on the 90th day after service of the notice of levy on Z company is $2,000. The Z company pays $2,000 pursuant to the notice of levy, thereby satisfying the levy upon the contract in accordance with section 6332(b). On February 1, 1973, Z company advances $500 to C, which is the increment in policy loan value since satisfaction of the levy of January 29, 1971. On February 5, 1973, a new notice of levy for the unpaid balance of the delinquent taxes, executed after the first levy was satisfied, is served upon Z company. Because the new notification was not received by Z company until after the policy loan was made, under paragraph (1)(iii) of this paragraph, the tax lien is not valid against Z company with respect to the policy loan (including interest thereon in accordance with paragraph (a) of § 301.6323(e)–1).

Example (4). On June 1, 1973, a tax assessment is made against D and on June 2, 1973, in accordance with § 301.6323(f)–1, a notice of lien with respect to the assessment is filed. On July 2, 1973, D executes an assignment of his rights, as the insured, under an insurance contract to M bank as security for a loan. M bank holds its security interest subject to the lien because it is not an insurer entitled to protection under section 6323(b)(9) and did not become a holder of the security interest prior to the filing of the notice of lien for purposes of section 6323(a). It is immaterial that a notice of levy had not been served upon the insurer before the assignment to M bank was made.

(j) *Passbook loans*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against an institution described in section 581 or 591 to the extent of any loan

made by the institution which is secured by a savings deposit, share, or other account evidenced by a passbook (as defined in paragraph (i)(2) of this section) if the institution has been continuously in possession of the passbook from the time the loan is made. This paragraph applies only to a loan made without actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)–1) of the existence of the lien. If a passbook loan is made without actual notice or knowledge of the existence of the lien, this paragraph does not apply to any additional loan made after knowledge of the lien is acquired by the institution even if it continues to retain the passbook from the time the original passbook loan is made.

(2) *Definition of passbook.* For purposes of this paragraph, the term "passbook" includes—

(i) Any tangible evidence of a savings deposit, share, or other account which, when in the possession of the bank or other savings institution, will prevent a withdrawal from the account to the extent of the loan balance, and

(ii) Any procedure or system, such as an automatic data processing system, the use of which by the bank or other savings institution will prevent a withdrawal from the account to the extent of the loan balance.

(3) *Example.* On June 1, 1970, a tax assessment is made against A and on June 2, 1970, a notice of lien with respect to the assessment is filed in accordance with § 301.6323(f)–1. A owns a savings account at the M bank with a balance of $1,000. On June 10, 1970, A borrows $300 from the M bank using the savings account as security therefor. The M bank is continuously in possession of the passbook from the time the loan is made and does not have actual notice or knowledge of the lien at the time of the loan. The tax lien is not valid against M bank with respect to the passbook loan of $300 and accrued interest and expenses entitled to priority under § 301.6323(e)–1. Upon service of a notice of levy, the M bank must pay over the savings account balance in excess of the amount of its protected interest in the account as determined on the date of levy.

§ 301.6323(c) Statutory provisions; validity and priority against certain persons; protection for certain commercial transactions financing agreements, etc.

SEC. 6323. *Validity and priority against certain persons.* * * *

(c) *Protection for certain commercial transactions financing agreements, etc.*—(1) *In general.* To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) Is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) A commercial transactions financing agreement,

(ii) A real property construction or improvement financing agreement, or

(iii) An obligatory disbursement agreement, and

(B) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) *Commercial transactions financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) To make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) To purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) *Commercial financing security defined.* The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) *Purchaser treated as acquiring security interest.* A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) *Real property construction or improvement financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) The construction or improvement of real property,

(ii) A contract to construct or improve real property, or

(iii) The raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only—

(i) In the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) In the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) In the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) *Obligatory disbursement agreement.* For purposes of this subsection—

(A) *Definition.* The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) *Special rules for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract between the taxpayer and another person—

(i) The term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was insured, and

(ii) If the contract the performance of which was insured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such insured contract.

[Sec. 6323(c) as amended by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(c)–1 Protection for commercial transactions financing agreements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is in qualified property covered by the terms of a commercial transactions financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of the tax lien filing, out of an unsecured obligation.

See paragraphs (a) and (e) of § 301.6323(h)–1 for definitions of the terms "security interest" and "tax lien filing," respectively. For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)–1.

(b) *Commercial transactions financing agreement.* For purposes of this section, the term "commercial transactions financing agreement" means a written agreement entered into by a person in the course of his trade or business—

(1) To make loans to the taxpayer (whether or not at the option of the person agreeing to make such loans) to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(2) To purchase commercial financing security, other than inventory, acquired by the taxpayer in the ordinary course of his trade or business.

Such an agreement qualifies as a commercial transactions financing agreement only with respect to loans or purchases made under the agreement before (i) the 46th day after the date of tax lien filing or, (ii) the time when the lender or purchaser has actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)–1) of the tax lien filing, if earlier. For purposes of this paragraph, a loan or purchase is considered to have been made in the course of the lender's

or purchaser's trade or business if such person is in the business of financing commercial transactions (such as a bank or commercial factor) or if the agreement is incidental to the conduct of such person's trade or business. For example, if a manufacturer finances the accounts receivable of one of his customers, he is considered to engage in such financing in the course of his trade or business. The extent of the priority of the lender or purchaser over the tax lien is the amount of his disbursements made before the 46th day after the date the notice of tax lien is filed, or made before the day (before such 46th day) on which the lender or purchaser has actual notice or knowledge of the filing of the notice of the tax lien. Property which is commercial financing security to which the priority of the lender extends is not affected by the fact that it was acquired by the taxpayer after the lender received actual notice or knowledge of the filing of the notice of the tax lien and before such 46th day. For example, although the receipt of actual notice or knowledge of the filing of the notice of the tax lien has the effect of ending the period within which protected disbursements may be made to the taxpayer, property which is acquired by the taxpayer after the lender receives actual notice or knowledge of such filing and before such 46th day, which otherwise qualifies as commercial financing security, becomes commercial financing security to which the priority of the lender extends for loans made before he received the actual notice or knowledge.

(c) *Commercial financing security.* The term "commercial financing security" means—

(1) Paper of a kind ordinarily arising in commercial transactions,

(2) Accounts receivable,

(3) Mortgages on real property, and

(4) Inventory.

For purposes of this paragraph, the term "paper of a kind ordinarily arising in commercial transactions" in general includes any written document customarily used in commercial transactions. For example, such written documents include paper giving contract rights, chattel paper, documents of title to personal property, and negotiable instruments or securities. The term "commercial financing security" does not include general intangibles such as patents or copyrights. A mortgage on real estate (including a deed of trust, contract for sale, and similar instrument) may be commercial financing security if the taxpayer has an interest in the mortgage as a mortgagee or assignee. The term "commercial financing security" does not include a mortgage where the taxpayer is the mortgagor of realty owned by him. For purposes of this paragraph, the term "inventory" includes raw materials and goods in process as well as property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(d) *Qualified property.* For purposes of paragraph (a) of this section, qualified property consists solely of commercial financing security acquired by the taxpayer-debtor before the 46th day after the date of tax lien filing. An account receivable or a paper giving contract rights described in § 301.6323(c)–1(c) is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Chattel paper, documents of title, negotiable instruments, securities, and mortgages on real estate are acquired by a taxpayer when he obtains rights in the paper or mortgage. Inventory is acquired by the taxpayer when title passes to him. Identifiable proceeds, which arise from the collection or disposition of qualified property by the taxpayer, are considered to be acquired at the time such qualified property is acquired if the secured party has a continuously perfected security interest in the proceeds under local law. The term "proceeds" includes whatever is received when collateral is sold, exchanged, or collected. For purposes of this paragraph, the term "identifiable proceeds" does not include money, checks and the like which have been commingled with other cash proceeds. Property acquired by the taxpayer after the 45th day following tax lien filing, by the expenditure of proceeds, is not qualified property.

(e) *Purchaser treated as acquiring security interest.* A person who purchases commercial financing security, other than inventory, pursuant to a commercial transactions financing agreement is treated, for purposes of this section, as having acquired a security interest in the commercial financing security. In the case of a bona fide purchase at a discount, a purchaser of commercial financing security who satisfies the requirements of this section has priority over the tax lien to the full extent of the security.

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

Example (1). (i) On June 1, 1970, a tax is assessed against M, a tool manufacturer, with respect to his delinquent tax liability. On June 15, 1970, M enters into a written financing agreement with X, a bank. The agreement provides that, in consideration of such sums as X may advance to M, X is to have a security interest in all of M's presently owned and subsequently acquired commercial paper, accounts receivable, and inventory (including inventory in the manufacturing stages and raw materials). On July 6, 1970, notice of the tax lien is filed in accordance with § 301.6323(f)–1. On August 3, 1970, without actual notice or knowledge of the tax lien filing, X advances $10,000 to M. On August 5, 1970, M acquires additional inventory through the purchase of raw materials. On August 20, 1970, M has accounts receivable, arising from the sale of tools, amounting to $5,000. Under local law, X's security interest arising by reason of the $10,000 advance on August 3, 1970, has priority, with respect to the raw materials and accounts receivable, over a judgment lien against M arising July 6, 1970 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because the $10,000 advance was made before the 46th day after the tax lien filing, and the accounts receivable in the amount of $5,000 and the raw materials were acquired by M before such 46th day, X's $10,000 security interest in the accounts receivable and the inventory has priority over the tax lien. The priority of X's security interest also extends to the proceeds, received on or after the 46th day after the tax lien filing, from the liquidation of the accounts receivable and inventory held by M on August 20, 1970, if X has a continuously perfected security interest in identifiable proceeds under local law. However, the priority of X's security interest will not extend to other property acquired with such proceeds.

Example (2). Assume the same facts as in example (1) except that on July 15, 1970, X has actual knowledge of the tax lien filing. Because an agreement does not qualify as a commercial transactions financing agreement when a disbursement is made after tax lien filing with actual knowledge of the filing, X's security interest will not have priority over the tax lien with respect to the $10,000 advance made on August 3, 1970.

Example (3). Assume the same facts as in example (1) except that, instead of additional inventory, on August 5, 1970, M acquires an account receivable as the result of the sale of machinery which M no longer needs in his business. Even though the account receivable was acquired by taxpayer M before the 46th day after tax lien filing, the tax lien will have priority over X's security interest arising in the account receivable pursuant to the earlier written agreement because the account receivable was not acquired by the taxpayer in the ordinary course of his trade or business.

Example (4). Pursuant to a written agreement with the N Manufacturing Company entered into on January 4, 1971, Y, a commercial factor, purchases the accounts receivable arising out of N's regular sales to its customers. On November 1, 1971, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to N's delinquent tax liability. On December 6, 1971, Y, without actual notice or knowledge of the tax lien filing, purchases all of the accounts receivable resulting from N's November 1971 sales. Y has taken appropriate steps under local law so that the December 6, 1971, purchase is protected against a judgment lien arising November 1, 1971 (the date of tax lien filing) out of an unsecured obligation. Because the purchaser of commercial financing security, other than inventory, is treated as having acquired a security interest in commercial financing security, and because Y otherwise meets the requirements of this section, the tax lien is not valid with respect to Y's December 6, 1971, purchase of N's accounts receivable.

§ 301.6323(c)–2 Protection for real property construction or improvement financing agreements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is in qualified property covered by the terms of a real property construction or improvement financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of this section, it is immaterial that the holder of the security interest had actual notice or knowledge of the lien at the time disbursements are made pursuant to such an agreement. See paragraphs (a) and (e) of § 301.6323

(h)–1 for general definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)–1.

(b) *Real property construction or improvement financing agreement.* For purposes of this section, the term "real property construction or improvement financing agreement" means any written agreement to make cash disbursements (whether or not at the option of the party agreeing to make such disbursements):

(1) To finance the construction, improvement, or demolition of real property if the agreement provides for a security interest in the real property with respect to which the construction, improvement, or demolition has been or is to be made;

(2) To finance a contract to construct or improve, or demolish real property if the agreement provides for a security interest in the proceeds of the contract; or

(3) To finance the raising or harvesting of a farm crop or the raising of livestock or other animals if the agreement provides for a security interest in any property subject to the lien imposed by section 6321 at the time of tax lien filing, in the crop raised or harvested, or in the livestock or other animals raised.

For purposes of subparagraphs (1) and (2) of this paragraph, construction or improvement may include demolition. For purposes of any agreement described in subparagraph (3) of this paragraph, the furnishing of goods and services is treated as the disbursement of cash.

(c) *Qualified property.* For purposes of this section, the term "qualified property" includes only—

(1) In the case of an agreement described in paragraph (b)(1) of this section, the real property with respect to which the construction or improvement has been or is to be made;

(2) In the case of an agreement described in paragraph (b)(2) of this section, the proceeds of the contract to construct or improve real property; or

(3) In the case of an agreement described in paragraph (b)(3) of this section, property subject to the lien imposed by section 6321 at the time of tax lien filing, the farm crop raised or harvested, or the livestock or other animals raised.

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

Example (1). A, in order to finance the construction of a dwelling on a lot owned by him, mortgages the property to B. The mortgage, executed January 4, 1971, includes an agreement that B will make cash disbursements to A as the construction progresses. On February 1, 1971, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to A's delinquent tax liability. A continues the construction, and B makes cash disbursements on June 10, 1971, and December 10, 1971. Under local law B's security interest arising by virtue of the disbursements is protected against a judgment lien arising February 1, 1971 (the date of tax lien filing) out of an unsecured obligation. Because B is the holder of a security interest coming into existence by reason of cash disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance the construction, of real property, and because B's security interest is protected, under local law, against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, B's security interest has priority over the tax lien.

Example (2). (i) C is awarded a contract for the demolition of several buildings. On March 3, 1969, C enters into a written agreement with D which provides that D will make cash disbursements to finance the demolition and also provides that repayment of the disbursements is secured by any sums due C under the contract. On April 1, 1969, under section 6323(f), a notice of lien is filed with respect to C's delinquent tax liability. With actual notice of the tax lien, D makes cash disbursements to C on August 1, September 1, and October 1, 1969. Under local law D's security interest in the proceeds of the contract with respect to the disbursements is entitled to priority over a judgment lien arising on April 1, 1969 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because D's security interest arose by reason of disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance a contract to demolish real property, and because D's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to D's security interest in the proceeds of the demolition contract.

Example (3). Assume the same facts as in example (2) and, in addition, assume that, as further security for the cash disbursements, the March 3, 1969 agreement also provides for a security interest in all of C's demolition equipment. Because the security interest arising under an agreement to make cash disbursements to finance a contract to demolish real property is limited to the proceeds of the demolition contract, the tax lien will have priority over D's security interest in the equipment.

Example (4). (i) On January 2, 1969, F and G enter into a written agreement, whereby F agrees to provide G with cash disbursements, seed, fertilizer, and insecticides as needed by G, in order to finance the raising and harvesting of a crop on a farm owned by G. Under the terms of the agreement F is to have a security interest in the crop, the farm, and all other property then owned or thereafer acquired by G. In accordance with § 301.6323(f)–1, on January 10, 1969, a notice of lien is filed with respect to G's delinquent tax liability. On March 3, 1969, with actual notice of the tax lien, F makes a cash disbursement of $5,000 to G and furnishes him seed, fertilizer, and insecticides having a value of $10,000. Under local law F's security interest, coming into existence by reason of the cash disbursement and the furnishing of goods, has priority over a judgment lien arising January 10, 1969 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because F's security interest arose by reason of a disbursement (including the furnishing of goods) made under a written agreement which was entered into before tax lien filing and which constitutes an agreement to finance the raising or harvesting of a farm crop, and because F's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to F's security interest in the crop even though a notice of lien was filed before the security interest arose. Furthermore, because the farm is property subject to the tax lien at the time of tax lien filing, F's security interest with respect to the farm also has priority over the tax lien.

Example (5). Assume the same facts as in example (4) and in addition that on October 1, 1969, G acquires several tractors to which F's security interest attaches under the terms of the agreement. Because the tractors are not property subject to the tax lien at the time of tax lien filing, the tax lien has priority over F's security interest in the tractors.

§ 301.6323(c)–3 Protection for obligatory disbursement agreements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is in qualified property covered by the terms of an obligatory disbursement agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

See paragraphs (a) and (e) of § 301.6323(h)–1 for definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)–1.

(b) *Obligatory disbursement agreement.* For purposes of this section the term "obligatory disbursement agreement" means a written agreement, entered into by a person in the course of his trade or business, to make disbursements. An agreement is treated as an obligatory disbursement agreement only with respect to disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer. The obligation to pay must be conditioned upon an event beyond the control of the obligor. For example, the provisions of this section are applicable where an issuing bank obligates itself to honor drafts or other demands for payment on a letter of credit and a bank, in good faith, relies upon that letter of credit in making advances. The provisions of this section are also applicable, for example, where a bonding company obligates itself to make payments to indemnify against loss or liability and, under the terms of the bond, makes a payment with respect to a loss. The priority described in this section is not applicable, for example, in the case of an accommodation endorsement by an endorser who assumes his obligation other than in the course of his trade or business.

(c) *Qualified property.* Except as provided under paragraph (d) of this section, the term "qualified property," for purposes of this section, means property subject to the lien imposed by section 6321 at the time of tax lien filing and, to

the extent that the acquisition is directly traceable to the obligatory disbursement, property acquired by the taxpayer after tax lien filing.

(d) *Special rule for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract of the taxpayer and another person, the term "qualified property" shall be treated as also including—

(1) The proceeds of the contract the performance of which was insured, and

(2) If the contract the performance of which was insured is a contract to construct or improve real property, to produce goods, or to furnish services, any tangible personal property used by the taxpayer in the performance of the insured contract.

For example, a surety company which holds a security interest, arising from cash disbursements made after tax lien filing under a payment or performance bond on a real estate construction project, has priority over the tax lien with respect to the proceeds of the construction contract and, in addition, with respect to any tangible personal property used by the taxpayer in the construction project if its security interest in the tangible personal property is protected under local law against a judgment lien arising, as of the time the tax lien was filed, out of an unsecured obligation.

(e) *Examples.* This section may be illustrated by the following examples:

Example (1). (i) On January 2, 1969, H, an appliance dealer, in order to finance the acquisition from O of a large inventory of appliances, enters into a written agreement with Z, a bank. Under the terms of the agreement, in return for a security interest in all of H's inventory, presently owned and subsequently acquired, Z issues an irrevocable letter of credit to allow H to make the purchase. On December 31, 1968 and January 10, 1969, in accordance with § 301.6323(f)–1, separate notices of lien are filed with respect to H's delinquent tax liabilities. On March 31, 1969, Z honors the letter of credit. Under local law, Z's security interest in both existing and after-acquired inventory is protected against a judgment lien arising on or after January 10, 1969, out of an unsecured obligation. Under local law, Z's security interest in the inventory purchased under the letter of credit qualifies as a purchase money security interest and is valid against persons acquiring security interests in or liens upon such inventory at any time.

(ii) Because Z's security interest in H's inventory did not arise under a written agreement entered into before the filing of notice of the first tax lien on December 31, 1968, that lien is superior to Z's security interest except to the extent of Z's purchase money security interest. Because Z's interest qualifies as a purchase money security interest with respect to the inventory purchased under the letter of credit, the tax liens attach under section 6321 only to the equity acquired by H, and the rights of Z in the inventory so purchased are superior even to the lien filed on December 31, 1968, without regard to this section.

(iii) Because Z's security interest arose by reason of disbursements made under a written agreement which was entered into before the filing of notice of the second tax lien on January 10, 1969, and which constitutes an agreement to make disbursements required to be made by reason of the intervention of the rights of O, a person other than the taxpayer, and because Z's security interest is valid under local law against a judgment lien arising as of the time of such tax lien filing on January 10, 1969, out of an unsecured obligation, the second tax lien is, under this section, not valid with respect to Z's security interest in inventory owned by H on January 10, 1969, as well as any after-acquired inventory directly traceable to Z's disbursements (apart from such greater protection as Z enjoys, with respect to the latter, under its purchase money security interest). No protection against the second tax lien is provided under this section with respect to a security interest in any other inventory acquired by H after January 10, 1969, because such other inventory is neither subject to the tax lien at the time of tax lien filing nor directly traceable to Z's disbursements.

Example (2). On June 1, 1971, K is awarded a contract to construct an office building. At the same time, S, a surety company, agrees in writing to insure the performance of the contract. The agreement provides that in the event S must complete the job as the result of a default by K, S will be entitled to the proceeds of the contract. In addition, the agreement provides that S is to have a security interest in all property belonging to K. On December 1, 1971, prior to the completion of the building, K defaults. On the same date, under § 301.6323(f)–1, a notice of lien is filed with respect to K's delinquent tax liability. S completes the building on June 1, 1972. Under local law S's security interest in the proceeds of the contract and S's security interest in the property of K are entitled to priority over a judgment lien arising December 1, 1971 (the date of tax lien filing) out of an unsecured obligation. Because, for purposes of an obligatory disbursement agreement which is a surety agreement, the security interest may be in the proceeds of the insured contract, S's security interest in the proceeds of the contract has priority over the tax lien even though a notice of lien was filed before S's security interest arose. Furthermore, because the insured contract was a contract to construct real property, S's security interest in any of K's tangible personal property used in the performance of the contract also has priority over the tax lien.

Example (3). (i) On February 2, 1970, L enters into an agreement with M, a contractor, to construct an apartment building on land owned by L. Under a separate agreement, N bank agrees to furnish funds on a short-term basis to L for the payment of amounts due to M during the course of construction. Simultaneously, X, a financial institution, makes a binding commitment to N bank and L to provide long-term financing for the project after its completion. Under its commitment, X is obligated to pay off the balance of the construction loan held by N bank upon the execution by L of a new promissory note secured by a mortgage deed of trust upon the improved property. On September 4, 1970, in accordance with § 301.6323(f)–1, notice of lien is properly filed with respect to L's delinquent tax liability. On September 8, 1970, X obtains actual notice of the tax lien filing. On September 14, 1970, the documents creating X's security interest are executed and recorded, N bank's lien for its construction loan is released, and X makes the required disbursements to N bank. Under local law, X's security interest is protected against a judgment lien arising on September 4, 1970 (the time of tax lien filing) out of an unsecured obligation.

(ii) Because X's security interest arose by reason of a disbursement made under a written agreement entered into before tax lien filing, which constitutes an agreement to make disbursements required to be made by reason of the intervention of the rights of N bank, a person other than the taxpayer, and because X's security interest is valid under local law against a judgment lien arising as of the time of the tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to X's security interest to the extent of the disbursement to N bank. The obligatory disbursement is protected under section 6323(c)(4) even if X is not subrogated to N bank's rights or X's agreement is not itself a real property construction financing agreement.

§ 301.6323(d) Statutory provisions; validity and priority against certain persons; 45-day period for making disbursements.

SEC. 6323. *Validity and priority against certain persons.*

* * * * *

(d) *45-day period for making disbursements.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) Is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

[Sec. 6323(d) as amended by sec. 236(a) Rev. Act 1964 (78 Stat. 127); sec. 101(a) Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(d)–1 45-day period for making disbursements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is—

(1) In property which is subject, at the time of tax lien filing, to the lien imposed by section 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(2) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of subparagraph (1) of this paragraph, a contract right is in existence at the time of tax lien filing only to the extent earned by performance at such time. For purposes of subparagraph (2) of this paragraph, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)–1. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the option of the person making the disbursements. See paragraphs (a) and (e) of § 301.6323(h)–1 for definitions of the terms "security interest"

and "tax lien filing," respectively. See paragraph (a) of § 301.6323(i)–1 for certain circumstances under which a person is deemed to have actual notice or knowledge of a fact.

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

Example (1). On December 1, 1967, an assessment is made against A with respect to his delinquent tax liability. On January 2, 1968, A enters into a written agreement with B whereby B agrees to lend A $10,000 in return for a security interest in certain property owned by A. On January 10, 1968, in accordance with § 301.6323(f)–1 notice of the tax lien affecting the property is filed. On February 1, 1968, B, without actual notice or knowledge of the tax lien filing, disburses the loan to A. Under local law, the security interest arising by reason of the disbursement is entitled to priority over a judgment lien arising January 10, 1968 (the date of tax lien filing) out of an unsecured obligation. Because the disbursement was made before the 46th day after tax lien filing, because the disbursement was made pursuant to a written agreement entered into before tax lien filing, and because the resulting security interest is protected under local law against a judgment lien arising as of the date of tax lien filing out of an unsecured obligation, B's $10,000 security interest has priority over the tax lien.

Example (2). Assume the same facts as in example (1) except that when B disburses the $10,000 to A on February 10, 1968, B has actual knowledge of the tax lien filing. Because the disbursement was made with actual knowledge of tax lien filing, B's security interest does not have priority over the tax lien even though the disbursement was made before the 46th day after the tax lien filing. Furthermore, B is not protected under § 301.6323(a)–1(a) as a holder of a security interest because he had not parted with money or money's worth prior to the time the notice of tax lien was filed (Jan. 10, 1968) even though he had made a firm commitment to A before that time.

§ 301.6323(c) Statutory provisions; validity and priority against certain persons; priority of interest and expenses.

SEC. 6323. *Validity and priority against certain persons.* * * *

(c) *Priority of interest and expenses.* If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) Any interest or carrying charges upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured, and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321, to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

[Sec. 6323(c) as amended by sec. 236(a) Rev. Act 1964 (78 Stat. 127); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(c)–1 Priority of interest and expenses.

(a) *In general.* If the lien imposed by section 6321 is not valid as against another lien or security interest, the priority of the other lien or security interest also extends to each of the following items to the extent that under local law the item has the same priority as the lien or security interest to which it relates:

(1) Any interest or carrying charges (including finance, service, and similar charges) upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee (including, for example, the trustee under a deed of trust) or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured (including amounts paid by the holder of the security interest for mortgage insurance, such as that issued by the Federal Housing Administration), and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321.

(b) *Collection expenses.* The reasonable expenses described in paragraph (a)(3) of this section include expenditures incurred by the protected holder of the lien or security interest to establish the priority of his interest or to collect, by foreclosure or otherwise, the amount due him from the property subject to his lien. Accordingly, the amount of the encumbrance which is protected is increased by the amounts so expended by the holder of the security interest.

(c) *Costs of insuring, preserving, etc.* The reasonable costs of insuring, preserving, or repairing described in paragraph (a)(4) of this section include expenditures by the holder of a security interest for fire and casualty insurance on the property subject to the security interest and amounts paid by the holder of the lien or security interest to repair the property. Such reasonable costs also include the amounts paid by the holder of the lien or security interest in a leasehold to the lessor of the leasehold to preserve the leasehold subject to the lien or security interest. Accordingly, the amount of the lien or security interest which is protected is increased by the amounts so expended by the holder of the lien or security interest.

(d) *Satisfaction of liens.* The amounts described in paragraph (a)(6) of this section include expenditures incurred by the protected holder of a lien or security interest to discharge a statutory lien for State sales taxes on the property subject to his lien or security interest if both his lien or security interest and the sales tax lien have priority over a Federal tax lien. Accordingly, the amount of the lien or security interest is increased by the amounts so expended by the holder of the lien or security interest even though under local law the holder of the lien or security interest is not subrogated to the rights of the holder of the State sales tax lien. However, if the holder of the lien or security interest is subrogated, within the meaning of paragraph (b) of § 301.6323(i)–1, to the rights of the holder of the sales tax lien, he will also be entitled to any additional protection afforded by section 6323(i)(2).

§ 301.6323(f) Statutory provisions; validity and priority against certain persons; place for filing notice; form.

SEC. 6323. *Validity and priority against certain persons.* * * *

(f) *Place for filing notice; form.*—(1) *Place for filing.* The notice referred to in subsection (a) shall be filed—

(A) *Under State laws.*—(i) *Real property.* In the case of real property, in one office within the State (or the county, or other governmental subdivision) as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) *With clerk of district court.* In the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) *With recorder of deeds of the District of Columbia.* In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) *Situs of property subject to lien.* For purposes of paragraph (1), property shall be deemed to be situated—

(A) *Real property.* In the case of real property, at its physical location; or

(B) *Personal property.* In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) *Form.* The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

[Sec. 6323(f) as added by sec. 101(a) Federal Tax Lien Act of 1966 (80 Stat. 1125)]

§ 301.6323(f)–1 Place for filing notice; form.

(a) *Place for filing.* Unless subparagraph (2) or (3) of this paragraph applies, the notice of lien referred to in § 301.6323(a)–1 shall be filed as follows:

(1) *Under State laws.*—(i) *Real property.* In the case of real property, notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by

the laws of the State, in which the property subject to the lien is deemed situated under the provisions of paragraph (b)(1) of this section.

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, the notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provisions of paragraph (b)(2) of this section.

(2) *With the clerk of the U.S. district court.* Whenever a State has not by law designated one office which meets the requirements of subparagraph (1)(i) or (1)(ii) of this paragraph, the notice shall be filed in the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is deemed situated under the provisions of paragraph (b) of this section. For example, a State has not by law designated one office meeting the requirements of subparagraph (1)(i) of this paragraph if more than one office is designated within the State, county, or other governmental subdivision for filing notices with respect to all real property located in such State, county, or other governmental subdivision. A State has not by law designated one office meeting the requirements of subparagraph (1)(ii) of this paragraph if more than one office is designated in the State, county, or other governmental subdivision for filing notices with respect to all of the personal property of a particular taxpayer.

(3) *With the Recorder of Deeds of the District of Columbia.* If the property subject to the lien imposed by section 6321 is deemed situated, under the provisions of paragraph (b) of this section, in the District of Columbia, the notice shall be filed in the office of the Recorder of Deeds of the District of Columbia.

(b) *Situs of property subject to lien.* For purposes of paragraph (a) of this section, property is deemed situated as follows:

(1) *Real property.* Real property is deemed situated at its physical location.

(2) *Personal property.* Personal property, whether tangible or intangible, is deemed situated at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of subparagraph (2) of this paragraph the residence of a corporation or partnership is deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is not within the United States is deemed to be in the District of Columbia.

(c) *Form.* The notice referred to in § 301.6323(a)-1 shall be filed on Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien. For example, omission from the notice of lien of a description of the property subject to the lien does not affect the validity thereof even though state law may require that the notice contain a description of the property subject to the lien.

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

Example (1). The law of State X provides that notices of Federal tax lien affecting personal property are to be filed in the Office of the Recorder of Deeds of the county where the taxpayer resides. The laws of State X also provide that notices of lien affecting real property are to be filed with the recorder of deeds of the county where the real property is located. On June 1, 1970, in accordance with § 301.6323(f)-1, a notice of lien is filed in county M with respect to the delinquent tax liability of A. At the time the notice is filed, A is a resident of county M and owns real property in that county. One year later A moves to county N and 1 year after that A moves to county O. Because the situs of personal property is deemed to be at the residence of the taxpayer at the time the notice of lien is filed, the notice continues to be effectively filed with respect to A's personal property even though A no longer resides in county M. Furthermore, because the situs of real property is deemed to be at its physical location, the notice of lien also continues to be effectively filed with respect to A's real property.

Example (2). B is a resident of Canada but owns personal property in the United States. On January 4, 1971, in accordance with § 301.6323(f)-1, a notice of lien is filed with the office of the Recorder of Deeds of the District of Columbia. On January 2, 1973, B changes his residence to State Y in the United States. Because the residence of a taxpayer who is not a resident of the United States is deemed to be in the District of Columbia and the situs of personal property is deemed to be at the residence of the taxpayer at the time of filing, the lien continues to be effectively filed with respect to the personal property of B located in the United States even though B has returned to the United States and taken up residence in State Y and even though B has at no time been in the District of Columbia.

Example (3). The law of State Z in effect before July 1, 1967, provides that notices of lien affecting real property are to be filed in the office of the recorder of deeds of the county in which the real property is located, but that if the real property is registered under the Torrens system of title registration the notice is to be filed with the registrar of titles rather than the recorder of deeds. The law of State Z in effect after June 30, 1967, provides that all notices of lien affecting real property are to be filed with the recorder of deeds of the county in which the real property is located. Accordingly, where the Torrens system is adopted by a county in State Z, there were before July 1, 1967, two offices designated for filing notices of Federal tax lien affecting real property of titles rather than the recorder of deeds, nated for Torrens real property and another office was designed for non-Torrens real property. Because State Z had not designated one office within the State, county, or other governmental subdivision for filing notices before July 1, 1967, with respect to all real property located in the State, county, or governmental subdivision, before July 1, 1967, the place for filing notices of lien under this section, affecting property located in counties adopting the Torrens system, was with the clerk of the U.S. district court for the judicial district in which the real property is located. However, after June 30, 1967, the place for filing notices of lien under this section, affecting both Torrens and non-Torrens real property in counties adopting the Torrens system is with the recorder of deeds for each such county. Notices of lien filed under this section with the clerk of the U.S. district court before July 1, 1967, remain validly filed whether or not refiled with the recorder of deeds after the change in State law or upon refiling during the required refiling period.

Example (4). The law of State W provides that notices of lien affecting personal property of corporations and partnerships are to be filed in the office of the Secretary of State. Notices of lien affecting personal property of any other person are to be filed in the office of the clerk of court for the county where the person resides. Because the State law designates only one filing office within State W with respect to personal property of any particular taxpayer, notices of lien filed under this section, affecting personal property, shall be filed in the office designated under State law.

§ 301.6323(g) Statutory provisions; validity and priority against certain persons; refiling of notice of tax lien.

SEC. 6323. *Validity and priority against certain persons.* * * *

(g) *Refiling of notice.*—For purposes of this section—

(1) *General rule.*—Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) *Place for filing.*—A notice of lien refiled during the required refiling period shall be effective only—

(A) If such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) In any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) *Required refiling period.*—In the case of any notice of lien, the term "required refiling period" means—

(A) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) *Transitional rule.*—Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

[Sec. 6323(g) as added by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(g)-1 Refiling of notice of tax lien.

(a) *In general*—(1) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required refiling period (described in paragraph (c) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provisions of paragraphs (b)(1)(i) and (c) of this section in respect of one of the notices of lien does not affect the effectiveness of the

refiling of any other notice of lien. Except for the filing of a notice of lien required by paragraph (b)(1)(ii) of this section (relating to a change of residence) the validity of any refiling of a notice of lien is not affected by the refiling or nonrefiling of any other notice of lien.

(2) *Effect of refiling.* A timely refiled notice of lien is effective as of the date on which the notice of lien to which it relates was effective.

(3) *Effect of failure to refile.* If the district director fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the district director to refile a notice of lien during the required refiling period will not, following the expiration of the refiling period, affect the effectiveness of the notice with respect to:

(i) Property which is the subject matter of a suit, to which the United States is a party, commenced prior to the expiration of the required refiling period, or

(ii) Property which has been levied upon by the United States prior to the expiration of the refiling period.

However, if a suit or levy referred to in the preceding sentence is dismissed or released and the property is subject to the lien at such time, a notice of lien with respect to the property is not effective after the suit or levy is dismissed or released unless refiled during the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien.

(4) *Filing of new notice.* If a notice of lien is not refiled, and if the lien remains in existence, the Internal Revenue Service may nevertheless file a new notice of lien either on the form prescribed for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of section 6323(f) and § 301.-6323(f)-1 and is effective from the date on which such filing is made.

(b) *Place for refiling notice of lien*—(1) *In general.* A notice of lien refiled during the required refiling period (described in paragraph (c) of this section) shall be effective only—

(i) If the notice of lien is refiled in the office in which the prior notice of lien (including a refiled notice) was filed under the provisions of section 6323; and

(ii) In any case in which 90 days or more prior to the date the refiling of the notice of lien under subdivision (i) is completed, the Internal Revenue Service receives written information (in the manner described in subparagraph (2) of this paragraph) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with section 6323(f)(1)(A)(ii) in the State in which such new residence is located (or, if such new residence is located without the United States, in the District of Columbia).

A notice of lien is considered as refiled in the office in which the prior notice or refiled notice was filed under the provisions of section 6323 if it is refiled in the office which, pursuant to a change in the applicable local law, assumed the functions of the office in which the prior notice or refiled notice was filed. If on or before the 90th day referred to in subdivision (ii) more than one written notice is received concerning a change in the taxpayer's residence, a notice of lien is required by this subdivision to be filed only with respect to the residence shown on the written notice received on the most recent date. Subdivision (ii) is applicable regardless of whether the taxpayer resides at the new residence on the date the refiling of notice of lien under subdivision (i) of this subparagraph is completed.

(2) *Notice of change of taxpayer's residence*—(i) *In general.* Except as provided in subdivision (ii) or (iii) of this subparagraph, for purposes of this section, a notice of change of a taxpayer's residence will be effective only if it (A) is received, in writing, from the taxpayer or his representative by the director of the service center which serves the district in which the former residence was located, (B) relates to an unpaid tax liability of the taxpayer, and (C) states the taxpayer's name and the address of his new residence. Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. For purposes of this subdivision, a notice of change of a taxpayer's residence shown on a return or an amended return (including a return of the same tax) will not be effective to notify the Internal Revenue Service.

(ii) *Notice received before July 1, 1973.* For purposes of this section, a notice of a change of a taxpayer's residence will also be effective if it (A) is received, in writing, by any office of the Internal Revenue Service before July 1, 1973, from the taxpayer or his representative, (B) relates to an unpaid tax liability of the taxpayer, and (C) states the taxpayer's name and the address of his new residence.

(iii) *By return or amended return.* For purposes of this section, in the case of a notice of lien which relates to an assessment of tax made after December 31, 1966, a notice of change of a taxpayer's residence will also be effective if it is contained in a return or amended return of the same type of tax filed with the Internal Revenue Service by the taxpayer or his representative which on its face indicates that there is a change in the taxpayer's address and correctly states the taxpayer's name, the address of his new residence, and his identifying number required by section 6109.

(iv) *Other rules applicable.* Except as provided in subdivisions (i), (ii), and (iii) of this subparagraph, no communication (either written or oral) to the Internal Revenue Service will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not the Service has actual notice or knowledge of the taxpayer's new residence. For the purpose of determining the date on which a notice of change of a taxpayer's residence is received under this section, the notice shall be treated as received on the date it is actually received by the Internal Revenue Service without reference to the provisions of section 7502.

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

Example (1). A, a delinquent taxpayer, is a resident of State M and owns real property in State N. In accordance with § 301.6323(f)-1, notices of lien are filed in States M and N. In order to continue the effect of the notice of lien filed in M, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in M but is not required to refile the notice of lien with the appropriate office in N. Similarly, in order to continue the effect of the notice of lien filed in State N, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in N but is not required to refile the notice of lien with the appropriate office in M.

Example (2). B, a delinquent taxpayer, is a resident of State M. In accordance with § 301.6323(f)-1, notice of lien is properly filed in that State. One year before the beginning of the required refiling period, B establishes his residence in State N, and B immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. In order to continue the effect of the notice of lien filed in M, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in M, and (ii) the appropriate office in N, because B properly notified the Internal Revenue Service of his change in residence to N more than 89 days prior to the date refiling of the notice of lien in M is completed. Even if the Internal Revenue Service had acquired actual notice or knowledge of B's change in residence by other means, if B had not properly notified the Internal Revenue Service of his change in residence, the effect of the notice of lien in State M could have been continued without any refiling in State N.

Example (3). C, a delinquent taxpayer, is a resident of State O. In accordance with § 301.6323(f)-1, notice of lien is properly filed in that State. Four years before the required refiling period, C establishes his residence in State P, and C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. Three years before the required refiling period, C establishes his residence in State R, and again C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (2) of this section. In order to continue the effect of the notice of lien filed in O, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in O, and (ii) the appropriate office in R. Refiling in R is required because the notice received by the Service of C's change in residence to R was the most recent notice received more than 89 days prior to the date refiling in O is completed. The notice of lien is not required to be filed in P, even though C properly notified the Internal Revenue Service of his change in residence to P, because such notice is not the most recent one received.

Example (4). Assume the same facts as in example (3), except that C does not notify the Internal Revenue Service of his change in residence to R in accordance with the provisions of paragraph (b)(2) of this section. In order to continue the effect of the notice of lien filed in O, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with (i) the appropriate office in O, and (ii) the appropriate office in P. Refiling in P is required because C properly notified the Internal Revenue Service of his change in residence to P, even though C is not a resident of P on the date refiling of the notice of lien in O is completed. The Internal Revenue Service is not required to file a notice of lien in R because C did not properly notify the Service of his change in residence to R.

Example (5). D, a delinquent taxpayer, is a resident of State M and owns real property in States N and O. In accordance with § 301.6323(f)–1, the Internal Revenue Service files notices of lien in M, N, and O States. Five years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P, and at that time the Internal Revenue Service received from D a notification of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. On a date which is 5 years and 7 months after the date of the assessment shown on the notice of lien, the Internal Revenue Service properly refiles notices of lien in M, N, and O which refilings are sufficient to continue the effect of each of the notice of lien. The Internal Revenue Service is not required to file a notice of lien in P because D did not notify the Internal Revenue Service of his change of residence to P more than 89 days prior to the date each of the refilings in M, N, and O was completed.

Example (6). Assume the same facts as in example (5) except that the refiling of the notice of lien in O occurs 100 days after D notifies the Internal Revenue Service of his change in residence to P in accordance with the provisions of paragraph (b)(2) of this section. In order to continue the effect of the notice of lien filed in O, in addition to refiling the notice of lien in O, the Internal Revenue Service must also refile, during the required refiling period, a notice of lien in P because D properly notified the Internal Revenue Service of his change of residence to P more than 89 days prior to the date the refiling in O was completed. However, the Internal Revenue Service is not required to refile the notice of lien in P to maintain the effect of the notices of lien in M and N because D did not notify the Internal Revenue Service of his change in residence to P more than 89 days prior to the date the refilings in M and N were completed.

Example (7). E, a delinquent taxpayer, is a resident of State T. Because T has not designated one office in the case of personal property for filing notices of lien in accordance with the provisions of section 6323(f)(1)(A)(ii), the Internal Revenue Service properly files a notice of lien with the clerk of the appropriate U.S. district court. However, solely as a matter of convenience for those who may have occasion to search for notices of lien, and not as a matter of legal effectiveness, the Internal Revenue Service also files notice of lien with the recorder of deeds of the county in T where E resides. In addition, the Internal Revenue Service sends a copy of the notice of lien to the X life insurance company to give the company actual notice of the notice of lien. In order to continue the effect of the notice of lien, the Internal Revenue Service must refile the notice of lien with the clerk of the appropriate U.S. district court during the required refiling period. In order to continue the effect of the notice of the lien, it is not necessary to refile the notice of lien with the recorder of deeds of the county where E resides, because the refiling of the notice of lien with the recorder of deeds does not constitute a proper filing for the purposes of section 6323(f). In addition, to continue the effect of the notice of lien under this section it is not necessary to send a copy of the notice of lien to the X life insurance company, because the sending of a notice of lien to an insurance company does not constitute a proper filing for the purposes of section 6323(f).

(c) *Required refiling period*—(1) *In general.* For the purpose of this section, except as provided in subparagraph (2) of this paragraph, the term "required refiling period" means—

(i) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(ii) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(2) *Tax assessments made before January 1, 1962.* If the assessment of the tax is made before January 1, 1962, the first required refiling period shall be the calendar year 1967. This, to maintain the effectiveness of any notice of lien on file which relates to a lien which arose before January 1, 1962, the Internal Revenue Service will refile the notice of lien during the calendar year 1967.

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

Example (1). On March 1, 1963, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 1, 1963, in accordance with § 301.6323(f)–1, a notice of lien is filed. The notice of lien filed on July 1, 1963, is effective through March 31, 1969. The first required refiling period for the notice of lien begins on April 1, 1968, and ends on March 31, 1969. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 1, 1963, through March 31, 1975. The second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

Example (2). Assume the same facts as in example (1), except that although the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (April 1, 1968, through March 31, 1969), a notice of lien is filed on June 2, 1971, in accordance with § 301.6323(f)–1. Because of this filing, the notice of lien filed on June 2, 1971, is effective as of June 2, 1971. That notice must be refiled during the 1-year period ending on March 31, 1975, if it is to continue in effect after March 31, 1975.

Example (3). On April 1, 1960, an assessment of tax is made against B, a delinquent taxpayer, and a tax lien for the amount of the assessment arises on that date. On June 1, 1962, in accordance with § 301.6323(f)–1, a notice of lien is filed. Because the assessment of tax was made before January 1, 1962, the notice of lien filed on June 1, 1962, is effective through December 31, 1967. The first required refiling period for the notice of lien is the calendar year 1967. A refiling of the notice of lien during 1967 will extend the effectiveness of the notice of lien filed on June 1, 1962, through December 31, 1973.

§ 301.6323(h) Statutory provisions; validity and priority against certain persons; definitions.

SEC. 6323. *Validity and priority against certain persons.* * * *

(h) *Definitions.* For purposes of this section and section 6324—

(1) *Security interest.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) *Mechanic's lienor.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) *Motor vehicle.* The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) *Security.* The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument or money.

(5) *Tax lien filing.* The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) *Purchaser.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) A lease of property,

(B) A written executory contract to purchase or lease property,

(C) An option to purchase or lease property or any interest therein, or

(D) An option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

[Sec. 6323(h) as added by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(h)–0 Scope of definitions.

Except as otherwise provided by § 301.6323(h)–1, the definitions provided by § 301.6323(h)–1 apply for purposes of §§ 301.6323(a)–1 through 301.6324–1.

§ 301.6323(h)–1 Definitions.

(a) *Security interest*—(1) *In general.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time—

(i) If, at such time, the property is in existence and the interest has become

protected under local law against a subsequent judgment lien (as provided in subparagraph (2) of this paragraph) arising out of an unsecured obligation; and

(ii) To the extent that, at such time, the holder has parted with money or money's worth (as defined in subparagraph (3) of this paragraph).

A security interest must be in existence, within the meaning of this paragraph, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of paragraph (a) of § 301.6323(a)-1 a security interest must be in existence within the meaning of this paragraph before a notice of lien is filed.

(2) *Protection against a subsequent judgment lien.* (i) For purposes of this paragraph, a security interest is deemed to be protected against a subsequent judgment lien on—

(A) The date on which all actions required under local law to establish the priority of a security interest against a judgment lien have been taken, or

(B) If later, the date on which all required actions are deemed effective, under local law, to establish the priority of the security interest against a judgment lien.

For purposes of this subdivision, the dates described in (*a*) and (*b*) of this subdivision (i) shall be determined without regard to any rule or principle of local law which permits the relation back of any requisite action to a date earlier than the date on which the action is actually performed. For purposes of this paragraph, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of this section.

(ii) The application of this subparagraph may be illustrated by the following example:

Example. (i) Under the law of State X, a security interest in negotiable instruments, stocks, bonds, or other securities may be perfected, and hence protected against a judgment lien, only by the secured party taking possession of the instruments or securities. However, a security interest in such intangible personal property is considered to be temporarily perfected for a period of 21 days from the time the security interest attaches, to the extent consideration other than past consideration is given under a written security agreement. Under the law of X, a security interest attaches to such collateral when there is an agreement between the creditor and debtor that the interest attaches, the debtor has rights in the property, and consideration is given by the creditor. Under the law of X, in the case of temporary perfection, the security interest in such property is protected during the 21-day period against a judgment lien arising, after the security interest attaches, out of an unsecured obligation. Upon expiration of the 21-day period, the holder of the security interest must take possession of the collateral to continue perfection.

(ii) Because the security interest is protected during the 21-day period against a subsequent judgment lien arising out of an unsecured obligation, and because the taking of possession before the conclusion of the period of temporary perfection is not considered, for purposes of subdivision (i) of this subparagraph, to be a requisite action which relates back to the beginning of such period, the requirements of this paragraph are satisfied. However, because taking possession is a condition precedent to continued perfection, possession of the collateral is a requisite action to establish such priority after expiration of the period of temporary perfection. If there is a lapse of perfection for failure to take possession, the determination of when the security interest exists (for purposes of protection against the tax lien) is made without regard to the period of temporary perfection.

(3) *Money or money's worth.* For purposes of this paragraph, the term "money or money's worth" includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(4) *Holder of a security interest.* For purposes of this paragraph, the holder of a security interest is the person in whose favor there is a security interest. For provisions relating to the treatment of a purchaser of commercial financing security as a holder of a security interest, see § 301.6323(c)-1(e).

(b) *Mechanic's lienor.*—(1) *In general.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement (including demolition) of the property. A mechanic's lienor is treated as having a lien on the later of—

(i) The date on which the mechanic's lien first becomes valid under local law against subsequent purchasers of the real property without actual notice, or

(ii) The date on which the mechanic's lienor begins to furnish the services, labor, or materials.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following example:

Example (1). On February 1, 1968, A lets a contract for the construction of an office building on property owned by him. On March 1, 1968, in accordance with § 301.6323(f)-1, a notice of lien for delinquent Federal taxes owed by A is filed. On April 1, 1968, B, a lumber dealer, delivers lumber to A's property. On May 1, 1968, B records a mechanic's lien against the property to secure payment of the price of the lumber. Under local law, B's mechanic's lien is valid against subsequent purchasers of real property without notice from February 1, 1968, which is the date the construction contract was entered into. Because the date on which B's mechanic's lien is valid under local law against subsequent purchasers is February 1, and the date on which B begins to furnish the materials is April 1, the date on which B becomes a mechanic's lienor within the meaning of this paragraph is April 1, the later of these two dates. Under paragraph (a) of § 301.6323(a)-1, B's mechanic's lien will not have priority over the Federal tax lien, even though under local law the mechanic's lien relates back to the date of the contract.

(c) *Motor vehicle.* (1) The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State, the District of Columbia, or a foreign country.

(2) A motor vehicle is "registered for highway use" at the time of a sale if immediately prior to the sale it is so registered under the laws of any State, the District of Columbia, or a foreign country. Where immediately prior to the sale of a motor vehicle by a dealer, the dealer is permitted under local law to operate it under a dealer's tag, license, or permit issued to him, the motor vehicle is considered to be registered for highway use in the name of the dealer at the time of the sale.

(d) *Security.* The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(e) *Tax lien filing.* The term "tax lien filing" means the filing of notice of the lien imposed by section 6321.

(f) *Purchaser.*—(1) *In general.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth (as defined in subparagraph (3) of this paragraph), acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice.

(2) *Interest in property.* For purposes of this paragraph, each of the following interests is treated as an interest in property, if it is not a lien or security interest:

(i) A lease of property,

(ii) A written executory contract to purchase or lease property,

(iii) An option to purchase or lease property and any interest therein, or

(iv) An option to renew or extend a lease of property.

(3) *Adequate and full consideration in money or money's worth.* For purposes of this paragraph, the term "adequate and full consideration in money or money's worth" means a consideration in money or money's worth having a reasonable relationship to the true value of the interest in property acquired. See paragraph (a)(3) of this section for definition of the term "money or money's

worth." Adequate and full consideration in money or money's worth may include the consideration in a bona fide bargain purchase. The term also includes the consideration in a transaction in which the purchaser has not completed performance of his obligation, such as the consideration in an installment purchase contract, even though the purchaser has not completed the installment payments.

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

Example (1). A enters into a contract for the purchase of a house and lot from B. Under the terms of the contract A makes a down payment and is to pay the balance of the purchase price in 120 monthly installments. After payment of the last installment, A is to receive a deed to the property. A enters into possession, which under local law protects his interest in the property against subsequent purchasers without actual notice. After A has paid five monthly installments, a notice of lien for Federal taxes is filed against B in accordance with § 301.6323 (f)-1. Because the contract is an executory contract to purchase property and is valid under local law against subsequent purchasers without actual notice, A qualifies as a purchaser under this paragraph.

Example (2). C owns a residence which he leases to his son-in-law, D, for a period of 5 years commencing January 1, 1968. The lease provides for payment of $100 a year, although the fair rental value of the residence is $2,500 a year. The lease is recorded on December 31, 1967. On March 1, 1968, a notice of tax lien for unpaid Federal taxes of C is filed in accordance with § 301.6323(f)-1. Under local law, D's interest is protected against subsequent purchasers without actual notice. However, because the rental paid by D has no reasonable relationship to the value of the interest in property acquired, D does not qualify as a purchaser under this paragraph.

(g) *Judgment lien creditor.* The term "judgment lien creditor" means a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money. In the case of a judgment for the recovery of a certain sum of money, a judgment lien creditor is a person who has perfected a lien under the judgment on the property involved. A judgment lien is not perfected until the identity of the lienor, the property subject to the lien, and the amount of the lien are established. Accordingly, a judgment lien does not include an attachment or garnishment lien until the lien has ripened into judgment, even though under local law the lien of the judgment relates back to an earlier date. If recording or docketing is necessary under local law before a judgment becomes effective against third parties acquiring liens on real property, a judgment lien under such local law is not perfected with respect to real property until the time of such recordation or docketing. If under local law levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved. The term "judgment" does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity such as the action of State taxing authorities.

§ 301.6323(i) Statutory provisions; validity and priority against certain persons; special rules.

SEC. 6323. *Validity and priority against certain persons.* * * *

(i) *Special rules*—(1) *Actual notice or knowledge.* For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) *Subrogation.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

[Sec. 6323(i) as added by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(i)-1 Special rules.

(a) *Actual notice or knowledge.* For purposes of subchapter C (section 6321 and following), chapter 64 of the Code, an organization is deemed, in any transaction, to have actual notice or knowledge of any fact from the time the fact is brought to the attention of the individual conducting the transaction, and in any event from the time the fact would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(b) *Subrogation*—(1) *In general.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324. Thus, if a tax lien imposed by section 6321 or 6324 is not valid with respect to a particular interest as against the holder of that interest, then the tax lien also is not valid with respect to that interest as against any person who, under local law, is a successor in interest to the holder of that interest.

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

Example. On February 1, 1968, an assessment is made and a tax lien arises with respect to A's delinquent tax liability. On February 25, 1968, in accordance with § 301.6323 (f)-1, a notice of lien is properly filed. On March 1, 1968, A negotiates a loan from B, the security for which is a second mortgage on property owned by A. The first mortgage on the property is held by C and has priority over the tax lien. Upon default by A, C begins proceedings to foreclose upon the first mortgage. On September 1, 1968, B pays the amount of principal and interest in default to C in order to protect the second mortgage against the pending foreclosure of C's senior mortgage. Under local law, B is subrogated to C's rights to the extent of the payment to C. Therefore, the tax lien is invalid against B to the extent he became subrogated to C's rights even though the tax lien is valid against B's second mortgage on the property.

(c) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed (see § 301.6323(f)-1), the amount of the outstanding obligation secured by the lien is authorized to be disclosed as a matter of public record on Form 668 "Notice of Federal Tax Lien Under Internal Revenue Laws." The amount of the outstanding obligation secured by the lien remaining unpaid at the time of an inquiry is authorized to be disclosed to any person who has a proper interest in determining this amount. Any person who has a right in the property or intends to obtain a right in the property by purchase or otherwise will, upon presentation by him of satisfactory evidence, be considered to have a proper interest. Any person desiring this information may make his request to the office of the Internal Revenue Service named on the notice of lien with respect to which the request is made. The request should clearly describe the property subject to the lien, identify the applicable lien, and give the reasons for requesting the information.

PAR. 8. Section 301.6325 is amended to read as follows:

§ 301.6325 Statutory provisions; release of lien or discharge of property.

SEC. 6325. *Release of lien or discharge of property*—(a) *Release of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) *Bond accepted.* There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to

terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

(b) *Discharge of property*—(1) *Property double the amount of the liability.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

(2) *Part payment; interest of United States valueless.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) There is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

(B) The Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

(3) *Substitution of proceeds of sale.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

(c) *Estate or gift tax.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

(d) *Subordination of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) There is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

(2) The Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

(e) *Nonattachment of lien.* If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

(f) *Effect of certificate*—(1) *Conclusiveness.* Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

(A) In the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

(B) In the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

(C) In the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

(D) In the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

(2) *Revocation of certificate of release or nonattachment.* If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

(A) By mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

(B) By filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

(3) *Certificates void under certain conditions.* Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

(g) *Filing of certificates and notices.* If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

(h) *Cross reference.* For provisions relating to bonds, see chapter 73 (sec. 7101 and following).

[Sec. 6325 as amended by sec. 77, Technical Amendments Act 1958 (72 Stat. 1662); sec. 103(a), Federal Tax Lien Act 1966 (80 Stat. 1133)]

PAR. 9. Section 301.6325–1 is amended by revising the heading, by revising subparagraphs (1)(i), (2), (3), and (4) of paragraph (b), by revising paragraph (d), and by adding new paragraphs (e), (f), and (g). These revised and added provisions read as follows:

§ 301.6325–1 Release of lien or discharge of property.

* * * * *

(b) *Discharge of specific property from the lien*—(1) *Property double the amount of the liability.* (i) The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if he determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by the lien and of the amount of all other liens upon the property which have priority over the lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property.

* * * * *

(2) *Part payment; interest of United States valueless*—(i) *Part payment.* The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if there is paid over to him in partial satisfaction of the liability secured by the lien an amount determined by him to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the district director will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued.

(ii) *Interest of the United States valueless.* The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to the lien if he determines that the interest of the United States in the property to be so discharged has no value.

(iii) *Valuation of interest of United States.* For purposes of this subparagraph, in determining the value of the interest of the United States in the property, or any part thereof, with respect to which the certificate of discharge is to be issued, the district director shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the district director may, in his discretion, give consideration to the forced sale value of the property in appropriate cases.

(3) *Discharge of property by substitution of proceeds of sale.* A district director may, in his discretion, issue a

certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if such part of the property is sold and, pursuant to a written agreement with the district director, the proceeds of the sale are held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as the lien or claim had with respect to the discharged property. This subparagraph does not apply unless the sale divests the taxpayer of all right, title, and interest in the property sought to be discharged. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any lien or claim of the United States.

(4) *Application for certificate of discharge.* Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the district director responsible for collection of the tax. The application shall contain such information as the district director may require.

* * * * *

(d) *Subordination of lien*—(1) *By payment of the amount subordinated.* A district director may, in his discretion, issue a certificate of subordination of a lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if there is paid over to the district director an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States. For this purpose, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage loan on a part of the property subject to the tax lien and pays over the proceeds of the loan to a district director after an application for a certificate of subordination is approved, the district director will issue a certificate of subordination. This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection*—(i) *In general.* A district director may, in his discretion, issue a certificate of subordination of a lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if the district director believes that the subordination of the lien will ultimately result in an increase in the amount realized by the United States from the property subject to the lien and will facilitate the ultimate collection of the tax liability.

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

Example (1). A, a farmer, needs money in order to harvest his crop. A Federal tax lien, notice of which has been filed, is outstanding with respect to A's property. B, a lending institution is willing to make the necessary loan if the loan is secured by a first mortgage on the farm which is prior to the Federal tax lien. Upon examination, the district director believes that ultimately the amount realizable from A's property will be increased and the collection of the tax liability will be facilitated by the availability of cash when the crop is harvested and sold. In this case, the district director may, in his discretion, subordinate the tax lien on the farm to the mortgage securing the crop harvesting loan.

Example (2). C owns a commercial building which is deteriorating and in unsalable condition. Because of outstanding Federal tax liens, notices of which have been filed, C is unable to finance the repair and rehabilitation of the building. D, a contractor, is willing to do the work if his mechanic's lien on the property is superior to the Federal tax liens. Upon examination, the district director believes that ultimately the amount realizable from C's property will be increased and the collection of the tax liability will be facilitated by arresting deterioration of the property and restoring it to salable condition. In this case, the district director may, in his discretion, subordinate the tax lien on the building to the mechanic's lien.

Example (3). E, a manufacturer of electronic equipment, obtains financing from F, a lending institution, pursuant to a security agreement, with respect to which a financing statement was duly filed under the Uniform Commercial Code on June 1, 1970. On April 15, 1971, F gains actual notice or knowledge that notice of a Federal tax lien had been filed against E on March 31, 1971, and F refuses to make further advances unless its security interest is assured of priority over the Federal tax lien. Upon examination, the district director believes that ultimately the amount realizable from E's property will be increased and the collection of the tax liability will be facilitated if the work in process can be completed and the equipment sold. In this case, the district director may, in his discretion, subordinate the tax lien to F's security interest for the further advances required to complete the work.

Example (4). Suit is brought against G by H, who claims ownership of property the legal title to which is held by G. A Federal tax lien against G, notice of which has previously been filed, will be enforceable against the property if G's title is confirmed. Because section 6323(b)(8) is inapplicable, J, an attorney, is unwilling to defend the case for G unless he is granted a contractual lien on the property, superior to the Federal tax lien. Upon examination, the district director believes that the successful defense of the case by G will increase the amount ultimately realizable from G's property and will facilitate collection of the tax liability. In this case, the district director may, in his discretion, subordinate the tax lien to J's contractual lien on the disputed property to secure J's reasonable fees and expenses.

(3) *Application for certificate of subordination.* Any person desiring a certificate of subordination under this paragraph shall submit an application therefor in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require.

(e) *Nonattachment of lien.* If a district director determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed in accordance with § 301.6323(f)-1 refers to such person, the district director may issue a certificate of nonattachment. Such certificate shall state that the lien, notice of which has been filed, does not attach to the property of such person. Any person desiring a certificate of nonattachment under this paragraph shall submit an application therefor in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require.

(f) *Effect of certificate*—(1) *Conclusiveness.* Except as provided in subparagraphs (2) and (3) of this paragraph, if a certificate is issued under section 6325 by a district director and the certificate is filed in the same office as the notice of lien to which it relates (if the notice of lien has been filed), the certificate shall have the following effect—

(i) In the case of a certificate of release issued under paragraph (a) of this section, the certificate shall be conclusive that the tax lien referred to in the certificate is extinguished;

(ii) In the case of a certificate of discharge issued under paragraph (b) or (c) of this section, the certificate shall be conclusive that the property covered by the certificate is discharged from the tax lien;

(iii) In the case of a certificate of subordination issued under paragraph (d) of this section, the certificate shall be conclusive that the lien or interest to which the Federal tax lien is subordinated is superior to the tax lien; and

(iv) In the case of a certificate of nonattachment issued under paragraph (e), the certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in the certificate.

(2) *Revocation of certificate of release or nonattachment*—(i) *In general.* If a district director determines that either—

(*a*) A certificate of release or a certificate of nonattachment of the general tax lien imposed by section 6321 was issued erroneously or improvidently, or

(*b*) A certificate of release of such lien was issued in connection with a compromise agreement under section 7122 which has been breached,

and if the period of limitation on collection after assessment of the tax liability has not expired, the district director may revoke the certificate and reinstate the tax lien. The provisions of this subparagraph do not apply in the case of the lien imposed by section 6324 relating to estate and gift taxes.

(ii) *Method of revocation and reinstatement.* The revocation and reinstatement described in subdivision (i) of this subparagraph is accomplished by—

(*a*) Mailing notice of the revocation to the taxpayer at his last known address, and

(*b*) Filing notice of the revocation of the certificate in the same office in which the notice of lien to which it relates was filed (if the notice of lien has been filed).

(iii) *Effect of reinstatement*—(*a*) *Effective date.* A tax lien reinstated in accordance with the provisions of this subparagraph is effective on and after the date of notice of revocation is mailed to the taxpayer in accordance

with the provisions of subdivision (ii) (*a*) of this subparagraph, but the reinstated lien is not effective before the filing of notice of revocation, in accordance with the provisions of subparagraph (ii) (*b*) of this subparagraph, if the filing is required by reason of the fact that a notice of the lien had been filed.

(*b*) *Treatment of reinstated lien.* As of the effective date of reinstatement, a reinstated lien has the same force and effect as a general tax lien imposed by section 6321 which arises upon assessment of a tax liability. The reinstated lien continues in existence until the expiration of the period of limitation on collection after assessment of the tax liability to which it relates. The reinstatement of the lien does not retroactively reinstate a previously filed notice of lien. The reinstated lien is not valid against any holder of a lien or interest described in § 301.6323(a)–1 until notice of the reinstated lien has been filed in accordance with the provisions of § 301.-6323(f)–1 subsequent to or concurrent with the time the reinstated lien became effective.

(iv) *Example.* The provisions of this subparagraph may be illustrated by the following example:

Example. On March 1, 1967, an assessment of an unpaid Federal tax liability is made against A. On March 1, 1968, notice of the Federal tax lien, which arose at the time of assessment, is filed. On April 1, 1968, A executes a bona fide mortgage on property belonging to him to B. On May 1, 1968, a certificate of release of the tax lien is erroneously issued and is filed by A in the same office in which the notice of lien was filed. On June 3, 1968, the lien is reinstated in accordance with the provisions of this subparagraph. On July 1, 1968, A executes a bona fide mortgage on property belonging to him to C. On August 1, 1968, a notice of the lien which was reinstated is properly filed in accordance with the provisions of § 301.-6323(f)–1. The mortgages of both B and C will have priority over the rights of the United States with respect to the tax liability in question. Because a reinstated lien continues in existence only until the expiration of the period of limitation on collection after assessment of the tax liability to which the lien relates, in the absence of any extension or suspension of the period of limitation on collection after assessment, the reinstated lien will become unenforceable by reason of lapse of time after February 28, 1973.

(3) *Certificates void under certain conditions.* Notwithstanding any other provisions of subtitle F of the Code, any lien for Federal taxes attaches to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires the property after the certificate has been issued. Thus, if property subject to a Federal tax lien is discharged therefrom and is later reacquired by the delinquent taxpayer at a time when the lien is still in existence, the tax lien attaches to the reacquired property and is enforceable against it as in the case of after-acquired property generally.

(g) *Filing of certificates and notices.* If a certificate or notice described in this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 (to which the certificate or notice relates) is filed, the certificate or notice is effective if filed in the office of the clerk of the U.S. district court for the judicial district in which the State office where the notice of lien is filed is situated.

[FR Doc.72-22413 Filed 12-29-72; 2:20 pm]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 51]

Fresh Fruits, Vegetables and Other Products Inspection, Certification and Standards

Notice is hereby given that the U.S. Department of Agriculture is considering the amendment of Regulations Governing Inspection, Certification, and Standards for Fresh Fruits, Vegetables and Other Products[1] (7 CFR 51.1–51.61). The Agricultural Marketing Act of 1946 authorizes official inspection and certification of fresh fruits and vegetables and other products.[2] Such inspection and certification is voluntary and is made available only upon request of financially interested parties and upon payment of a fee to cover the cost of the service.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposal should file the same, in duplicate, not later than March 1, 1973 with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, where they will be available for public review during official hours of business (7 CFR § 1.27 (b).)

Statement of considerations leading to the amendment of the regulations. The approved shield mark with the appropriate U.S. grade designation, and other approved continuous inspection legends may be used on containers or labels only when: (1) The product has been packed under continuous inspection as provided by the Inspection Service, (2) the plant in which the product is packed is maintained under good commercial sanitary practices, and (3) the product has been certified by an inspector as meeting the requirements of U.S. Grade A, U.S. Grade No. 1, or a higher U.S. grade, when the grade mark includes the official shield, or the requirements of such quality, grade or specification as may be approved by the Administrator, when certain other continuous inspection legends are used.

In the enforcement of these labeling regulations to guard against improper use of approved grade marks and inspection legends, it is essential that either the packer's name and address or other identification be shown on each container.

The proposed amendment would revise § 51.49 of the regulations to provide requirements pertaining to packer identification and to add an example of such identification by adding a new paragraph (d) and redesignating the present paragraph (d) to (e). A new figure 6 would be added and the present figure 6 renumbered to figure 7.

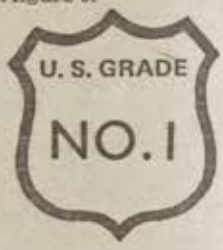
In addition, subparagraph (8) of paragraph (e) of § 51.59 would be reworded to provide that drawings or printers' proofs of each packer's or distributor's labels or other container markings bearing official identification marks be submitted for approval by the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, prior to printing.

As proposed to be amended, §§ 51.49 and 51.59 are set forth below:

§ 51.49 Approved identifications.

* * * * *

(d) *Packer identification* The packer's name and address or assigned code number or other mark identifying the packer as may be approved by the Administrator, shall appear on any container bearing grade marks or inspection legends approved under paragraph (a), (b), or (c) of this section, as illustrated by the example in figure 6.



PACKER NO. 01
PACKED UNDER CONTINUOUS
FEDERAL - STATE INSPECTION

FIGURE 6.

(e) *Other identification marks.* Products may be inspected on a lot inspection basis as provided in this part and identified by an official inspection mark similar in form and design to figure 7 of this paragraph. The use of this mark or other comparable identification marks may be required by the Administrator whenever he determines that such identification is necessary in order to maintain the identity of lots which have been inspected and certified.

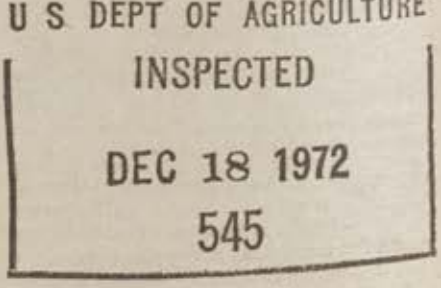


FIGURE 7

[1] None of the requirements in the regulations of this subpart shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to products covered in the regulations of this subpart.

[2] Among such other products are the following: Raw nuts; Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

§ 51.59 Operations and operating procedures.

* * * * *

(e) * * *

(8) Submit to the Chief of the Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, for approval prior to printing, drawings or printers' proofs of each packer's or distributor's label bearing or referring in any manner to official inspection legends or grade marks.

* * * * *

(Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624)

Dated: December 26, 1972.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.73-87 Filed 1-3-73;8:45 am]

Commodity Credit Corporation

[7 CFR Part 1430]

PRICE SUPPORT PROGRAM FOR MILK

Loans, Purchases, and Other Operations

Notice is hereby given that the Secretary of Agriculture, under authority of section 201(c) of the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1446), and sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended (62 Stat. 1070, as amended; 15 U.S.C. 714b and 714c), is considering the terms and conditions of the price support program for milk, for the 1973–74 marketing year beginning April 1, 1973, including the general level of prices to producers for milk and the prices for and terms of purchase by CCC of butter, nonfat dry milk, and cheddar cheese. Section 201(c) of the Agricultural Act of 1949, as amended, provides as follows: "The price of milk shall be supported at such level not in excess of 90 per centum nor less than 75 per centum of the parity price therefor as the Secretary determines necessary in order to assure an adequate supply. Such price support shall be provided through purchases of milk and the products of milk."

Consideration will be given to any data, views, and recommendations which are submitted in writing to the Director, Livestock and Dairy Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. In order to be sure of consideration, all submissions must be received by the Director not later than 30 days after 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 Director during regular business hours (8:15 a.m.–4:45 p.m.). (7 CFR 1.27(b))

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

GLENN A. WEIR,
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc.73-125 Filed 1-3-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 3]

VITAMIN A AND VITAMIN D

Proposed Statement of Policy; Correction

The Commissioner of Food and Drugs issued a proposed statement of policy on the use of vitamin A and vitamin D which was published in the FEDERAL REGISTER of Thursday, December 14, 1972 (37 FR 26618). The provisions of the proposed new sections should be corrected as follows:

1. The proposed § 3.—— *Vitamin A preparations for oral use as drugs* is amended by deleting paragraph (b)(3), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as set forth below.

§ 3.—— Vitamin A preparations for oral use as drugs.

* * * * *

(b) * * *

(3) [Deleted]

(c) Preparations containing 10,000 or less I.U. of vitamin A per dosage unit will be regarded as misbranded if their recommended daily dosage exceeds 10,000 I.U.

* * * * *

2. The proposed § 3.—— *Vitamin D preparations for oral use as drugs* is amended by deleting paragraph (b)(3), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as set forth below.

§ 3.—— Vitamin D preparations for oral use as drugs.

* * * * *

(b) * * *

(3) [Deleted]

(c) Preparations containing 400 or less I.U. of vitamin D per dosage unit will be regarded as misbranded if their recommended daily dosage exceeds 400 I.U.

* * * * *

Dated: December 26, 1972.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-132 Filed 1-3-73;8:45 am]

[21 CFR Part 191]

BANNED HAZARDOUS SUBSTANCES

Proposed Exemption of Artists' Paints and Related Materials

An order was published in the FEDERAL REGISTER of March 11, 1972 (37 F.R. 5229), classifying certain lead-containing paints and other similar surface-coating materials as banned hazardous substances. This regulation (21 CFR 191.9(a)(6)) was promulgated under section 2(q)(1)(B) of the Federal Hazardous Substances Act.

Section 191.9(a)(6)(i) declares as a banned hazardous substance any paint or other similar surface-coating material intended, or packaged in a form suitable, for use in or around a household that is shipped in interstate commerce between December 31, 1972, and December 31, 1973, and that contains lead compounds of which the lead content (calculated as the metal) is in excess of 0.5 percent of the total weight of the contained solids or dried paint film. The effective date of this part of the regulation was confirmed in the FEDERAL REGISTER of August 10, 1972 (37 F.R. 16078).

Since the promulgation of said banning regulation, the Food and Drug Administration has received many inquiries and adverse responses concerning the banning of artists' paints due to their lead content. These deal specifically with lead carbonate (also known as white lead, flake white, cremnitz white, and silver white). Interested persons state (1) that lead is a necessary component of artists' paints, (2) that a satisfactory substitute for lead is not currently available, and (3) that although these products are both intended and packaged in a form suitable for use in and around a household, it is not likely that children will ingest the dried paint film.

Having considered the responses and other relevant material, the Commissioner of Food and Drugs proposes to exempt artists' paints and related materials from classification as a banned hazardous substance. If this proposal is adopted these materials will still be subject to other provisions of the Federal Hazardous Substances Act and regulations promulgated thereunder.

Therefore, pursuant to provisions of the Federal Hazardous Substances Act (sec. 2(q)(1)(B), (2), 74 Stat. 374, as amended 80 Stat. 1304; 15 U.S.C. 1261(q)(1)(B), (2)) and the Federal Food, Drug, and Cosmetic Act (sec. 701(e), 52 Stat. 1055, as amended; 21 U.S.C. 371(e)), and under authority delegated to him (21 CFR 2.120), the Commissioner proposes that § 191.9(a)(6) be amended by adding thereto a new subdivision (i)(*d*), as follows:

§ 191.9 Banned hazardous substances.

(a) * * *

(6)(i) * * *

(*d*) The provisions of this subdivision (i) do not apply to artists' paints and related materials.

* * * * *

Publication of this proposal in the FEDERAL REGISTER shall have the effect of suspending the implementation date (De-

cember 31, 1972) of § 191.9(a)(6)(i)(b) only as it applies to artists' paints and related materials, pending review of comments and promulgation of an order in this matter. This proposal will in no way affect the implementation date of § 191.9(a)(6)(i)(b) as it applies to other paints and similar surface-coating materials.

Interested persons may, within 60 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments 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 26, 1972.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-29 Filed 1-3-72;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 91]

[Docket No. 11350; Notice No. 72-35]

VFR WEATHER MINIMUMS

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 91 of the Federal Aviation Regulations by revising § 91.105 to prescribe distance from cloud minimums for aircraft operating 1,200 feet or less above the surface outside controlled airspace.

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, AGC-24, 800 Independence Avenue SW., Washington, DC 20591. All communications received on or before March 22, 1973, will be considered by the Administrator before taking action on the proposed rule. 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.

I. *Background.* This notice of proposed rule making follows advance notice of proposed rule making (ANPRM) 71-24 (36 FR 17052) which was issued on August 23, 1971. That ANPRM was issued to obtain comments on the adequacy of existing basic VFR weather minimums below 10,000 feet MSL in controlled and uncontrolled airspace.

Approximately 600 of the 730 comments received in response to the notice stated that existing VFR minimums are adequate. Despite the fact that views were solicited on the adequacy of all minimums in controlled airspace below 10,000 MSL, many comments were devoted solely to opposing the results of a pilot survey which indicated that some individuals favored an increase in visibility from 3 to 5 miles. Since many of the comments were preoccupied with this one issue, the amount of information submitted on other aspects of the ANPRM, including distance from cloud requirements, was small. This notice is issued to obtain more adequate public comment with respect to distance from cloud requirements.

II. *Within controlled airspace.* There was overwhelming opposition to increasing VFR minimums in controlled airspace. As indicated above, a large proportion of the comments was directed to the issue of whether or not to increase the visibility minimum to 5 miles (below 10,000 feet). Commentators considered this unacceptable for two reasons. First, they stated that the estimated restriction to all kinds of general aviation activity would be very serious, due to the poor visibility prevailing in many parts of the United States a large portion of the time. Second, they stated that a visibility minimum of 5 miles would not, in itself, enable a pilot to see and avoid another aircraft any sooner than with 3 miles visibility, because, they stated, it is almost impossible to see a small aircraft 5 miles away.

Rule making on the visibility aspects of the ANPRM is being deferred for further study of these comments, particularly since available statistics indicate that most near midair collision incidents occur during daylight hours and when the visibility is in excess of 5 miles. This would indicate that a mere increase in visibility minimums may involve an increased burden on the airspace user without a corresponding increase in safety in controlled airspace.

III. *Outside controlled airspace.* There were few comments directed specifically to adequacy of minimums in uncontrolled airspace. The majority of these stated that the minimums are adequate and no changes are necessary. However, some commentators did support more restrictive requirements. The National Transportation Safety Board (NTSB) commented that in many instances uncontrolled airspace is utilized for training, transition and aircraft familiarization for new or low-time pilots, that these activities plus a low-experience level inherent in training activities tend to increase hazards, and that therefore greater cloud clearance and visibility should be required. The NTSB stated that the weather minimums in uncontrolled airspace should be the same as those in controlled airspace below 10,000 feet. The FAA is giving due consideration to all aspects of this recommendation, and believes that the Board may be correct with respect to distance from clouds at and below 1,200 feet outside controlled airspace. This notice requests further public comment on this point.

Several other comments suggested that the minimums should be increased. Some favored an across-the-board visibility requirement of 3 miles with no change in the existing "clear of clouds" requirement below 1,200 feet AGL. Others suggested some intermediate or sliding scale of visibility values, while a few recommended some form of cloud clearance criteria in uncontrolled airspace below 1,200 feet. In addition, several commentators noted the complexity of the existing weather minimums. The FAA agrees that the present rules are complex, and that one of the complicating factors is the "clear of clouds" requirement outside controlled airspace at and below 1,200 feet above the surface. The proposed amendment, in addition to responding to safety considerations, would eliminate this factor.

As several comments indicated, a requirement to avoid clouds by a moderate distance could prevent a pilot from inadvertently entering clouds since the distance between being "clear of" clouds and "in" clouds is slight. Specifying a moderate minimum distance would introduce a new safety factor in the VFR rules outside of controlled airspace.

Since Notice 71-24 covered many areas and the responding comments were necessarily somewhat fragmented, the FAA believes that the public should have an opportunity to focus on this one aspect of the VFR minimums. In addition to the subject matter of this proposal, there are other subjects either discussed in the ANPRM or generated by it that are receiving consideration and which may lead to future proposals.

In consideration of the foregoing, it is proposed to amend Part 91 of the Federal Aviation Regulations by amending § 91.105(a) by deleting, from the table, the words "clear of clouds" and by substituting the words "500 feet below," "1,000 feet above," and "2,000 feet horizontal," therefor.

This amendment is proposed under the authority of sections 307 and 313(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348, 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 22, 1972.

WILLIAM M. FLENER,
Director, Air Traffic Service.

[FR Doc.73-144 Filed 1-3-73;8:45 am]

Federal Highway Administration

[49 CFR Part 393]

[Docket No. MC-22; Notice No. 72-25]

MOTOR CARRIER SAFETY REGULATIONS

Vehicle Interior Noise Levels

The Director of the Bureau of Motor Carrier Safety proposes to amend the motor carrier safety regulations to establish a maximum interior sound level for commercial motor vehicles operated in interstate or foreign commerce.

On October 28, 1970, the Bureau issued an advance notice of proposed rule making inviting interested parties to comment on the feasibility and need for regulation of interior noise levels of commercial motor vehicles (35 FR 17194). As that notice stated, the Bureau's objective was to reduce the risk of damage to the hearing of drivers and to look into the possibility that noise-induced driver fatigue may play a role in causing accidents. The advance notice specifically invited comments on test procedures, such as those set forth in SAE recommended practice J336, and sought comments on test methods that would be suitable to the Bureau's safety inspection techniques.

Forty responses were received. They evidenced a general agreement that regulation in the area of vehicle interior noise levels was necesary. There was, however, a wide disparity of views on the question of establishing a valid test procedure. The respondents generally concluded that the hearing conservation criteria in the regulations issued under the Walsh-Healey Public Contracts Act (41 CFR 50-204.10) should be applied to commercial motor vehicles. There was, however, no evidence submitted that showed a correlation between the results obtainable using the SAE J336 test procedure, or any other test procedure and in-service driver noise exposure. As a result, the comments did not produce sufficient data to permit the Bureau to derive a suitable test procedure. Further investigation was obviously required.

The Bureau's staff conducted a detailed survey of the available literature, which tended to confirm the view, expressed by many respondents, that regulation in this area is warranted. Extended periods of exposure to high noise levels are known to cause varying degrees of temporary and permanent hearing loss. The Department of Labor, under the authority of the Walsh-Healey Act and the Occupational Safety and Health Act of 1970, is presently enforcing regulations designed to abate the effects of such high noise levels in a number of industries, thereby reducing the risk of hearing loss in workers employed in those industries. The Director has concluded that any hearing loss, even temporary hearing threshold shifts, is detrimental to the safety of commercial motor vehicle operations. He has further concluded that commercial motor vehicle drivers should not be subjected to the deleterious effects of long term, high noise level exposures.

In the case of a bus or truck driver, hearing loss, permanent or temporary, poses a direct threat to highway safety. This potential safety hazard has long been recognized; it forms the basis for provisions of the motor carrier safety regulations which establish minimum driver hearing qualifications (49 CFR 391.41(b)(11)) and which require drivers who must use a hearing aid to meet that qualification standard to wear the device while they are driving (49 CFR 392.9b). There is some evidence indicating that sustained exposure to noise levels even lower than the maxima permitted under presently accepted hearing conservation criteria may be related to psychophysiological impairments which, if unchecked, could lead to a degradation of driving performance.

Levels of exterior or community noise lower than those which are known to be detrimental to hearing have been documented as a major source of irritation to the public. These phenomena have been characterized as "noise pollution." The Bureau of Motor Carrier Safety lacks authority to regulate "noise pollution." Under the Noise Control Act of 1972, Public Law 92-547, Congress directed the Administrator of the Environmental Protection Agency to promulgate noise emission regulations for vehicles operated by motor carriers in interstate and foreign commerce, after consultation with the Secretary of Transportation to assure appropriate consideration for safety and availability of technology. After carefully considering the impact of the Noise Control Act of 1972 upon the present rule-making proceeding, the Director has concluded that the Congress did not intend, by enacting that statute, to disturb the Bureau's authority to protect not only the physical well-being of commercial motor vehicle drivers, but also other highway users from the danger of accidents resulting from temporarily or permanently deafened commercial vehicle drivers. Instead, it was Congress' purpose to give the Environmental Protection Agency the tools to extend protection of the public to matters relating to health and welfare, rather than safety. Hence, the Director has concluded that the evidence now in hand justifies the issuance of a proposal to prohibit exposure of drivers to noise levels that exceed established hearing conservation criteria for the maximum hours of service a driver may lawfully spend behind the wheel of a commercial motor vehicle.

In an effort to develop data that would be helpful in this rulemaking proceeding, the Department of Transportation's Office of Noise Abatement, in cooperation with the Bureau of Motor Carrier Safety and the American Trucking Associations, Inc., conducted detailed studies of both interior and exterior noise levels generated by commercial motor vehicles. The results of these studies are available in DOT report No. OST/TST 72-2 by writing to the National Technical Information Service, Operations Division, Springfield, Va. 22151. The studies dealt with tire noise and noise generated by other vehicle components. (The field testing portion of the studies was conducted at Wallops Island, Va., and this portion of the study is often referred to as the "Wallops Island tests.") In addition, the Bureau has conducted its own over-the-road interior noise level tests on most of these same vehicles. The main objective of the Wallops Island tests was to develop a simple test procedure that could be performed in a stationary vehicle by members of the Bureau's field staff and that would yield results consistent with the time-exposure methodology developed in 1970 by the intersociety committee (representing the American Academy of Occupational Medicine, the American Academy of Opthamology and Otolaryngology, the American Conference of Governmental Industrial Hygienists, the Industrial Hygiene Association, and the Industrial Medical Association).[1] These guidelines, with which present Federal regulations are consistent, are intended to protect 80 to 90 percent of the exposed worker populace from a noise-induced hearing handicap.

The Society of Automotive Engineers recommended practice J336 was developed to provide a test procedure under which a motor vehicle would generate its "worst case" interior noise levels. This being the case, noise level readings obtained through use of this test procedure could, the Bureau concluded, be directly compared to the hearing conservation criteria developed by the 1970 intersociety committee.

During the Wallops Island tests, therefore, the Office of Noise Abatement utilized test procedures which included both portions of the SAE J336 and J366a procedures and procedures using stationary vehicles, that were considered suitable for the Bureau's use. Data from these initial tests indicated that the results of a test of a stationary vehicle, with its engine at high idle speed and its doors and windows closed would, if modified by a suitable correction factor, equal the results obtained from a SAE J366a test.

Satisfied that a suitable test of stationary vehicles could be developed, the Bureau staff conducted over-the-road tests on 11 of the Wallops Island vehicles plus an additional three vehicles not tested at Wallops Island in an effort to relate the data obtained from testing stationary vehicles to the noise-level-versus time-exposure data that result from presently utilized hearing conservation test methods. Preliminary results of these over-the-road tests indicate that the noise levels experienced during tests on stationary vehicles may be somewhat higher than the noise levels to which a driver is exposed during a typical driving cycle. However, firm conclusions based on this data are still tenative at this time, since a complete analysis of the data has not been completed. The Bureau is, therefore, proposing to establish a maximum interior sound level for commercial motor vehicles based upon recommendations of the 1970 intersociety committee. Those recommendations provide for a maximum sound level of 90 db (A) for 8 hours' exposure. The proposed maximum vehicle interior sound level of 88 db (A) is an extrapolation of those recommendations based upon a 10-hour exposure time. The 10-hour hypothesis was chosen because the maximum allowable driving time under § 395.3(a) of the motor carrier safety regulations is 10 hours.

Existing data indicate that if a driver is exposed to higher sound levels for 10

[1] Guidelines for Noise Exposure Control, Sound and Vibration 4(11), 21-24 (November 1970).

hours, he will incur a substantial risk of at least temporary hearing impairment. The Director recognizes that additional data may show that a higher level of sound may be permissible in light of conditions shown to exist during actual operations. Consequently, interested persons are particularly invited to submit test data correlating the results of the static test here proposed to the time-weighted noise exposure of drivers in actual operations.

The proposed rule would incorporate the stationary-vehicle high idle test procedure developed during the Wallops Island tests. General purpose hand-held sound level meters, identical to those now used by the enforcement staff of the California Highway Patrol (to enforce that State's roadside noise limits), would be used. The test would be conducted with the vehicle's windows and doors closed to eliminate, so far as possible, the effects of roadway or industrial noise sources over which the carrier has no control. The objective of the proposed test procedures is to have a test that is as simple and foolproof as possible in order to yield a high degree of repeatability and to produce results that can easily be documented for enforcement purposes.

The proposed new rule would apply an identical standard to all commercial vehicles, regardless of the date of their manufacture. The Bureau's tests of older vehicles indicated that, if a vehicle is properly maintained from an acoustical standpoint, with its muffler, shift lever boot, and cab insulation in good condition, it can meet the proposed standard. The proposed rule does allow, however, an additional amount of time in which to bring older vehicles into compliance with the rule.

In consideration of the foregoing, the Director of the Bureau of Motor Carrier Safety proposes to amend Part 393 of the motor carrier safety regulations (Subchapter B in Chapter III of title 49, CFR) by adding a new § 393.94, reading as set forth below.

Interested persons are invited to submit data, views, or arguments pertaining to the proposal. All comments should refer to the docket number and notice number appearing at the top of this notice. Comments should be submitted in three copies to the Bureau of Motor Carrier Safety, Federal Highway Administration, Washington, D.C. 20590. All comments received before the close of business on March 30, 1973, will be considered before further action is taken. Comments will be available for examination by the public in room 4136, 400 Seventh Street SW., Washington, DC, both before and after closing date for comments.

This notice of proposed rule making is issued under the authority of section 204 of the Interstate Commerce Act, as amended, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator in 49 CFR 1.48 and 49 CFR 389.4, respectively.

Issued on December 22, 1972.

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

§ 393.94 Vehicle interior noise.

(a) *Application of the rules in this section.* This section applies to all motor vehicles manufactured on and after October 1, 1974. On and after March 1, 1975, this section applies to all motor vehicles manufactured before October 1, 1974.

(b) *General rule.* The interior sound level at the driver's seating position of a motor vehicle must not exceed 88 dB(A) when measured in accordance with paragraph (c) of this section.

(c) *Test procedure.* (1) Park the vehicle at a location so that no large reflecting surfaces, such as other vehicles, signboards, buildings, or hills, are within 50 feet of the driver's seating position.

(2) Close all vehicle doors, windows, and vents. Turn off all power-operated accessories.

(3) Place the driver in his normal seated position at the vehicle's controls. Evacuate all occupants except the driver and the person conducting the test.

(4) Use a sound level meter which meets the requirements of the American National Standards Institute Standard ANSI S1.4–1971 Specification for Sound Level Meters, for Type 2 Meters. Set the meter to the A weighting network, "fast" meter response.

(5) Locate the microphone, oriented vertically upward 6 inches to the right of, in the same plane as, and directly in line with, the driver's right ear.

(6) With the vehicle's transmission in neutral gear, accelerate its engine to its maximum governed or maximum rated engine speed. Stabilize the engine at that speed.

(7) Observe the A-weighted sound level reading on the meter for the stabilized engine speed condition. Record that reading, if the reading has not been influenced by extraneous noise sources such as motor vehicles operating on adjacent roadways.

(8) Return the vehicle's engine speed to idle and repeat the procedures specified in paragraph (c) (6) and (7) of this section until two maximum sound levels within 2 dB of each other are recorded. Numerically average those two maximum sound level readings.

(9) The average obtained in accordance with paragraph (c) (8) of this section is the vehicle's interior sound level at the driver's seating position for the purpose of determining whether the vehicle conforms to the rule in paragraph (b) of this section. However, a 2 dB tolerance over the sound level limitation specified in that paragraph is permitted to allow for variations in test conditions and variations in the capabilities of meters.

[FR Doc.73-143 Filed 1-3-73;8:45 am]

ATOMIC ENERGY COMMISSION

[10 CFR Part 19]

NOTICES, INSTRUCTIONS AND REPORTS TO EMPLOYEES OF LICENSEES; INSPECTIONS

Notice of Proposed Rule Making

The Atomic Energy Commission has under consideration the adoption of a new 10 CFR Part 19 which would include certain provisions for the options of employees of Commission licensees concerning Commission inspections. These provisions are comparable with those provided by the Department of Labor for inspections pursuant to the Occupational Safety and Health Act of 1970 (OSHA), as set out in 29 CFR Part 1903. Several requirements presently included in 10 CFR Part 20 regarding information that licensees must provide for their employees would also be included in proposed Part 19.

The basic purpose of the new Part 19 would be to provide options to workers concerning inspections of working conditions regulated by the Commission comparable to those that are afforded for working conditions regulated by the Department of Labor.

Several sections in 10 CFR Part 20 as presently in force deal specifically with information that Commission licensees are required to provide for their employees. Section 20.206 requires instructions and the posting of various notices for employees. Section 20.404 requires radiation exposure reports to former employees upon request. Section 20.405(c) requires notification in writing to any employee (or other individual) who receives an exposure of any type that must be reported to the Commission in accordance with § 20.405 (a) or (b). Section 20.406 requires annual radiation exposure reports to employees upon request. Section 20.408 requires, from licensees subject to § 20.407, a report to any employee (or other individual), upon termination of employment, of an exposure of any type recorded pursuant to §§ 20.401(a) or 20.108. It is proposed to transfer these provisions to the proposed new Part 19; the substance of §§ 20.405(c) and 20.408 would be combined. Notice of proposed amendments to 10 CFR Part 20 to reflect these transfers is being published concurrently with this notice.

Proposed § 19.12, "Instructions to employees", includes the substance of present § 20.206(a) with the addition of new requirements that licensees instruct their employees: (1) To observe Commission regulations and license conditions to the extent within their control, (2) to report to the licensee conditions which may lead to or cause a violation of Commission regulations or license conditions or any unnecessary exposure, and (3) to respond appropriately to warnings in the event of unusual occurrences.

Proposed § 19.13, "Notifications and reports to employees", includes present

regulations in 10 CFR Part 20 which require notices or reports to employees of their exposure to radiation or radioactive material. The requirements for notification and reports to employees would be extended to include the results of measurements, analyses, and calculations of radioactive material deposited or retained in the body of an employee.

Sections 19.14 through 19.17 would provide options to employees in connection with AEC inspections comparable to those provided by 29 CFR Part 1903 in connection with Department of Labor inspections.

Pursuant to the Atomic Energy Act of 1954, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following new 10 CFR Part 19 is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, within forty-five (45) days after publication of this notice in the FEDERAL REGISTER. Copies of the comments on the proposed amendments may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20545.

A new Part 19 is added to read as follows:

PART 19—NOTICES, INSTRUCTION AND REPORTS TO EMPLOYEES OF LICENSEES; INSPECTIONS

Sec.
19.1 Purpose.
19.2 Scope.
19.3 Definitions.
19.4 Interpretations.
19.5 Communications.
19.11 Posting of notices to employees.
19.12 Instructions to employees.
19.13 Notifications and reports to employees.
19.14 Presence of representatives of licensees and employees during inspections.
19.15 Consultation with employees during inspections.
19.16 Requests by employees for inspections.
19.17 Inspections not warranted; informal review.
19.30 Violations.

§ 19.1 Purpose.

The regulations in this part establish requirements for notices, instructions, and reports, by licensees to licensee employees in connection with licensed activities, and options available to employees of licensees in connection with Commission inspections and investigations of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, and regulations, orders and licenses issued thereunder.

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Commission pursuant to the regulations in Parts 30, 32 through 35, 40, or 70 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

§ 19.3 Definitions.

As used in this part:

(a) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto;

(b) "Commission" means the U.S. Atomic Energy Commission;

(c) "License" means a license issued under the regulations in Parts 30, 32 through 35, 40, or 70 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter. "Licensee" means the holder of such a license.

(d) "Restricted area" means any area access to which is controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials. "Restricted area" shall not include any areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

§ 19.4 Interpretations.

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

§ 19.5 Communications.

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part should be addressed to the Director of Regulatory Operations, U.S. Atomic Energy Commission, Washington, D.C. 20545. Communications, reports, and applications, may be delivered in person at the Commission's offices at 1717 H Street NW., Washington, DC; at 7920 Norfolk Avenue, Bethesda, MD; or at Germantown, Md.

§ 19.11 Posting of notices to employees.

(a) Each licensee shall post current copies of the following documents: (1) The regulations in this part; (2) the regulations in Part 20 of this chapter; (3) the license or licenses, and amendments; and (4) the operating procedures applicable to the licensed work. If posting of a document is not practicable, the licensee may post a notice which describes the document and states where it may be examined by employees.

(b) Form AEC–3, "Notice to Employees," shall be posted by each licensee.

NOTE: Copies of Form AEC–3 may be obtained by writing to the Director of the appropriate U.S. Atomic Energy Commission regional regulatory operational office listed in appendix "D", Part 20 of this chapter, or the Directorate of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

(c) Form AEC–3, and any notice or document posted by the licensee pursuant to paragraph (a) of this section, shall be posted conspicuously in every establishment where employees are employed in activities licensed by the Commission, in a sufficient number of places to permit employees to observe them on the way to or from their place of employment.

(d) Except for documents or parts thereof relating to nuclear materials safeguards, each licensee shall post within 24 hours after receipt a copy of any notice of violation, notice of proposed imposition of civil penalty, or order issued pursuant to Subpart B of Part 2 of this chapter, and shall post, within 24 hours after dispatch, a copy of his response to such document(s). Such document shall be conspicuously posted in a sufficient number of places in the licensee's establishment where employees are employed in activities licensed by the Commission to permit employees working in or frequenting any portion of the establishment to observe a copy on the way to or from their place of employment. Such documents shall remain posted until 10 working days after the licensee's response is dispatched, or until action correcting the violation has been completed, whichever is later. If no response from the licensee is required, such documents from the Commission shall remain posted for 10 working days. The licensee shall assure that such documents are not covered by other materials, and are not defaced or altered during the period when posting is required.

§ 19.12 Instructions to employees.

All employees of licensees working in, or frequenting any portion of, a restricted area shall: (a) Be informed of the occurrence of radioactive materials or of radiation in such portions of the restricted area; (b) be instructed in the health protection problems associated with exposure to such radioactive materials or radiation, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed; (c) be instructed in, and instructed to observe, to the extent within the employees' control, the applicable provisions of Commission regulations and licenses for the protection of personnel from exposures to radiation or radioactive materials; (d) be instructed to report promptly to the licensee any condition which may lead to or cause a violation of Commission regulations and licenses or unnecessary exposure to radiation or to radioactive material; (e) be instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and (f) be advised as to the radiation exposure reports which licensee employees may request pursuant to § 19.13.

§ 19.13 Notifications and reports to employees.

(a) Notifications and reports to an employee as required by this section shall: Be in writing; include appropriate identifying data such as the name of the licensee, the name of the employee, the employee's social security number; include the employee's radiation exposure data obtained in compliance with the regulations of this chapter and the results of any measurements, analyses, and

calculations of radioactive material deposited or retained in the body of the employee, as performed in compliance with any Commission regulation, order, or license condition as appropriate; and contain the following statement:

This report is furnished to you under the provisions of the Atomic Energy Commission regulation 10 CFR Part 19. You should preserve this report for further reference.

(b) At the request of any employee, each licensee shall advise such employee annually of the employee's exposure to radiation or radioactive material.

(c) At the request of a former employee each licensee shall furnish to the former employee a report of the former employee's exposure to radiation or radioactive material. Such report shall be furnished within 30 days from the time the request is made, shall cover each calendar quarter of the employee's employment involving exposure to radiation or radioactive material, or such lesser period as may be requested by the employee, and shall include the dates and locations of employment with the licensee.

(d) When a licensee is required pursuant to § 20.405 or § 20.408 of this chapter to report to the Commission any exposure of an employee to radiation or radioactive material, the licensee shall also provide a copy of the report to the employee. Such notice shall be transmitted at a time not later than the transmittal to the Commission.

§ 19.14 Presence of representatives of licensees and employees during inspections.

(a) A representative of a licensee and a representative authorized by the employees of the licensee shall be given an opportunity to accompany a Commission inspector during the physical inspection of working conditions in any establishment where licensed activities are conducted, for the purpose of aiding such inspection. An inspector may permit additional licensee representatives or representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. Different licensee and employee representatives may accompany the inspector during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) Commission inspectors shall have authority to resolve all disputes as to who is the representative authorized by the licensee and licensee employees for the purpose of this section. If there is no authorized representative of employees, or if the inspector is unable to determine with reasonable certainty who is such representative, he may consult with a reasonable number of employees concerning matters of radiation protection in the establishment.

(c) The representative(s) authorized by employees shall be an employee(s) of the licensee. However, if in the judgment of the Commission inspector, good cause has been shown why accompaniment by a third party who is not an employee of the licensee (such as a consultant health physicist) is reasonably necessary to the conduct of an effective and thorough physical inspection of the working conditions, such third party may accompany the inspector during the inspection.

(d) Commission inspectors are authorized to refuse to permit accompaniment under this section by any individual whose conduct interferes or is likely to interfere with a fair and orderly inspection. With regard to areas containing proprietary information or information classified by an agency of the U.S. Government in the interest of national security, an individual who accompanies an inspector may have access to such information only if authorized to do so.

§ 19.15 Consultation with employees during inspections.

Commission inspectors may consult with employees of licensees concerning matters of radiation protection with respect to employees and other matters related to applicable provisions of Commission regulations and licenses to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee may bring privately to the attention of the inspectors any past or present condition in the establishment which he has reason to believe may have contributed to or caused (a) any violation of the Act, the regulations in this chapter, or license condition, or (b) any unnecessary exposure of an individual to radiation or radioactive material.

§ 19.16 Requests by employees for inspections.

(a) Any employee or employee representative who believes that a violation of the Act, the regulations in this chapter, or license conditions exists or has occurred in any establishment where licensed activities are conducted and where such employee is employed, may request an inspection of such establishment by giving notice of the alleged violation to the Director of Regulatory Operations or to a Commission inspector. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the licensee by the Director of Regulatory Operations or the inspector no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the name of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Commission, except for good cause shown.

(b) If, upon receipt of such notice, the Director of Regulatory Operations determines that the complaint meets the requirements set forth in paragraph (a) of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists or has occurred. Inspections pursuant to this section need not be limited to matters referred to in the complaint.

(c) During any inspection of an establishment in which licensed activities are conducted, any employee or representative of employees employed in such establishment may notify the inspector, in writing, of any past or present condition therein which he has reason to believe may have contributed to or caused any violation. Any such notice shall comply with the requirements of paragraph (a) of this section.

(d) No licensee shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under the regulations in this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this part.

§ 19.17 Inspections not warranted; informal review.

(a) If the Director of Regulatory Operations determines, with respect to a complaint under § 19.16 that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, he shall notify the complainant in writing of such determination. The complainant may obtain review of such determination by submitting a written statement of position with the Director of Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545, and, at the same time, shall provide the licensee with a copy of such statement by certified mail. The licensee may submit an opposing written statement of position with the Director of Regulation, and at the same time, shall provide the complainant with a copy of such statement by certified mail. Upon the request of the complainant or the licensee, the Director of Regulation or his designee may hold an informal conference in which the complainant and the licensee may orally present their views. After considering all written and oral views presented, the Director of Regulation shall affirm, modify, or reverse the determination of the Director of Regulatory Operations and furnish the complainant and the licensee a written notification of his decision and the reason therefor.

(b) If the Director of Regulatory Operations determines that an inspection is not warranted because the requirements of § 19.16(a) have not been met, he shall notify the complainant in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of § 19.16(a).

§ 19.30 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the act or any regulation or order issued thereunder.

Any person who willfully violates any regulation or order issued thereunder may be guilty of a crime, and upon conviction, may be punished by fine or imprisonment or both, as provided by law.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Germantown, Md., this 21st day of December 1972.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-107 Filed 1-3-73;8:45 am]

[10 CFR Part 20]

STANDARDS FOR PROTECTION AGAINST RADIATION

Reports to Employees and Other Individuals

Concurrently with publication of this notice, the Atomic Energy Commission is publishing a notice of proposed rule making to add to its regulations a new 10 CFR Part 19, Notices, Instructions and Reports; Inspections. Set forth in this notice are proposed amendments to 10 CFR Part 20 of the Commission's regulations. The amendments would transfer from 10 CFR Part 20 certain sections that would be incorporated in the new 10 CFR Part 19, and would add to 10 CFR Part 20 appropriate references to new 10 CFR Part 19 so that the transferred provisions may be easily found. A new section would be added containing the requirements for notification and reports to individuals which may include persons other than employees. The requirements for reports to individuals as specified in §§ 20.405(c) and 20.408 would be combined into one paragraph of the new section.

Pursuant to the Atomic Energy Act of 1954, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 20 is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, within forty-five (45) days after publication of this notice in the FEDERAL REGISTER. Copies of the comments on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

1. Section 20.206 is amended to read as follows:

§ 20.206 Instruction of personnel.

All individuals working in or frequenting any portion of a restricted area shall receive instructions as specified in § 19.12 of this chapter.

§ 20.404 [Deleted]

2. Section 20.404 is deleted.

§ 20.405 [Amended]

3. Paragraph (c) of § 20.405 is deleted.

§ 20.406 [Deleted]

4. Section 20.406 is deleted.

§ 20.408 [Amended]

5. Section 20.408 is amended to delete the words "to such individual and".

6. A new § 20.409 is added to read as follows:

20.409 Notifications and reports to individuals.

(a) Notifications and reports to employees and former employees of exposure to radiation or radioactive material shall be made in accordance with § 19.13 of this chapter.

(b) When a licensee is required pursuant to § 20.405 or § 20.408 to report to the Commission any exposure of an individual to radiation or radioactive material, the licensee shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the Commission, and shall comply with the provisions of § 19.13(a) of this chapter.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Germantown, Md., this 21st day of December 1972.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-108 Filed 1-3-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19663; FCC 72-1176]

FM BROADCAST STATIONS

Proposed Table of Assignments in Certain Cities in Colorado and Wyoming and Memorandum Opinion and Order

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Craig, Greeley, Vail, and Windsor, Colo., and Laramie and Torrington, Wyo.) (Fort Collins, Pueblo, and Steamboat Springs, Colo.), Docket No. 19663, RM-1895, RM-1896, RM-1871.

1. We have before us, for consideration, three petitions, each requesting the institution of rule making looking toward the assignment of a new FM channel. They each deal with different communities which are related by close proximity. The views of petitioners and commenting parties in respect to each proposal will be set out seriatim. Our public interest evaluation concerning the three proposals will follow in a succeeding paragraph. All population statistics cited are from the 1970 U.S. Census unless otherwise specified.

RM-1871, FORT COLLINS, PUEBLO, STEAMBOAT SPRINGS, AND VAIL, COLO.

2. On October 28, 1971, Mr. Charles R. Tuma filed a petition with this Commission (supplemented on June 1, 1972 and June 19, 1972) requesting the assignment of FM Channel 264 to Fort Collins, Colo. The assignment is proposed to be accomplished by making the following changes in our FM table of assignments:

City	Add	Delete
Fort Collins, Colo.	264	----
Pueblo, Colo.	284	[1] 264
Vail, Colo.	245	[2] 284
Steamboat Springs, Colo.	292A	[3] 244A

[1] No application pending.
[2] Two applications pending.
[3] Three applications pending.

An opposition to the proposal was filed by Vail Broadcasting Corp. (Vail Broadcasting), applicant for FM Channel 284 at Vail, Colo. (BPH-7960).[1]

3. Fort Collins, Colo. (population 43,337), is the county seat of Larimer County (population 89,900). FM Channels 227 and 300 are assigned to Fort Collins. The former channel is licensed to the Fort Collins Broadcasting Co. (KIIX-FM). The latter channel has two applications pending for its use, BPH-7434 (Gilroy Broadcasting Co., Inc.) and BPH-7496 (Beef Empire Broadcasting Co.). An educational FM station, KCSU-FM, is licensed to the State Board of Agriculture on Channel 215 in the community. KCOL is licensed to Beef Empire Broadcasting Co. and serves Fort Collins as an unlimited time standard broadcast service. A daytime-only standard broadcast service is provided in the community on KZIX, which is licensed to the Fort Collins Broadcasting Co. In brief, Fort Collins has two FM commercial services, two standard broadcast commercial services and one FM educational service existing or in prospect.

4. Petitioner's filings indicate that Fort Collins (its county's seat) is a rapidly developing community with a population growth, between 1960 and 1970, of 73 percent. Mr. Tuma maintains that the official census statistics for 1970 do not accurately reflect the number of residents in the community since in addition to those persons listed in the census there are approximately 20,000 students located there in attendance at Colorado State University during most of the year. The educational facilities in Fort Collins include the Colorado State University, two high schools, four junior high schools and 18 public and parochial elementary schools. We are told that the community has a healthy industrial base with a variety of companies being active. We are further

[1] A site for Channel 264 at Fort Collins must be at least 5 miles north to meet the spacing requirement to Channel 266 at Denver, Colo. A site for Channel 245 at Vail must be at least 1 mile southwest to met the spacing requirement to Channel 247 at Boulder, Colo.

advised that the area will have the benefit of a huge photographic processing plant which is being built by the Eastman Kodak Co., and that there are approximately 57 industrial employers in Larimer County, where the largest employs 1,600 persons. Fort Collins also is the hub for a large farming and ranching area with agricultural products being sold in the county in the value of $30 million a year. Retail sales in Fort Collins have increased from $59 million in 1963 to $99 million in 1970. The average effective buying income per household in Larimer County is in excess of $9,000.

5. In order to assign Channel 264 to Fort Collins a variety of other reassignments are required (see paragraph 2 supra) among which is the deletion of Channel 284 from Vail, Colo., and its replacement with proposed Channel 245. Vail Broadcasting is an applicant for the use of Channel 284 at Vail supra as is Radio Vail, Inc. (BPH-8056). Vail Broadcasting informs us that the only appropriate site for locating the required FM tower and antenna is within the White River National Forest and that any tower located in the forest must meet the rigid standards of the U.S. Department of Agriculture, Forest Service (Forest Service), with respect to ecological criteria. Apparently Vail Broadcasting and a number of users of nonpublic radio facilities have prevailed on the Forest Service to establish an antenna farm, to which all antennas located in the national park are to be restricted, on Vail Mountain. A tower for FM Channel 284, presently assigned to Vail, can be located at the said antenna farm in full compliance with our minimum mileage separation requirements. Petitioner's proposed replacement for Channel 284, Channel 245, cannot have its tower constructed at the said location without causing a short spacing to FM Channel 247 occupied by Station KRNW at Boulder, Colo. Hence, Vail Broadcasting vigorously opposes the suggested replacement of Channel 284 with Channel 245 at Vail, maintaining that the assignment of Channel 245 is impractical at Vail because of the interaction of our minimum mileage separation requirements with the restriction of tower and antenna sites required by the Forest Service.[3] Petitioner makes a showing that Channel 245 can be used at the said site if the Commission will grant a waiver with regard to our minimum mileage separation requirements. Mr. Tuma maintains that such a waiver should be granted because the shortage in spacing is small (.689 of a mile) and because the topography between Vail and Boulder will prevent any possible interference between the proposed Vail station and KRNW at Boulder.

[3] The second best antenna site available to potential broadcasters at Vail under the Forest Service's regulations is clearly unsuitable in Vail Broadcasting's view since it is 28 miles distant by road with the last 6 miles passable only by cross country skis in the winter.

RM-1895, GREELEY AND CRAIG, COLO., AND LARAMIE, WYO.

6. Mr. Joseph Tennessen[3] filed a petition with this Commission on November 19, 1971, requesting the assignment of FM Channel 241 to Greeley, Colo., by the following amendments to § 73.202(b) of our rules:

City	Add	Delete
Greeley, Colo.	241	----
Laramie, Wyo.	236	[1] 241
Craig, Colo.	273	[2] 236

[1] No application pending.
[2] No application pending.

The only comment received was from petitioner in support of the proposal.[4]

7. Weld County, Colo., the largest county in Colorado, has a population of 89,297 persons. It contains, as its county seat, Greeley, with its population of 38,902 residents. Our FM table of assignments has one FM channel assigned to the community, Channel 222, on which KGRE, licensed to Meroco Broadcasting Co., operates. An educational FM station, KUNC-FM, operating on Channel 218, is licensed to the University of Northern Colorado in the community. There are two standard broadcast stations in Greeley, KFKA and KYOU. The former is licensed to Colorado R.G., Inc. while the latter is licensed to Meroco Broadcasting Co.

8. Mr. Tennessen states:

> Greeley serves as the primary cultural, educational and retail center for Weld County and the surrounding area. It is the site of the University of Northern Colorado which has an enrollment of approximately 10,000 and Aims College with an enrollment exceeding 3,000. The economy of the Greeley area is expanding rapidly. Retail sales have grown from $159 million in 1965 to $260 million in 1971. A number of large manufacturing concerns are now located in the front range area north of Denver and it remains an area of continued high growth. Kodak has built a major facility in Weld County which is expected to employ 3,000 persons by 1975.

We are advised that Greeley's population has grown at a 47.8-percent rate between 1960 and 1970. After a recent survey petitioner made in connection with the operation of KFKA, petitioner concluded that there was a real desire in Greeley for a greater variety of programing with some members of the public in favor of more musical fare while others desired more informational material. Mr. Tennessen hopes to meet this diversity of needs with the proposed new FM operation. While noting the point that 57 percent of the county's gross product is generated by agriculture, petitioner underscores the fact that a substantial portion of the rural population surrounding Greeley receives little or no nighttime radio service. He further suggests that any service received from Denver, Colo., stations, 50 miles distant, does not meet the needs of Weld County since Denver stations' news, information and other programing are directed to the tastes and interests of metropolitan Denver. In conclusion, it is Mr. Tennessen's business judgment that the city of Greeley can support an additional FM broadcast service.

[3] Mr. Tennessen is the president of Colorado R.G., Inc., licensee of standard broadcast Station KFKA at Greeley, Colo.

[4] A site for Channel 241 at Greeley must be at least 10 miles north to meet the spacing requirement to Channel 239 at Denver, Colo.

RM-1896, WINDSOR, COLO., AND LARAMIE AND TORRINGTON, WYO.

9. FM Channel 256 is requested to be assigned to Windsor, Colo., by the petition of Mr. Harry P. Brewer (individual licensee of standard broadcast Station KUAD, Windsor, Colo.), filed with this Commission on November 23, 1971. The assignment is proposed to be made by making the following changes in our FM table of assignments:

City	Add	Delete
Windsor, Colo.	256	----
Laramie, Wyo.	275	[1] 255
Torrington, Wyo.	272A	[1] 257A

[1] No application pending.

The only filing subsequent to the petition was the supplement to the petition also filed by Mr. Brewer.[5]

10. There is no FM assignment and only one standard broadcast station at Windsor, located in Weld County, respective populations, 1,564 and 89,297. The standard broadcast station, KUAD is a daytime-only service licensed to petitioner.[6]

11. Most of petitioner's material deals with the engineering problem of finding an FM frequency which can be assigned to Windsor in compliance with our standard requirements. Attempts were made to find a Class A channel for assignment to the community. No Class A channel could be found which could be located to meet our minimum mileage separation requirements and at the same time put the required city-grade signal over Windsor. In view of this circumstance and Mr. Brewer's desire to establish a first full-time local radio service at Windsor, Class C Channel 256 is proposed for assignment to that community. In an attempt to support his proposal petitioner sets out the following facts:

> Windsor is a town of single-family homes with almost 95 percent of the dwelling units being in this class. The Windsor School District covers an area of 100 square miles, with an enrollment of almost 1,000 pupils. Since more than half of the students are bused

[5] A site for Channel 256 at Windsor must be at least 11 miles northeast to meet the spacing requirement to Channel 258 at Denver, Colo.

[6] Petitioner states: "KUAD is currently a day-time only broadcast station. Even though they have been granted a PSA license, for 25 percent of the year KUAD is unable to serve their day-time listening audience starting at 6 a.m. due to the limitations incurred for protection of KVOO in Tulsa, Okla. * * *"

into Windsor, a broadcast station—operating presunrise hours to get school closing and other important information to the students and their parents—is an essential and basic need of this remote area of Colorado.

Windsor came into existence in 1882 when it became a regular overnight stop for travelers. It grew into the major shopping and civic center for the surrounding farms and cattle ranches. Windsor is at the intersection of two state highways and is four miles east of a limited access, divided, interstate highway running north to Cheyenne and south to Denver. The community is served by two railroads.

In the past few years, several national and international firms have located in northern Colorado. Among them are IBM, Hewlett-Packard, Beechcraft, Ball Brothers, Dow Chemical, and Westinghouse. In 1968, Eastman Kodak announced that it would build a large facility just southeast of Windsor for the processing of photographic chemicals and sensitized film and paper. The company estimates a payroll of 1,000 persons by the end of 1972 and of 2,500 people by 1975, and it contemplates further expansion after that. On the basis of this projection and the probable location of more industry in the area, a tenfold increase in the population is anticipated by 1990.

Windsor community leaders have come to realize that growth, if unplanned, could bring community problems such as housing, traffic, utilities, schools, health care and drugs. With the aid of a Federal grant and with the assistance of the State of Colorado, the Public Service Co., the Mountain States Telephone Co., and the Eastman Kodak Co., Windsor has had prepared a comprehensive master plan to cope with this future development. The scope of this plan takes into account community goals regarding land use, transportation, housing, community facilities, commercial development, and future industry. Thus, Windsor has seized the opportunity to become the State's most attractive growth area.

PRELIMINARY EVALUATION OF THE FORT COLLINS, GREELEY AND WINDSOR PROPOSED ASSIGNMENTS

12. As noted above, the three communities involved herein are located in close proximity to each other. Fort Collins, Greeley, and Windsor are located in the north central portion of the State of Colorado, with Windsor located in between the other two communities. The distance between Fort Collins and Greeley is approximately 22 miles, and the distance to Windsor is approximately 11 miles from either city. The 1970 U.S. census population for Fort Collins is 43,337, for Greeley is 38,902, and for Windsor is 1,564. Fort Collins has two FM assignments, Greeley has one and Windsor has none. The three petitioners are requesting Class C channel assignments, but due to the proximity of these communities and the low population density, it does not appear that it would be in the public interest to propose an assignment of three Class C channels—no Class A channels are available for assignment in this area of Colorado. However, it would be desirable to explore the possibility of assigning two additional channels to this area. Although it appears that any two of the three channels proposed herein could be assigned to any one of the three communities, Channels 241 and 256 are to be preferred. Our technical analysis indicates that proposed assignment of these two channels would involve the least possible areas of preclusion to future assignments on the cochannel and adjacent channel frequencies. It would thus leave Channel 264 and its adjacent channels available for future assignments to a wide area. Further, the proposal for Channel 264 involves a change in the channel assignments at two communities for which applications have been filed, and it would not be in the public interest to delay consideration of these applications as result of a rule making proceeding herein. Thus we will propose for consideration the assignment of Channel 241 to Greeley and Channel 256 to either Fort Collins or Windsor. It is to be noted that a Class C channel assigned to either Fort Collins or Greeley could be used at Windsor by the provisions of § 73.203(b) of the rules.

13. In view of the foregoing, we propose for consideration the following revisions in our FM Table of Assignments (§ 73.202(b) of our rules) with respect to the cities listed below:

TABLE A

City	Channel No.	
	Present	Proposed
Greeley, Colo.	222	222, 241
Laramie, Wyo.	241, 255	236, 255
Craig, Colo.	229, 236	229, 272

TABLE B

City	Channel No.	
	Present	Proposed
Windsor, Colo.		(1)
Fort Collins, Colo.	227, 300	227, 256, 300
Laramie, Wyo.	241, 255	241, 275
Torrington, Wyo.	257A	232A

[1] 256 or in the alternative.

14. Authority for the actions proposed herein is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

15. *Showings required.* Comments are invited on the proposals discussed and set forth above. Proponents of the proposed assignments are expected to file comments even if they only resubmit or incorporate by reference their former pleadings. They should also state their intent to apply for the channels if they are assigned and, if authorized, to build their stations properly. Failure to file may lead to denial of a request.

16. *Cutoff procedure.* As in other recent FM rule making proceedings, the following procedures will govern:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered, if advanced in reply comments.

(b) With respect to petitions for rule making which conflict with the proposals in this notice, they will be considered as comments in the proceeding, and public notice to this effect will be given, as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decisions in this docket.

17. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules and regulations, interested parties may file comments on or before February 2, 1973, and reply comments on or before February 12, 1973. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

18. In accordance with the provisions of § 1.419 of the Commission's rules and regulations, an original and 14 copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

19. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its Headquarters in Washington, D.C. (1919 M Street NW.).

20. For the reasons stated above: *It is ordered*, That the petition for rule making (as supplemented) filed by Mr. Charles R. Tuma (RM-1871), proposing the assignment of Channel 264 to Fort Collins, Colo., is denied.

Adopted: December 20, 1972.

Released: December 27, 1972.

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

[FR Doc.73-175 Filed 1-3-73;8:45 am]

[47 CFR Part 78]

[Docket No. 19623]

BANDWIDTHS AVAILABLE FOR INTRA-CITY STATIONS

Proposed Alternative Channel Arrangement; Order Extending Time for Filing Comments

In the matter of amendment of Part 78 of the Commission's rules and regulations to add an alternative channel arrangement, reducing the bandwidths available for intra-city stations, and adding certain other clarifications, Docket No. 19623, RM-1936.

1. On December 20, 1972, Theta-Com of California filed a motion for extension of time within which to file reply comments in the above-captioned proceeding. Theta-Com requests that the time for filing reply comments be extended from December 29, 1972, to, and including, January 16, 1973.

2. In support thereof, Theta-Com asserts that a number of parties filed comments and recommendations with respect to various aspects of the rule making proceeding and that some of these comments are quite lengthy and that all are highly technical in nature. Theta-Com indicates that the nature of the comments will require a careful technical evaluation in order for the parties

to submit meaningful and helpful reply comments relative to the important issues raised in the notice of proposed rule making. The fact that the reply comment period runs through the Christmas holiday season lessens the time for evaluation and is added justification for the extension. Finally, Theta-Com submits that the extension will not work to the prejudice of any party, rather will facilitate a decision on the issues raised in the notice of proposed rule making.

3. It appears that good cause exists for the extension of time and it will accordingly be granted.

Accordingly, it is ordered, That the motion for extension of time filed December 20, 1972, by Theta-Com of California is granted and the date for filing reply comments in this proceeding is extended until January 16, 1973.

This action is taken by the Chief, Cable Television Bureau, pursuant to authority delegated by § 0.289(c)(4) of the Commission's rules.

Adopted and Released: December 27, 1972.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] SOL SCHILDHAUSE,
Chief, Cable Television Bureau.

[FR Doc.73-173 Filed 1-3-73;8:45 am]

[47 CFR Part 89]

[Docket No. 19662; FCC 72-1165]

PUBLIC SAFETY RADIO SERVICES

Memorandum Opinion and Order; Expanded Use of Tone and Impulse Signaling

In the matter of amendment of Part 89 of the Commission's rules to permit expanded use of tone and impulse signaling in the public safety radio services, Docket No. 19662, RM-1762, RM-1892, RM-1731.

1. On July 24, 1963, the Commission adopted rules (Docket 14424) permitting police, fire, and local government licensees use of land-mobile frequencies for certain specified fixed and mobile remote alarm signaling purposes. The transmitters are limited to 50 watts plate input power, voice and nonvoice emission (A1, A2, A3, F1, F2, F3) with a 6-second maximum message length, subject to no more than five repeats. In addition, activation of the transmitter may occur only to indicate intruders, fires, or equipment malfunction. It was felt that these operating conditions, taken together, would insure intermittent operation of alarm signaling units and, thus, minimize interference to the normal voice base-mobile communications of cochannel licensees.

2. The Commission has received petitions from the Forestry Conservation Communications Association (FCCA) and the Associated Public Safety Communications Officers, Inc. (APCO) seeking amendment of the above provisions. The FCCA petition (RM-1762) requests amendment of the forestry conservation radio service rules by addition of the alarm signaling provisions now contained in the rules governing the police, fire, and local government radio services. Such amendment FCCA states, will aid the expansion of conservation efforts while affording better frequency utilization. The FCCA petition is supported by the Department of General Services, Communications Division of the State of California (California). In addition, California recommended "secondary tone and impulse signaling authorization be extended to the Highway Maintenance Radio Service."

3. The APCO rule making petition (RM-1892) seeks modification of the alarm signaling provisions in the police, fire, and local government radio services to eliminate the power, emission, and transmitter activation limitations and the requirement for a showing of noninterference to other licensees. APCO states that tone and impulse signaling equipment could be used to monitor mobile unit status and location, and provide traffic count information. Further, land-mobile transmitters used in conjunction with sensing devices could, in APCO's view, automatically relay pertinent weather data such as the presence of ice, rain, and fog.

4. APCO would also extend these modified signaling provisions to the highway maintenance and forestry conservation radio services. The suggested rule changes, APCO argues, will increase the efficiency and effectiveness of public safety officials and agencies by increasing the quantity of data which the agencies have available for study and analysis.

5. The Commission agrees that the maximum use of new techniques and processes that are possible with expanded use of land-mobile frequencies for nonvoice applications should be encouraged. To this end, we have amended our land-mobile rules to permit widespread nonvoice uses in connection with mobile service activities. Report and order in Docket No. 19086 (FCC 71-854, 36 FR 16914). The rules, as amended in that proceeding, permit almost unlimited short duration nonvoice applications by base and mobile units on a secondary noninterference basis to radiotelephone applications. That proceeding did not, however, modify the provisions governing remote alarm signaling operations which, as mentioned previously, may be both fixed and mobile.

6. Therefore, in keeping with our desire to encourage innovative uses of radio, we feel, as does APCO, that the remote alarm signaling rules require some revision. However, certain of the modifications sought by APCO appear undesirable because of areas of overlap with other rule making proceedings. In particular, the possible use of land-mobile frequencies for automatic vehicle location is being explored in the rule making proceeding in Docket 19302 (FCC 72-556, 37 FR 13640), released July 3, 1972. Further, point-to-point telemetering can be conducted on frequencies allocated for fixed use and additional telemetering frequencies are under consideration in Docket 19451 (FCC 72-173, 37 FR 4454), released March 3, 1972.

7. In addition, APCO fails to support its request for deletion of the power limitation because it does not demonstrate that the 50 watts [1] permitted under the present rules is insufficient to meet normal public safety needs. We believe the power limit for fixed uses has been set at a reasonable level to safeguard regular mobile two-way activities from interference. Such power limitations are needed to insure that the primary uses; namely, mobile communications, are not adversely affected. Further, the 50-watt limitation is intended to be a ceiling since the rules [2] require that the power used be no more than the minimum required for satisfactory technical operations. Fixed operations requiring greater equipment power than 50 watts or unable to operate on a secondary, noninterference basis to mobile operations may be accommodated on frequencies allocated for fixed use. In any event, while we want to permit public safety licensees to use their radio facilities to a maximum degree, care must be exercised to preserve the primary purposes of the mobile service frequencies.

8. Finally, the Commission agrees with the APCO request for deletion of the emission limitations to the extent that we are proposing: (1) To provide for composite emissions, and (2) to delete the current provisions for radiotelephone (A3 and F3). We are proposing to delete the A3 and F3 emission designators because, for remote alarm signaling purposes, modern digital techniques require less transmitter "on-time" than radiotelephone; and, thereby increase the efficient use of the land-mobile channel. The requirement for a noninterference showing is also proposed to be deleted because our experience with secondary alarming indicates interference is not a problem. Moreover, the change to digital techniques will require even shorter on-the-air transmissions further reducing the possibility of interference. We feel these changes, when considered in the light of the other changes proposed, should provide for almost any signaling need consistent with the available channel widths.

9. In conclusion, we propose to amend the public safety rules to permit expanded, fixed signaling and alarming, where an immediate indication of an abnormal condition is necessary to protect human life. Under the proposed rules, licensees would be permitted: for instance, to relay weather data, but the telemetering of traffic counts, traffic flow, and similar uses would not be permitted since it has not been shown that there is any immediate urgency related to such activity that would warrant use of land-mobile frequencies. The proposed rule changes, applicable to licensees in the police, fire, local government, highway maintenance and forestry conservation radio services, are as follows:

a. To permit automatic indication of any abnormal condition in facilities

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[1] Plate input power to the final radio frequency stage.

[2] Section 89.111(a).

under the jurisdiction of a licensee, that if not promptly reported would result in danger to human life.

b. To permit manually supervised transmissions as may be necessary to correct an abnormal condition or to activate devices that call the attention of the public to the pending condition.

c. To permit automatic confirmation that the manual correction or alerting signal has been accomplished.

d. To delete the requirement for a showing of noninterference to co-channel licensees for point-to-point alarm signal installations.

e. To implement "state-of-the-art" digital techniques by reducing the message length permitted (includes any redundancy desired) to 2 seconds for new installations.

f. To provide for signaling techniques which are not included under A1, A2, and F1, F2 emission designations by adding the A9 and F9 designators.

10. The pending rule making petitions of FCCA and APCO are granted to the extent indicated above and in all other respects are denied.

11. Another pending matter concerning nonvoice uses in the public safety radio services is a petition of Rydax, Inc. (RM-1731). Rydax would permit nonvoice uses in only limited applications where a voice transmission could be replaced by a coded message or where the application would provide system control functions for operation of automatic or multichannel systems where such operation would result in more efficient utilization of transmitters and frequency assignments.

12. The petition of Rydax will be denied since the request asks us to place limits on nonvoice uses beyond those established in the proceeding in Docket 19086. In that proceeding, expanded nonvoice provisions were incorporated in our rules. We encourage the development of very short (1 second or less) transmission tones as well as a standardized coding system, and we will continue to keep abreast of digital applications and will prepare changes where the need is developed. We have no evidence, at this time, that wider application of nonvoice techniques pose problems that warrant new limitations: *Accordingly, it is ordered*, That RM-1731 is denied.

13. The proposed amendments, which are to be found below, are issued under the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

14. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before March 2, 1973, and reply comments on or before March 16, 1973. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

15. In accordance with the provision 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. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Washington, D.C. headquarters.

Adopted: December 20, 1972.

Released: December 29, 1972.

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

Part 89 of the Commission's rules is amended as follows:

1. In § 89.101, paragraph (m) is added to read as follows:

§ 89.101 Frequencies.

* * * * *

(m) In the police, fire, local government, highway maintenance, and forestry conservation radio services, fixed operations may be authorized for tone and impulse signaling on mobile service frequencies above 25 MHz subject to the condition that harmful interference is not caused to the primary mobile service operation of any other licensee subject to the following limitations:

(1) Secondary tone or impulse signaling may be used only for the following purposes:

(i) Automatic indication of equipment malfunction.

(ii) Actuation of a device to indicate the presence of an intruder or fire on the property under the protection of the licensee.

(iii) Automatic indication of an abnormal condition in facilities under the jurisdiction of the licensee that if not promptly reported would result in danger to human life.

(iv) Manually supervised transmissions as may be necessary to correct an abnormal condition or to activate devices that alert the public to the condition.

(v) Automatic confirmation that the manual correction has been accomplished or that the alerting device has been activated.

(2) For equipment installed after 1973, the maximum duration of a nonvoice transmission, including automatic repeats, may not exceed 2 seconds.

(3) The bandwidth shall not exceed that authorized to the licensee for its primary operations on the frequency concerned.

(4) Frequency loading resulting from the use of secondary tone or impulse signaling will not be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile system.

(5) A mobile service frequency may not be used exclusively for secondary tone or impulse signaling.

(6) The plate power input to the final radio frequency state shall not exceed 50 watts.

(7) Only A1, A2, A9, F1, F2, or F9 emissions will be authorized.

(8) Automatic means shall be provided to deactivate the transmitter in the event the carrier remains on for a period in excess of 3 minutes.

(9) Operational fixed stations authorized pursuant to the provisions of this paragraph are exempt from the requirements of §§ 89.55(e)(2), 89.113(c), and 89.153.

* * * * *

2. Section 89.257 is amended by deleting the text of paragraph (c) and substituting the word "Reserved".

§ 89.257 Station limitations.

* * * * *

(c) [Reserved]

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3. Section 89.307 is amended by deleting the text of paragraph (e) and substituting the word "Reserved".

§ 89.307 Station limitations.

* * * * *

(e) [Reserved]

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4. Section 89.357 is amended by deleting the text of paragraph (d) and substituting the word "Reserved".

§ 89.357 Station limitations.

* * * * *

(d) [Reserved]

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[FR Doc.73-174 Filed 1-3-73;8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Part 2]

[Docket No. R-459]

NATURAL GAS PRESENTLY FLARED OR VENTED

Special Relief To Encourage Recovery; Correction

NOVEMBER 21, 1972.

In the notice of proposed rule making relating to special relief to encourage the recovery of natural gas presently flared or vented, issued November 9, 1972, and published in the FEDERAL REGISTER November 16, 1972 (37 FR 24370): Paragraph 2, line 8: Change "gas pursuant to the emergency provisions of Order Nos. 402" to "gas pursuant to the emergency provisions of Order No. 418".

Paragraph 2, line 9: Change "and 402A (18 CFR 2.68; May 6, 1970, and June 3, 1970)." to "(18 CFR 157.22(d), 157.29; December 10, 1970)."

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-111 Filed 1-3-73;8:45 am]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 9141]

OREGON

Notice of Classification of Public Land for Disposal by Exchange

DECEMBER 20, 1972.

On May 11, 1972, the Salem District, Bureau of Land Management, issued a decision proposing to classify the following described land for transfer out of Federal ownership by exchange under the provisions of the Act of June 28, 1934, as amended (48 Stat. 1269; 43 U.S.C. 315g):

WILLAMETTE MERIDIAN

T. 2 S., R. 7 E.,
Sec. 33, lots 2, 3, 5, 8 to 11, inclusive, 13, 16, 17, 19, 21, 22, 25, 27 to 29, inclusive, 33, and 35.

The area described contains about 21.875 acres in Clackamas County.

In order to obtain adequate public participation and to provide an opportunity to explain the proposal in greater detail, the district held a public meeting on the night of May 31 at Welches. At that meeting, many persons expressed themselves on the proposal. A few were in favor but most were opposed to the proposal. Following the meeting, several letters were received. Again, a few were in favor but most were opposed to the proposal.

The majority of those individuals opposing the exchange classification proposal did so, apparently, because of the damage they suffered during the 1964 flood. These individuals would rather have the land classified for public sale so they could acquire adjoining property to make up for the loss of usable portions of their own property. Others objected to the exchange classification proposal because they fear a developer might construct homes without regard to the wooded character of the area. It would be their desire to have the land retained in Federal ownership or classified for public sale. The latter alternative would give them the opportunity to bid for the adjoining property to develop or not develop, according to their preference. A few individuals objected to the proposal because they would like to buy one or more lots, and they fear they would have to pay a higher price from the owner following the exchange than what they would have to pay at the public auction. For these few individuals, a classification for public sale is preferred.

Many of the protests were withdrawn or modified following receipt of a letter from Mr. William C. Murphy, an exchange proponent. He has offered the existing private landowners the first opportunity to buy the adjoining lot from him, at the value arrived at in the BLM appraisal, should he successfully complete the exchange. This offer has been met with nearly total approval by the adjoining landowners.

It should be brought out that, in spite of the acceptance of this offer, the original protests do not appear to justify modification or termination of the classification decision to exchange the land. These protests do not question the issue that it is proper to dispose of the land. Disposal by exchange in this case will yield greater public benefits than disposal by public sale.

Similarly, the fear of some that the exchange would ruin the area because a developer might construct homes without regard to the wooded character is an unrelated issue. Transfer of the land out of Federal ownership either through exchange or public sale would generate the same risk of private ownership. There can be no guarantee as to what the new owner in either case does with the land except those guarantees provided by State and local laws, zoning, and codes.

Lastly, the fear of those who wish to buy adjoining property that they would have to pay a higher price from the owner following the exchange than what they would have to pay at the public auction is also an unrelated issue. It is impossible to predict what the high bid would be should the land be sold at public auction. The demand for land in this area is keen and we would anticipate a great deal of public interest in a sale offering. It is conceivable that the high bid at the auction would be higher than what the new owner would ask following the exchange.

In consideration of the foregoing reasons, and pursuant to section 7 of the Act of June 28, 1934 (43 U.S.C. 315f) and to regulations in 43 CFR 2400.0–3, the above-described land is hereby classified for disposal through exchange under the Act of June 28, 1934, as amended (48 Stat. 1269; 43 U.S.C. 315g; 43 CFR 2400).

In accordance with 43 CFR 2201.2, no application for an exchange will be accepted unless the application is accompanied by a statement from the Salem District Manager that the proposal appears feasible.

Portions of the land are within the Sandy River flood channel and subject to flood hazards. Pursuant to the authority contained in the Act of June 28, 1934, as amended (48 Stat. 1269; 43 U.S.C. 315g), and in sec. 1(3) of Executive Order 11296 of August 10, 1966 (31 FR 155), any conveyance of the land within the flood hazard area will be subject to a permanent restriction, which constitutes a covenant running with the land, that the land may be used only for park and nonintensive open space recreation purposes.

For a period of 30 days after receipt of this decision, interested parties may submit comments, objections or protests to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

ARTHUR W. ZIMMERMAN,
Acting State Director.

[FR Doc.73-28 Filed 1-3-73;8:45 am]

National Park Service

[Order No. 2]

ADMINISTRATIVE ASSISTANT, CUMBERLAND GAP NATIONAL HISTORICAL PARK, KY.

Delegation of Authority

1. *Administrative Officer.* The Administrative Officer may execute and approve contracts not in excess of $5,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

2. *Revocation.* This order supersedes Order No. 1 published in 28 FR 2866, dated March 22, 1963, and Amendment No. 1 published in 30 FR 8494 dated July 2, 1965.

(National Park Service Order No. 66 (36 FR 21218) as amended (37 FR 4001) (37 FR 12854) Southeast Region Order No. 5 (37 FR 7721))

Dated: November 15, 1972.

ALBERT A. HAWKINS,
Superintendent, Cumberland Gap National Historical Park.

[FR Doc.73-137 Filed 1-3-73;8:45 am]

[Order No. 2]

ADMINISTRATIVE OFFICER AND ASSISTANT, BOSTON GROUP

Delegation of Authority Regarding Execution of Contracts and Purchase Orders for Equipment, Supplies or Services

1. *Administrative Officer.* The Administrative Officer, Boston Group, National Park Service, may execute, approve, and administer contracts not in excess of $10,000 for supplies, equipment or services, including construction, in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds. This authority may be exercised by the Administrative Officer in behalf of any area under the administration of the Boston Group, National Park Service.

2. *Administrative Assistant.* The Administrative Assistant, Boston Group, National Park Service, may issue Pur-

chase Orders not in excess of $500 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds. This authority may be exercised by the Administrative Assistant in behalf of any area under the administration of the Boston Group, National Park Service.

3. This order supersedes Order No. 1 dated February 6, 1969 (34 FR 5034) and Amendment No. 1 dated April 14, 1972 (37 FR 11736).

(National Park Service Order No. 66, (36 FR 21218) as amended; Northeast Region Order No. 7 (37 FR 6325), as amended)

Dated: November 27, 1972.

HERBERT OLSEN,
General Superintendent,
Boston Group, National Park Service.

[FR Doc.73-138 Filed 1-3-73;8:45 am]

NATIONAL REGISTER OF HISTORIC PLACES

Additions and Deletions

By notice in the FEDERAL REGISTER of March 15, 1972, Part II, there was published a list of the properties included in the National Register of Historic Places. This list has been amended by a notice in the FEDERAL REGISTER of March 7 (pp. 4923–24), April 4 (pp. 6770–72), May 2 (pp. 8890–95), June 6 (pp. 11274–76), July 4 (pp. 13193–96), August 1 (pp. 15390–91), September 6 (pp. 18043–44), October 3 (pp. 20732–34), November 7 (pp. 23655–57), and December 5 (pp. 25860–63). Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470.

The following properties have been demolished and removed from the National Register:

NEBRASKA

Custer County

Broken Bow vicinity, *Haumont House*, 10 miles northeast of Broken Bow.

NEW YORK

Albany County

Albany, *Hun Houses*, 149–149½ Washington Avenue.

The following is a correction for a previous entry in the FEDERAL REGISTER:

IDAHO

Owyhee County

Silver City vicinity, *Silver City Historic District*, Includes secs. 3–9 of T. 5 S., R. 3 W.; secs. 31–32 of T. 4 S., R. 3 W.; secs. 25, 26, 35, and 36 of T. 4 S., R. 4 W.; and secs 1, 2, and 12 of T. 5 S., R. 4 W.

The following properties were omitted from previous FEDERAL REGISTER listings:

CALIFORNIA

Los Angeles County

Los Angeles, *Will Rogers State Historic Park (Will Rogers House)*, 14253 Sunset Boulevard.

Sacramento County

Sacramento, *Crocker, E. B., Art Gallery*, 216 O Street.

The following properties have been added to the National Register since December 5:

CALIFORNIA

Humboldt County

Eureka, *Tsahpek*, 3431 Fort Avenue.

Kern County

Johannesburg vicinity, *Last Chance Canyon*, 16 miles west of Johannesburg on U.S. 395.

Marin County

San Rafael, *Dollar, Robert, Estate*, 1408 Mission Avenue.

Orange County

Modjeska, *Modjeska House*, Modjeska Canyon Road.

Placer County

Tahoe City, *Outlet Gates and Gatekeeper's Cabin*, at Calif. 89 and Truckee River.

Santa Barbara County

Santa Barbara vicinity, *Painted Cave*, 11 miles north of Santa Barbara off Calif. 150.

Siskiyou County

Yreka, *West Miner Street—Third Street Historic District*, 102–402 West Miner Street; 122–419 Third Street.

COLORADO

Clear Creek County

Georgetown, *McClellan House*, 919 Taos Street.

CONNECTICUT

Hartford County

Hartford, *First Church of Christ and the Ancient Burying Ground*, 60 Gold Street.

New Haven County

Guilford, *Whitfield, Henry, House*, Old Whitfield Street.

New Haven, *Morris House*, 325 Lighthouse Road.

New London County

Colchester, *Champion, Henry, House*, Westchester Road.

DELAWARE

Kent County

Dover, *Christ Church*, Southeast corner of South State and Water Streets.

Dover, *Governor's House, The*, Kings Highway.

Dover, *Town Point*, Kitts Hummock Road.

New Castle County

Middletown, *Middletown Academy (Town Hall)*, 218 North Broad Street.

Odessa, *Appoquinimink Friends Meeting House*, Main Street.

Wilmington, *Lombardy Hall*, U.S. 202.

Wilmington, *Masonic Hall and Grand Theater, The*, 818 North Market Street.

Sussex County

Lewes, *Fisher's Paradise*, 624 Pilottown Road.

DISTRICT OF COLUMBIA

Washington, *Sewall-Belmont House*, 144 Constitution Avenue NE.

Washington, *Sulgrave Club*, 1801 Massachusetts Avenue NW.

Washington, *Washington Club*, 15 Dupont Circle NW.

FLORIDA

Alachua County

Gainesville, *Bailey, Major James B., House*, 1121 Northwest 6th Street.

Brevard County

Titusville, *St. Gabriel's Episcopal Church*, 414 Palm Avenue.

Gadsden County

Quincy, *Methodist Parsonage*, 212 North Madison Street.

Hillsborough County

Tampa, *Tampa Bay Hotel*, 401 West Kennedy Boulevard.

Jackson County

Greenwood, *Great Oaks*, Greenwood Highway (Fla. 71).

Marianna vicinity, *Waddells Mill Pond*, About 7 miles northwest of Marianna.

Jefferson County

Capps vicinity, *May, Asa, House*, On U.S. 19, about 0.5 mile north of its intersection with U.S. 27.

Palm Beach County

Palm Beach, *Bingham-Blossom House*, 1250 South Ocean Boulevard.

Palm Beach, *Whitehall (Henry Morrison Flagler House)*, Whitehall Way.

Wakulla County

Hyde Park vicinity, *Bird Hammock*, About 2 miles south of Hyde Park.

GEORGIA

Spalding County

Griffin, *Old Medical College Historical Area*, 223–233 East Broadway Street.

HAWAII

Honolulu County

Honolulu, *Royal Brewery, The*, 553 South Queen Street.

Kaneohe vicinity, *Molii Fish Pond*, Southeast of Kamehameha Highway between Kualoa and Johnson Road.

IDAHO

Ada County

Boise, *Jacobs, Cyrus, House*, 607 Grove Street.

Bear Lake County

Paris, *Bear Lake Stake Tabernacle*, Main Street.

Owyhee County

Silver City vicinity, *Camp Three Forks*, South of Silver City.

ILLINOIS

Cook County

Chicago, *Jackson Park Historic Landscape District and Midway Plaisance.*

Chicago, *Prairie Avenue District*, bounded roughly by 18th Street on the north, Calumet and Prairie on the east, midway between 18th and Cullerton on the south, and Indiana on the west.

Gallatin County

Old Shawneetown, *Marshall, John, House.*

KANSAS

Franklin County

Williamsburg vicinity, *Silkville*, 2.5 miles southwest of Williamsburg on U.S. 50.

KENTUCKY

Jefferson County

Louisville, *St. James-Belgravia Historic District*, bounded by Wilson Avenue on the north, South Fourth Street on the east, Hill Street on the south, and South Sixth Street on the west.

LOUISIANA

Iberville Parish, St. Gabriel, *St. Gabriel Roman Catholic Church*, 0.25 mile south of Louisiana 74 between the Illinois Central Railroad tracks and Louisiana 75.

MAINE

Cumberland County

Gorham, *McLellan House*, Gorham School Street.

MARYLAND

Anne Arundel County

Annapolis, *Artisan's House*, 43 Pinkney Street.

Kent County

Sassafras, *Rich Hill, The Griffith House*, On Maryland 299 south of Sassafras.

Prince Georges County

Upper Marlboro, *Mount Pleasant*, Mount Pleasant Road.

MASSACHUSETTS

Essex County

Salem, *Old Town Hall Historic District*, 215–231 Essex Street, 121–145 Washington Street, 6–34 Front Street, and Derby Square.

Norfolk County (also in Suffolk County)

Boston-Milton, *Paul's Bridge*, Neponset Valley Parkway, across the Neponset River.

MICHIGAN

Wayne County

Detroit, *St. Joseph's Roman Catholic Church*, 1828 Jay Street.

MISSOURI

Mississippi County

Charleston, *Missouri Pacific Depot*, East of the intersecting branches of the Missouri Pacific Railroad.

NEBRASKA

Cass County

Weeping Water, *Weeping Water Historic District*.

Jefferson County

Fairbury, *Jefferson County Courthouse*, Block bounded by Fourth and Fifth Streets and D and E Streets.

Lancaster County

Lincoln, *Ferguson, William H., House*, 700 South 16th Street.

NEW HAMPSHIRE

Sullivan County

Cornish, *St. Gaudens, Louis, House and Studio*, Dingleton Hill and Whitten Roads.

NEW JERSEY

Essex County

Newark, *South Park Calvary United Presbyterian Church*, 1035 Broad Street.

Gloucester County

Glassboro, *Whitney Mansion (Holly Bush)*, Whitney Avenue.

NEW YORK

Dutchess County

Poughkeepsie, *Garfield Place Historic District*, Both sides of Garfield Place.

Kings County

Brooklyn, Houses on Hunterfly Road Historic District, 1698–1708 Bergen Street.

New York County

New York, *High Bridge Aqueduct and Water Tower*, Harlem River at West 170th Street (also in Bronx County).

Rensselaer County

Schaghticoke, *Knickerbocker Mansion*, Knickerbocker Road.

Wayne County

Palmyra, *Market Street Historic District*, Both sides of Market Street.

NORTH CAROLINA

Craven County

New Bern, *Cedar Grove Cemetery*, Bounded by Queen, George, Cypress, Howard, and Metcalf Streets.

New Bern, *Smallwood, Eli, House*, 524 East Front Street.

Hertford County

Ahoskie vicinity, *Mitchell, William, House*, 3 miles east of Ahoskie on North Carolina 350.

Wake County

Raleigh, *Lewis-Smith House*, 515 North Wilmington Street.

OHIO

Franklin County

Columbus, *Harrison, General William Henry, Headquarters (Jacob Oberdier House)* 570 West Broad Street.

Hamilton County

Cincinnati, *Cincinnati City Hall*, 801 Plum Street.

Cincinnati, *Rookwood Pottery*, Celestial and Rookwood Place.

Highland County

Rainsboro vicinity, *Plum Run Mound*, 1.8 miles northeast of Rainsboro on U.S. 50.

Knox County

Mt. Vernon vicinity, *McLaughlin Mound*, 6.5 miles south of Mt. Vernon.

Scioto County

West Portsmouth vicinity, *Tremper Mound and Works*, 3 miles north of West Portsmouth.

Summit County

Cuyahoga Falls, *Chuckery Race*, George Metropolitan Park.

OREGON

Benton County

Philomath, *Philomath College*, Main Street.

PENNSYLVANIA

Chester County

West Chester, *First Presbyterian Church of West Chester*, 130 West Miner Street.

Luzerne County

Wilkes-Barre, *Weiss Hall*, South River Street.

RHODE ISLAND

Newport County

Newport, *Bellevue Avenue-Casino Historic District*, 170–230 Bellevue Avenue.

Providence County

Providence, *Brick School House*, 24 Meeting Street.

Providence, *Lippitt, Governor Henry, House*, 199 Hope Street.

SOUTH CAROLINA

Charleston County

Charleston vicinity, *Magnolia Gardens*, 10 miles northwest of Charleston on South Carolina 61.

Mount Pleasant vicinity, *Christ Episcopal Church*, 4.6 miles northeast of Mount Pleasant on U.S. 17.

Pickens County

Pickens vicinity, *Hagood Mill*, 3.5 miles northwest of Pickens on U.S. 178.

SOUTH DAKOTA

Custer County

Custer, *Custer County Courthouse*, 411 Mt. Rushmore Road.

TENNESSEE

Shelby County

Memphis, *Victorian Village District*, Adams and Jefferson Streets.

Wilson County

Lebanon vicinity, *Sellars Indian Mound*, East of Lebanon off Tennessee 26.

TEXAS

Travis County

Austin, *Ney, Elisabet, Studio and Museum*, 304 East 44th Street.

VERMONT

Bennington County

Manchester, *Equinox House*, Main Street.

Chittenden County

Burlington, *U.S. Post Office and Custom House (Smith-Goldberg U.S. Army Reserve Center)*, southeast corner of Main and Church Streets.

VIRGINIA

Augusta County

Spottswood vicinity, *Old Providence Stone Church*, northwest of Spottswood at junction of Virginia 613 and 620.

Charles City County

Charles City vicinity, *Westover Church*, 5 miles west of Charles City off Virginia 5.

Essex County

Loretto vicinity, *Vauter's Church*, 1 mile northwest of Loretto on U.S. 17.

King William County

Mangohick vicinity, *Mangohick Church*, south of Mangohick off Virginia 30.

Newport News (independent city), *Lee Hall*, 0.6 mile northwest of intersection of U.S. 60 and Virginia 238.

Richmond County

Warsaw, *Richmond County Court House*, at intersection of U.S. 360 and Virginia 3.

Rockingham County

Broadway vicinity, *Lincoln Homestead and Cemetery*, on Virginia 42, 1 mile south of its intersection with Route 684.

WASHINGTON

Whitman County

Colfax, *Perkins House*, North 623 Perkins.

ROBERT M. UTLEY,
Director, Office of Archeology and Historic Preservation.

[FR Doc.73-46 Filed 1-3-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

AREA DIRECTORS ET AL.

Delegation of Authority

Section 3.1 of 10 BIAM was published on page 11491 of the June 8, 1972, FEDERAL REGISTER (37 FR 11491). It is being amended to give Area Directors the authority of the Commissioner of Indian Affairs contained in 43 CFR 417.5 which deals with determining the amount of Colorado River water to be diverted for use on Indian reservations.

As amended, 10 BIAM 3.1 reads as follows:

3.1 *Authorities from the Commissioner.* The authorities of the Secretary of the Interior delegated to the Commissioner in Secretarial Order 2508 (10 BIAM 2.1), 25 CFR, 43 CFR 2.6, and 43 CFR 417.5 are hereby redelegated to the Area Directors and the Director of Southeastern Agencies.

This redelegation also includes future authorities of the Secretary of the Interior to the Commissioner which:

A. Do not by their own terms disallow exercise by officials below the Commissioner;

B. Are not within the generally applicable exceptions in section 3.3 below; or

C. Are not expressly excluded, by additional provisions to this chapter, from being exercised by officials below the Commissioner.

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

DECEMBER 22, 1972.

[FR Doc.73-139 Filed 1-3-73;8:45 am]

Office of the Secretary

[DES 72-118]

LAHONTAN NATIONAL FISH HATCHERY, DOUGLAS COUNTY, NEV.; PROPOSED ADDITIONAL FACILITIES

Notice of Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the Department of the Interior has prepared a draft environmental statement for the construction of additional facilities at the Lahontan National Fish Hatchery located about 4 miles south of Gardnerville, Nev., and invites written comments within 45 days of this notice.

The construction will include buildings for public use, staff residence, and storage; ponds for fish production and waste removal; and systems for water treatment and reconditioning. The new facilities are necessary to propagate Lahontan cutthroat trout for restoration of the fisheries in Pyramid and Walker Lakes in Nevada and to increase the numbers of rainbow trout currently stocked on military and Indian reservations in northeastern Nevada and eastern California.

Copies of the statement are available for inspection at the following locations:

Bureau of Sport Fisheries and Wildlife, 1500 Northeast Irving Street, Post Office 3737, Portland, OR 97208.

Bureau of Sport Fisheries and Wildlife, Office of Environmental Quality, Washington, D.C. 20240.

Single copies may be obtained by writing the Chief, Office of Environmental Quality, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240. Please refer to the statement number above.

WILLIAM W. LYONS,
Deputy Assistant Secretary, Program Policy.

DECEMBER 22, 1972.

[FR Doc.73-136 Filed 1-3-73;8:45 am]

LIVESTOCK GRAZING ON PUBLIC LANDS

Schedule of Fees, 1973

Pursuant to the authority vested in the Secretary of the Interior, notice is hereby given of the schedule of fees for the 1973 fee year beginning March 1, 1973, and ending February 28, 1974, for livestock grazing on the public lands.

For the purpose of establishing charges, 1 animal unit month (AUM) shall be considered equivalent to grazing use by one cow, five sheep, or one horse for 1 month. The charge for one horse is at twice the rate for one cow.

Bills shall be issued in accordance with the rates prescribed in this notice.

INSIDE STATUTORY GRAZING DISTRICTS

Pursuant to departmental regulations (43 CFR 4115.2-1(k)) as amended January 7, 1972 (32 FR 213), fees within districts, except as otherwise provided herein, shall be 78 cents per AUM of which 49 cents is the grazing use fee and 29 cents is the range improvement fee.

Exceptions to the above rates are hereby set as follows for certain LU project lands (national grasslands) in order to continue the basis of fees that has heretofore been establishished:

Arizona. For the San Simon project (Cienega area) transferred to the Department by Executive Order 10322, the fees shall be $1.32 per AUM of which 49 cents is the grazing use fee and 83 cents is the range improvement fee.

Colorado. For the Great Divide project transferred to the Department by Executive Order 10046, the fees shall be 93 cents per AUM of which 49 cents is the grazing use fee and 44 cents is the range improvement fee.

Montana. For all LU lands within districts transferred to the Department by Executive Order 10787, the fees shall be 94 cents per AUM of which 49 cents is the grazing use fee and 45 cents is the range improvement fee.

New Mexico. For the Hope Land project transferred to the Department by Executive Order 10787, the fees shall be 87 cents per AUM of which 49 cents is the grazing use fee and 38 cents is the range improvement fee. For the San Simon project (Cienega area) transferred to the Department by Executive Order 10322, the fees shall be $1.32 per AUM of which 49 cents is the grazing use fee and 83 cents is the range improvement fee.

OUTSIDE STATUTORY GRAZING DISTRICTS (EXCLUSIVE OF ALASKA)

Pursuant to departmental regulations (43 CFR 4125.1-1(m)), the rate for grazing leases except as otherwise provided herein, shall be 78 cents per AUM of which 25 percent is the range improvement fee.

Exceptions to the above rate are hereby set as follows for certain LU project lands and for all O&C and intermingled public domain lands in western Oregon in order to continue the basis of fees that has heretofore been established:

Montana. For those Milk River Land project lands outside districts transferred to the Department by Executive Order 10787, the fee shall be 94 cents per AUM of which 25 percent is the range improvement fee.

Wyoming. For the northeast Wyoming project transferred to the Department by Executive Order 10046 and amended by Executive Order 10175, the fee shall be 93 cents per AUM of which 25 percent is the range improvement fee.

Western Oregon. For western Oregon the fee shall be 95 cents per AUM.

ROGERS C. B. MORTON,
Secretary of the Interior.

JANUARY 2, 1973.

[FR Doc.73-277 Filed 1-3-73;8:45 am]

DEPARTMENT OF COMMERCE

National Bureau of Standards

TvTIME SIGNAL FORMAT; BROADCAST AUTHORIZATION

Availability of NBS Petition to Federal Communications Commission

The National Bureau of Standards is giving public notice that it has filed with the Federal Communications Commission a petition pursuant to 47 CFR 1.401 et seq. for the initiation of public proceedings to amend 47 CFR 73.682(a) and 73.699 concerning transmission standards for the television broadcast service.

The amendments proposed in the petition would permanently allocate, in the standard television broadcast format, all of line 21 in the odd field, and the first half of line 21 in the even field, for the transmission of NBS TvTime signals, digital, captioning information, digital

channel identification, and such other forms of digital information amenable to the NBS TvTime signal format as the Commission finds to be in the public interest. This proposed allocation of line 21 would permit the transmission throughout the United States, via the television broadcast service, of NBS TvTime signals containing NBS standards of both time and frequency, and occasional time advisory messages necessary to the conveying of complete time information to the many interested members of the public who will be using the service. The technology underlying the NBS TvTime System would also permit the transmission of captioning for the deaf and others, channel identification, and other digital information, as designated by the Commission. The petition also urges that the Commission authorize captioning and channel identification and explore other potential uses for this opportunity to transmit digital information.

Copies of this petition are available for public inspection at the Commission's Docket Reference Room, 1919 M Street NW., Washington, DC 20554. Copies of the petition may also be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22151, at a price of $3 per copy. Further information, if desired, may be obtained by calling the subscription desk at NTIS. The telephone number is (703) 321-8543.

Any interested person may file a statement in support of or in opposition to this petition pursuant to 47 CFR 1.405. Such statement should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

Dated: December 27, 1972.

R. S. WALLEIGH,
Acting Director.

[FR Doc.73-124 Filed 1-3-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, BOARD OF SCIENTIFIC COUNSELORS

Amended Notice of Meeting

Notice of December 13, 1972 (37 FR 28090, December 20, 1972) is hereby amended as follows:

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the Board of Scientific Counselors, NIEHS, January 8-9, 1973, at 9 a.m., Research Triangle Park, N.C., Building 1 Conference Room. This meeting will be open to the public from 9 a.m. to 1:30 p.m., January 8, at which time Dr. David P. Rall, Director, NIEHS, will report on recent legislative activities affecting the Institute, will present an overview of Institute intramural research activities as an orientation for the Board members, and will conduct a tour of the facilities. The meeting will be closed to the public 1:30 p.m. to 5 p.m., January 8 and 9 a.m. to 5 p.m., January 9 to review specific intramural research projects under consideration or in progress and to consider and formulate advice on the intramural research programs. This portion of the meeting will be closed in accordance with the Secretary's determination of September 27, 1972.

Dr. David P. Rall, Director, NIEHS, Research Triangle Park, N.C., (919) 549-8411, extension 3201, will furnish summaries of the meeting and rosters of the committee members, as well as any substantive information.

Dated: December 22, 1972.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.73-133 Filed 1-3-73;8:45 am]

Office of the Secretary

ASSISTANT SECRETARY (PUBLIC AFFAIRS)

Statement of Organization, Functions and Delegations of Authority

This notice affirms a prior decision to replace the position of Assistant Secretary (education) with Assistant Secretary (public affairs). This notice also recognizes the establishment of the position of Assistant Secretary for Education pursuant to Public Law 92-318, approved June 23, 1972.

1. Section 2-120 of Part 2 of the Statement of Organization, Functions and Delegations of Authority (35 FR 7033, May 2, 1970) for the Department of Health, Education, and Welfare is revoked.

2. A position of Assistant Secretary within the Department of Health, Education, and Welfare shall be utilized for the position of Assistant Secretary (public affairs) and designated Chapter 1H of Part 1 of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health Education, and Welfare.

3. The position of Assistant Secretary for Education was established by Public Law 92-318, approved June 23, 1972.

Dated: December 27, 1972.

STEVEN D. KOHLERT,
Deputy Assistant Secretary for Management.

[FR Doc. 73-179 Filed 1-3-73;8:45 am]

TECHNICAL ADVISORY COMMITTEE ON AGING RESEARCH

Notice of Public Meeting

This committee was established to advise the Secretary of Health, Education, and Welfare to develop a comprehensive, coordinated research program in the field of aging, which program will include disciplines ranging from biomedical research to transportation systems analysis, from psychology and sociology to management science and economics.

The meeting of the committee will be on Tuesday, January 16, 1973, from 9:30 a.m. to 4:30 p.m. in Room 3137 North Building, 330 Independence Avenue SW., Washington, DC. The meeting will be devoted to developing strategies for achieving a plan for a coordinated comprehensive multidisciplinary program in aging research. The meeting will be open for public observation.

ALFRED H. LAWTON,
Executive Director.

DECEMBER 26, 1972.

[FR Doc.73-180 Filed 1-3-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing Production and Mortgage Credit

[Docket No. N-72-129]

CARPET STANDARDS AND CARPET CERTIFICATION PROGRAM

Proposed Revision of Standards and Adoption of Program; Correction

On December 12, 1972, at 37 FR 26457, the Department of Housing and Urban Development published a notice to the effect that it proposed to adopt a carpet certification program. The date in the eighth line of that notice reads "September 21, 1972" whereas it should have read: "October 26, 1972."

JOHN L. GANLEY,
Deputy Assistant Secretary for Housing Productions and Mortgage Credit.

[FR Doc.73-171 Filed 1-3-73;8:45 am]

Office of the Secretary

[Docket No. D-72-212]

DIRECTOR, OFFICE OF PERSONNEL AND DEPUTY DIRECTOR, OFFICE OF PERSONNEL

Designation and Redelegation of Authority Regarding Administration of Certain Oaths

SECTION A. *Designation and redelegation.* The Director, Office of Personnel, and the Deputy Director, Office of Personnel, each is hereby:

1. Designated to administer the oath of office required by 5 U.S.C. 3331 incident to entrance into the executive branch, or any other oath required by law in connection with employment in the executive branch, as authorized under 5 U.S.C. 2903(b).

2. Authorized to:

a. Designate in writing subordinate employees by position to administer

oaths as authorized under 5 U.S.C. 2903 (b); and

b. Redelegate to subordinate employees the authority to designate in writing subordinate employees by position to administer oaths as authorized under 5 U.S.C. 2903(b).

SEC. B. *Supersedure.* This designation and redelegation supersedes unpublished designation and redelegation effective May 19, 1967.

(5 U.S.C. 2903; sec. 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d))

Effective date. This designation and redelegation is effective as of October 15, 1972.

HARRY T. MORLEY,
Assistant Secretary for Administration.

[FR Doc.73-172 Filed 1-3-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-285]

OMAHA PUBLIC POWER DISTRICT

Order Extending Completion Date

Omaha Public Power District is the holder of Provisional Construction Permit No. CPPR-41 issued by the Commission on June 7, 1968, for the construction of the Fort Calhoun Station, Unit 1, a 1,420 megawatt (thermal) pressurized water nuclear reactor presently under construction at the company's site in Washington County, Nebr., on the southwest bank of the Missouri River about 19 miles northwest of Omaha, Nebr.

On November 15, 1972, the company filed a request, which was supplemented by telegram dated December 20, 1972, for an extension of the completion date because of (i) a delay in the fabrication of the fuel pending completion of the prepressurization process, and (ii) a delay in procurement and installation of seismic restraints. The Director of Regulation having determined that this action involves no significant hazards consideration, and good cause having been shown:

It is hereby ordered, That the latest completion date for CPPR-41 is extended from December 31, 1972, to June 31, 1973.

For the Atomic Energy Commission.

Date of issuance: December 27, 1972.

R. C. DEYOUNG,
Acting Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.73-109 Filed 1-3-73;8:45 am]

[Docket No. 50-395]

SOUTH CAROLINA ELECTRIC & GAS CO.

Notice and Order for Evidentiary Hearing

The Atomic Energy Commission (the Commission) by its "Notice of Hearing on Application for Construction Permit," dated September 21, 1972, ordered a hearing to consider the application of the South Carolina Electric & Gas Co., for a construction permit for a pressurized water nuclear reactor designed for initial operation at approximately 2,775 thermal megawatts with a net electrical output of approximately 900-megawatts. The proposed facility, designated as the Virgil C. Summer Nuclear Station, is to be located at the applicant's site about 26 miles north of Columbia, S.C., in western Fairfield County. This hearing will be held pursuant to the provisions of the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 2 rules of practice and Part 50, "Licensing of Production and Utilization Facilities."

The hearing will be conducted by the Atomic Safety and Licensing Board (the Board) appointed by the Commission on November 14, 1972. This Board consists of Dr. John R. Lyman, Mr. Frederick J. Shon, and Mr. Daniel M. Head, Esq., chairman, with Dr. Kenneth A. McCollom, the technically qualified alternate, and Mr. Walter W. K. Bennett, Esq., the alternate chairman.

A prehearing conference was held by the Board in Winnsboro, S.C., on December 18, 1972, pursuant to the notice issued by the Board on November 22, 1972. A prehearing order was issued by the Board on December 27, 1972, containing the orders made by the Board as a result of the prehearing conference.

Please take notice: *And it is hereby ordered,* in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and the Commission's rules of practice, 10 CFR Part 2, That the evidentiary hearing in these proceedings is scheduled for 10 a.m., local time, on Monday, January 29, 1973, in the Fairfield County Courthouse, Congress Street, Winnsboro, S.C.

Issued at Washington, D.C., this 27th day of December 1972.

THE ATOMIC SAFETY AND LICENSING BOARD,
DANIEL M. HEAD,
Chairman.

[FR Doc.73-106 Filed 1-3-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 20724]

REMANDED ATLANTA-DETROIT/CLEVELAND/CINCINNATI INVESTIGATION

Notice of Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding has been postponed from January 23, 1973 (37 FR 28207, Dec. 21, 1972), to February 6, 1973, at 10 a.m. (local time), in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Administrative Law Judge William F. Cusick.

Dated at Washington, D.C., December 27, 1972.

[SEAL] WILLIAM F. CUSICK,
Administrative Law Judge.

[FR Doc.73-25 Filed 1-3-73;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN PORTUGAL

Entry or Withdrawal from Warehouse for Consumption

DECEMBER 29, 1972.

On November 17, 1970, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a comprehensive bilateral cotton textile agreement with the Government of Portugal concerning exports of cotton textiles and cotton textile products from Portugal to the United States over a 4-year period beginning on January 1, 1971, and extending through December 31, 1974. On May 22, 1972, notes were exchanged amending that agreement. Among the provisions of the amended agreement are those establishing specific limits on Categories 1/2/3/4, 5/6, 9, 22, 24/25, 26, 41/42/43, 46, 50, 51, 52, 53 and parts of 62, 55, 60, and parts of 62 for the third agreement year beginning January 1, 1973.

Accordingly, there is published below a letter of December 29, 1972, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amounts of cotton textiles and cotton textile products in the above categories produced or manufactured in Portugal which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning January 1, 1973, and extending through December 31, 1973, be limited to the designated levels. The letter published below and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, as amended, but are designed to assist only in the implementation of certain of its provisions.

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary and Director, Bureau of Resources and Trade Assistance.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DECEMBER 29, 1972.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of November 17, 1970, as amended, between the Governments of the United States and Portugal, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective January 1, 1973, and for the 12-month period extending

through December 31, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1/2/3/4, 5/6, 9, 22, 24/25, 26, 41/42/43, 46, 50, 51, 52, 53, and parts of 62, 55, 60, and parts of 62, produced or manufactured in Portugal, in excess of the following levels of restraint:

Category	12-Month levels of restraint
1/2/3/4	17,724,223 pounds.
5/6	11,957,100 syds (of which not more than 6,696,649 syds may be in Category 6).
9	12,989,097 syds.
22	2,105,865 syds.
24/25	7,721,505 syds (of which not more than 2,807,820 syds may be in Category 25).
26	3,369,384 syds.
41/42/43	126,352 dozen.
46	56,157 dozen.
50	32,291 dozen.
51	32,291 dozen.
52	47,733 dozen.
53 and parts of 62 (T.S.U.S.A. Nos. 382.0012, 382.0014, 382.0635, and 382.0640).	47,733 dozen.
55	38,588 dozen.
60	27,563 dozen.
Parts of 62 (all of the category except T.S.U.S.A. Nos. 382.0012, 382.0014, 382.0635, and 382.0640).	180,020 pounds (of which not more than 78,057 pounds may be in T.S.U.S.A. Nos. 380.0024, 380.0645, 382.0024, and 383.-0665).

In carrying out this directive, entries of cotton textiles and cotton textile products in the above categories, produced or manufactured in Portugal, which have been exported to the United States from Portugal prior to January 1, 1973, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period January 1, 1972 through December 31, 1972. In the event that the levels of restraint for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

In carrying out this directive, entries of two or three piece ladies suits produced or manufactured in Portugal from woven or knit cotton fabrics should not be charged against any of the levels of restraint designated herein, including the level of restraint for blouses in Category 52.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of November 17, 1970, as amended, between the Governments of the United States and Portugal which provide, in part, that within the aggregate limit and group limits, the limitations on specific categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on April 29, 1972 (37 FR 8802).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Portugal and with respect to imports of cotton textiles and cotton textile products from Portugal have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary and Director, Bureau of Resources and Trade Assistance.

[FR Doc.73-279 Filed 1-3-73;8:45 am]

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA

Entry or Withdrawal From Warehouse for Consumption

DECEMBER 29, 1972.

On December 31, 1970, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a comprehensive bilateral agreement with the Government of the Socialist Federal Republic of Yugoslavia concerning exports of cotton textiles and cotton textile products from Yugoslavia to the United States over a 5-year period beginning January 1, 1971, and extending through December 31, 1975. Among the provisions of the agreement are those establishing an aggregate limit, and within the aggregate limit, specific limits on Categories 9, 18/19, 22, 26 (duck fabric), 26 (other than duck fabric), 48 and 49, for the agreement year beginning January 1, 1973.

There is published below a letter of December 29, 1972, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amounts of cotton textiles and cotton textile products in the above categories, produced or manufactured in Yugoslavia, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning on January 1, 1973, and extending through December 31, 1973, be limited to certain designated levels. This letter and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of its provisions.

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary and Director, Bureau of Resources and Trade Assistance.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DECEMBER 29, 1972.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of December 31, 1970, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective January 1, 1973, and for the 12-month period extending through December 31, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textiles and cotton textile products in Categories 9, 18/19, 22, 26 (duck fabric), 26 (other than duck fabric), 48, 49, produced or manufactured in Yugoslavia, in excess of the following 12-month levels of restraint:

Category		12-month level of restraint
9	square yards	11,025,000
18/19	do	551,250
22	do	4,410,000
26 (duck fabric)[1]	do	2,205,000
26 (other than duck fabric)	do	2,756,250
48	dozen	15,435
49	do	30,539

[1] The T.S.U.S.A. numbers for duck fabrics are:

320---01 through 04, 06, 08
321---01 through 04, 06, 08
322---01 through 04, 06, 08
326---01 through 04, 06, 08
327---01 through 04, 06, 08
328---01 through 04, 06, 08

In carrying out this directive, entries of cotton textiles and cotton textile products in Categories 9, 18/19, 22, 26 (duck fabric), 26 (other than duck fabric), 48, and 49, produced or manufactured in Yugoslavia and which have been exported to the United States from Yugoslavia prior to January 1, 1973, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period January 1, 1972, through December 31, 1972. In the event that the levels of restraint established for such goods for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of December 31, 1970, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia which provides in part that within the aggregate and applicable group limits, limits on specific categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on April 29, 1972 (37 FR 8802).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Socialist Federal Republic of Yugoslavia and with respect to imports of

cotton textiles and cotton textile products from Yugoslavia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary and Director, Bureau of Resources and Trade Assistance.

Sincerely yours,

[FR Doc.73-280 Filed 1-3-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19558]

OVERSEAS DATAPHONE SERVICE

Notice of Inquiry Regarding Future Authorization Policy; Order Extending Time

1. By letter dated December 21, 1972, RCA Global Communications, Inc. (RCA Globcom) requests an extension of time until January 26, 1973, in which to file comments in the above-captioned Inquiry.[1] RCA Globcom alleges that the quested extension of time is needed because of the amount of information requested by the Commission, the press of other pending regulatory matters, and the time constraints created by the Christmas and New Year holidays.

2. In view of the previous extensions of time granted in this matter, we cannot find that RCA Globcom has made a sufficient showing of good cause to justify the entire extension of time sought. However, we do believe that a partial grant of the RCA Globcom request is warranted.

3. Accordingly, *It is ordered*, Pursuant to § 0.303(c) of the Commission's rules pertaining to delegations of authority, that the request of RCA Global Communications, Inc. is granted in part; and

(A) The time in which to file comments in Docket No. 19558 is extended until January 12, 1973;

(B) The time in which to file reply comments is extended until February 14, 1973; and

(C) Except to the extent granted above, the request of RCA Global Communications, Inc. is denied.

Adopted: December 26, 1972.

Released: December 27, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] CHARLES R. COWAN,
Acting Chief, Common Carrier Bureau.

[FR Doc.73-176 Filed 1-3-73;8:45 am]

[1] Notice of Inquiry in this matter first published at 37 FR 16042, Aug. 9, 1972.

FEDERAL POWER COMMISSION

[Docket No. E-7892]

ARIZONA PUBLIC SERVICE CO.

Proposed Changes in Rates and Charges

DECEMBER 27, 1972.

Take notice that Arizona Public Service Co. (Company) on September 5, 1972, tendered for filing proposed changes in its FPC Rate Schedule No. 38. The filing consists of a schedule of transmission losses agreed to by the Company and Southern California Edison Co. on May 14, 1967, as provided for through the invocation of Paragraph 10 of their transmission agreement. The Company states that this schedule is still effective without change.

The Company requests waiver of their late filing and the formal requirements of section 35 of the Commission's regulations.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-114 Filed 1-3-73;8:45 am]

[Docket No. E-7907]

ARIZONA PUBLIC SERVICE CO.

Proposed Changes in Rates and Charges

DECEMBER 27, 1972.

Take notice that Arizona Public Service Co. (Company) on September 28, 1972 tendered for filing proposed changes in its FPC Rate Schedule No. 50. The filing consists of an escalation as provided for in Exhibit C of the Company's agreement dated April 2, 1971, with Citizens Utilities Co. The proposed change would increase the Company's annual revenues from jurisdictional sales and service by $1,396 computed by using August 1972, as the base month.

The Company requests that § 35.11 of the Commission's regulations be waived and that the current escalation become effective at the beginning of July and August 1972, since it is impossible to anticipate an escalation prior to the end of a month.

The Company also requests waiver of the formal requirements of §§ 35.1 and 35.13 of the Commission's regulations, and that the short form of filing as submitted be filed and accepted. In support of this request, the Company states that the Commission has granted this short form of filing in the Company's FPC Rate Schedules 3 and 32.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 5, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-115 Filed 1-3-73;8:45 am]

[Docket No. RP73-70]

CAROLINA PIPELINE CO. AND TRANSCONTINENTAL GAS PIPE CORP.

Notice of Motion for Emergency Relief

DECEMBER 27, 1972.

Take notice that on December 15, 1972, Carolina Pipeline Co. (Carolina) filed in Docket No. RP73-70 a complaint against Transcontinental Gas Pipe Line Corp. (Transco) whereby Carolina seeks a Commission order directing Transco to deliver Carolina's present Annual Contract Quantity (ACQ) entitlement of gas under Transco's Contract Demand 2 (CD-2) Rate Schedule commencing January 1, 1973.

Complainant states it is a resale customer of Transco and also obtains part of its gas supply from Southern Natural Gas Co. Carolina provides service both directly and for resale for domestic, commercial, and industrial customers.

Complainant alleges that some of the interruptible industrial customers utilizing gas for direct flame applications and highly preferential process uses obtain gas as preferred interruptible customers and that these customers "clearly come within the 'human needs' type of customer meaning as used by the Commission."

Complainant states that "[b]ecause curtailments in the South were customarily of very short duration prior to current gas shortages, it was both physically feasible and economically desirable for these [preferred interruptible industrial] customers to purchase interruptible gas while maintaining a limited alternate fuel capability. In view of extensive curtailments now in effect on the Transco and Southern systems, these customers are faced with severe hardships."

Complainant claims that "if the relief herein sought were granted and Carolina were permitted to obtain the ACQ gas under the CD rate schedule daily basis Carolina would be able to maintain service in the winter to these [preferred interruptible industrial] 'human needs' customers." Complainant states that its preferred interruptible industrial customers have been completely curtailed since November 15, 1972.

Complainant states that the alternate fuels utilized by these preferred interruptible industrial customers "are in very short supply and most difficult to obtain at this time." Complainant alleges that if Carolina could obtain its ACQ gas from Transco under Transco's CD-2 Rate Schedule "at a volume in the range of 10,000 Mcf per day, it would greatly alleviate Carolina's difficulty in maintaining service to these [preferred interruptible industrial] customers."

Complainant claims that its requested relief "could have no adverse effect upon Transco's other customers."

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1973, 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 5, 15, and 16 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 request 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-110 Filed 1-3-73;8:45 am]

[Docket No. CP68-179]

FLORIDA GAS TRANSMISSION CO.

Notice of Petition to Amend

DECEMBER 27, 1972.

Take notice that on December 4, 1972, Florida Gas Transmission Co. (Petitioner), Post Office Box 44, Winter Park, FL 32789, filed in Docket No. CP68-179 a petition pursuant to section 7(c) of the Natural Gas Act for an amendment to the certificate of public convenience and necessity issued herein on July 17, 1969 (42 FPC 121), if such is necessary, in order to authorize the continued operation of its facilities and the rendition of service in the manner proposed by Petitioner, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in its application for a certificate in this proceeding it proposed to construct additional natural gas facilities to expand the average day sales capacity of its pipeline system in Florida by approximately 56,400 Mcf (equivalent to 60,000 MMBtu) to approximately 692,000 Mcf (at 14.73 p.s.i.a.). The sales proposed to be made by Florida Gas with the expanded facilities were shown in the application (Exhibit I) and followed Florida Gas' established practice of gradually upgrading sales made to direct interruptible customers to resale sales to its distributors, both firm and interruptible.

In connection with a rate proceeding in Dockets Nos. RP66-4, RP68-1, the Commission entered an order in Opinion No. 611 on February 16, 1972, directing Florida Gas to submit limitations on its sales to its I Rate Schedule customers reflecting service agreements and contracts on file with the Commission as of September 1, 1972, and not to increase its sales to resale and various direct sale customers beyond service agreement levels as of that date. On October 16, 1972, Florida Gas filed revised tariff sheets in its FPC Gas Tariff, Original Volume No. 1, and revised contracts with its direct sales customers containing limitations on service volumes. However, in an order issued November 14, 1972, the Commission accepted the filing of October 16, 1972, as in compliance with Opinion No. 611 but rejected the proposed service volumes because they did not represent the volumes in service agreements and contracts on file as of September 1, 1972. On December 1, 1972, Florida Gas filed revised tariff sheets and a listing of contract volumes on file as of September 1, 1972. Also, on December 4, 1972, Florida Gas retendered the service volumes contained in its October 16, 1972, filing, proposing to make them effective January 1, 1973, together with a motion for reconsideration of the November 14, 1972, order.

Florida Gas believes it has the necessary certificate authority to render the sales service proposed in the retendered tariff sheets and revised listing of contract volumes for its direct sales customers because the proposed service volumes follow the projected pattern of sales originally estimated in the application in this proceeding. If the Commission grants the relief requested in Florida Gas' motion for reconsideration of the order of November 14, 1972, and permits the proposed service volumes to become effective, then Florida Gas requests that the certificate issued in Docket No. CP68-179 be amended, if in the opinion of the Commission such authority is necessary to permit Petitioner to operate its facilities and render the service proposed. In the event that the Commission denies Florida Gas' motion for reconsideration amendment of Petitioner's certificate issued in this proceeding will not be necessary.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 10, 1973, 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 petition to amend 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 amendment 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 Petitioner to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-116 Filed 1-3-73;8:45 am]

[Docket No. CP68-179]

FLORIDA GAS TRANSMISSION CO.

Notice of Petition to Amend

DECEMBER 27, 1972.

Take notice that on December 4, 1972, Florida Gas Transmission Co. (Petitioner), Post Office Box 44, Winter Park, FL 32789, filed in Docket No. CP68-179 a petition to amend the order of the Commission issued in said docket on July 17, 1969 (42 FPC 121), by authorizing the continued operation of its facilities and service, all as more fully set forth in the petition to amend in this proceeding.

By the Commission's order of July 17, 1969, Petitioner was authorized to con-

struct and operate certain facilities and transport an additional 60,000,000 B.t.u. (equivalent to 56,400 Mcf) of natural gas per day. By Commission Opinion No. 611 issued February 16, 1972, Florida Gas Transmission Co., Docket Nos. RP66–4, et al. (47 FPC ——), Petitioner was directed, inter alia, to file a revised I rate schedule deleting certain restrictive provisions with a volume limitation on sales. On October 16, 1972, Petitioner filed revised tariff sheets and revised contracts with its direct sales customers containing limitations on service volumes; however, by order issued November 14, 1972, the Commission accepted the tariff sheets but rejected the proposed service volumes.

Petitioner states that it has retendered the service volumes contained in its October 16 filing and has filed a motion for reconsideration of the November 14, 1972, order. Applicant believes that it has the necessary certificate authority to render the sales services proposed in the retendered tariff sheets and revised listing of contract volumes for its direct sales customers because the proposed service volumes follow the projected pattern of sales originally estimated in the application in Docket No. CP68–179. If the Commission grants the relief requested in its motion for reconsideration, Applicant requests that the certificate issued in Docket No. CP68–179 be amended, if in the opinion of the Commission such authority is necessary to permit Petitioner to operate its facilities and render the services proposed.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 15, 1973, 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73–117 Filed 1–3–73;8:45 am]

[Project 2301]

MONTANA POWER CO.

Issuance of Annual License

DECEMBER 27, 1972.

On December 23, 1968, the Montana Power Co., licensee for Mystic Lake Project No. 2301 located in Stillwater County Mont., on West Rosebud Creek and Mystic Lake filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder (§§ 16.1–16.6). Licensee also made a supplemental filing pursuant to Commission Order No. 384 on December 23, 1969, and a supplemental filing pursuant to Commission Order No. 415 on October 29, 1970.

The license for Project No. 2301 was issued effective December 1, 1961, for a period ending December 31, 1969. In order to authorize the continued operation of the project pursuant to section 15 of the Act pending completion of licensee's application and Commission action thereon it is appropriate and in the public interest to issue an annual license to the Montana Power Co. for continued operation and maintenance of Project No. 2301.

Take notice that an annual license is issued to the Montana Power Co. (Licensee) under section 15 of the Federal Power Act for the period January 1, 1973, to December 31, 1973, or until Federal takeover, or the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Mystic Lake Project No. 2301, subject to the terms and conditions of its license.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73–118 Filed 1–3–73;8:45 am]

NATIONAL GAS SURVEY—SUPPLY-TECHNICAL ADVISORY TASK FORCE-NATURAL GAS SUPPLY

Agenda of Meeting

Meeting to be held in conference room 2043 of the Federal Power Commission, 441 G Street NW., Washington, DC, January 16, 1973—9 a.m.

Presiding: Dr. Paul J. Root, TF FPC Survey Coordinating Representative and Secretary.

1. Call to order and introductory remarks—Dr. Root.

2. Objectives and purposes of meeting: (A) Discussion of the activities and progress of the task force—Mr. Ralph W. Garrett, Director, Supply Technical Advisory Task Force-Natural Gas Supply. (B) Summary of the nature of the individual forecasting responses—Dr. Root. (C) Plans for obtaining supply forecasts for inclusion in the task force report—Mr. Garrett. (D) Status of assigned work and estimated date for completion—Mr. Garrett. (E) Discussion of the environmental aspects concerning the work of the task force—Mr. Garrett. (F) Other business.

3. Adjournment—Dr. Root.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the task force—which statements, if in written form, may be filed before or after the meeting, or if oral, at the time and in the manner permitted by the task force.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73–122 Filed 1–3–73;8:45 am]

NATIONAL GAS SURVEY—TRANSMISSION-TECHNICAL ADVISORY TASK FORCE-ECONOMICS

Agenda of Meeting

Meeting to be held in conference room 4454–B of the Federal Power Commission, 441 G Street NW., Washington, DC, January 9, 1973—9 a.m.

Presiding: Mr. Thos. H. Jenkins (Acting), FPC Survey Coordinating Representative and Secretary.

1. Meeting call to order—Mr. Jenkins.

2. Objectives and purposes of meeting: (A) Discussion of a progress report of work of the Transmission-Technical Advisory Task Force-Economics—Mr. Ray J. Lynch, Deputy Director, Transmission-Technical Advisory Task Force-Economics. (B) Status of assigned work and estimated date for completion—Mr. Lynch. (C) Discussion of environmental aspects concerning the work of the Transmission-Technical Advisory Task Force-Economics—Mr. Lynch. (D) Other business and next meeting date.

3. Adjournment—Mr. Jenkins.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the task force—which statements, if in written form, may be filed before or after the meeting, or if oral, at the time and in the manner permitted by the task force.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73–121 Filed 1–3–73;8:45 am]

[Docket No. E–7908]

ORANGE AND ROCKLAND UTILITIES, INC.

Notice of Application

DECEMBER 27, 1972.

Take notice that Orange and Rockland Utilities, Inc. (Applicant), incorporated under the laws of the State of New York, with its principal business office at Spring

Valley, N.Y., filed an initial rate schedule on June 2, 1972 in compliance with § 35.12 of the Commission's regulations under the Federal Power Act.

The rate schedule is in the form of an agreement between the Applicant and Consolidated Edison Company of New York, Inc. (Con Ed) providing for the sale of unit power and energy out of Applicant's Bowline Point Plant to Consolidated Edison for the period after commercial operation begins through April 28, 1973.

Applicant will make available for the use of Con Ed 200 mw. of capability available to Applicant through its one-third ownership of the 600 mw. Bowline Point Unit No. 1. Only the specific unit is available for use by Con Ed and should the unit fail for any reason (specifically including failure to complete construction) Applicant is not obligated to supply back-up reserve or energy from any other unit.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 8, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-120 Filed 1-3-73;8:45 am]

[Project 619]

PACIFIC GAS & ELECTRIC CO.

Issuance of Annual License

DECEMBER 27, 1972.

On December 22, 1967, Pacific Gas & Electric Co., Licensee for Bucks Creek Project No. 619 located in the vicinity of Quincy, County of Plumas, California, on Bucks Creek filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder (§ 16.1-16.6). Licensee also made a supplemental filing pursuant to Commission Order No. 384 on March 2, 1970, and a supplemental filing pursuant to Commission Order No. 415 on November 18, 1970.

The License for Project No. 619 was issued effective April 14, 1926, for a period ending December 31, 1968. In order to authorize the continued operation of the project pursuant to section 15 of the act pending completion of Licensee's application and Commission action thereon it is appropriate and in the public interest to issue an annual license to Pacific Gas & Electric Co. for continued operation and maintenance of Project No. 619.

Take notice that an annual license is issued to Pacific Gas & Electric Co. (Licensee) under section 15 of the Federal Power Act for the period January 1, 1973 to December 31, 1973, or until Federal takeover, or the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Bucks Creek Project No. 619, subject to the terms and conditions of its license.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-119 Filed 1-3-73;8:45 am]

FEDERAL RESERVE SYSTEM

AMERICAN NATIONAL HOLDING CO.

Order Approving Acquisition of Bank

American National Holding Co., Kalamazoo, Mich., 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 all of the voting shares (less directors' qualifying shares) of the American National Bank in Portage, Portage, Mich. (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls one bank [1] with deposits of approximately $183 million, representing less than 1 percent of total deposits in commercial banks in Michigan, and is the 18th largest banking organization in the State. (All banking data, except as otherwise noted, are as of December 31, 1971.) Upon acquisition of Bank ($4 million deposits), applicant's share of State deposits would remain less than 1 percent, and applicant's ranking among the State's banking organizations would remain unchanged.

Bank, which was established in 1972 by the management of applicant as a spin off of a branch of applicant's lead bank, serves the Kalamazoo banking market (approximated by the Kalamazoo SMSA) and, with approximately 0.8 percent of market deposits, is the smallest of five banks operating therein.[2]

Bank derives a portion of its loan and deposit business from areas served by applicant's banking subsidiary, the closest office of which is the South Westnedge branch, located approximately 1.1 mile north of Bank's sole office. However, in view of the close relationship that has existed between applicant and Bank since its organization, it appears that no meaningful competition between Bank and applicant's subsidiary bank would be eliminated as a result of consummation of applicant's proposal. Further, in view of Bank's small size, legal prohibitions against the establishment of branches in Portage by applicant's banking subsidiary and against the establishment of branch offices by Bank in any city, town, or village in which applicant's banking subsidiary maintains offices, and the close association between Bank and associates of applicant which is likely to continue irrespective of the Board's action on this application, it appears that no meaningful competition between Bank and applicant's subsidiary bank would develop in the future. Moreover, it appears unlikely that any significant competition would develop between any of applicant's proposed subsidiaries and Bank in the future in view of the distances separating the banking offices, the number of banks in the intervening areas, and State laws restricting branching. Even though Bank may legally branch into the same areas in which applicant's present and one of its proposed subsidiary banks may branch, in view of the relatively sparse populations of the areas involved, such a prospect appears remote. On the basis of the facts of record, the Board concludes that consummation of the proposed acquisition would have no significant adverse effects on existing competition, nor would it foreclose the development of significant competition.

The financial condition, managerial resources, and prospects of applicant are considered satisfactory and consistent with approval of the application. The same conclusions apply with respect to applicant's present subsidiary particularly in view of Applicant's recent contribution of $2½ million to the equity account of that bank. The financial condition, managerial resources, and future prospects of Bank appear favorable. Considerations relating to banking factors, therefore, are consistent with approval of the application. Although applicant does not intend to introduce any services at Bank not presently available in the community, considerations relating to the convenience and needs of the communities to be served lend weight toward approval of the application in view of the assistance applicant will provide Bank in establishing additional branch offices and other continuing assistance which applicant may provide Bank. It is the Board's judgment that consummation of the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months

[1] By order dated December 5, 1972, the Board approved applicant's application to acquire shares of a second bank, the successor by merger to the Niles National Bank and Trust Co., Niles, Mich. Today, the Board also announced, by separate order, its approval of applicant's application to acquire shares of the successor by merger to the American Bank of Three Rivers, N.A., Three Rivers, Mich.

[2] Market deposit data are as of June 30, 1970, at which time Bank's office served as a branch office of applicant's banking subsidiary. Bank operated as a branch office of applicant's banking subsidiary from 1963 until January, 1972, at which time Bank was spun-off as part of a reorganization of Applicant's banking subsidiary into a one-bank holding company in order to comply with Michigan banking law.

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 Chicago pursuant to delegated authority.

By order of the Board of Governors,[3] effective December 26, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-126 Filed 1-3-73;8:45 am]

BOL STATE BANK

Order Approving Merger of Banks

BOL State Bank, Lansing, Mich., a newly chartered nonoperating proposed State member bank of the Federal Reserve System, has applied pursuant to the Bank Merger Act (12 U.S.C. 1828 (c)) for the Board's prior approval to merge with Bank of Lansing, Lansing, Michigan (Bank), under the name of Bank and charter of applicant, as a means to facilitate the direct acquisition of the voting shares of Bank by Northern States Financial Corp., Detroit, Mich., and the indirect acquisition of Bank's shares by Twin Gates Corp., Wilmington, Del., because of its ownership of 22.48 percent of the voting shares of Northern States Financial Corp.

As required by the Act, notice of the proposed merger, in form approved by the Board, has been published, and the Board has requested reports on competitive factors from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered all relevant material contained in the record in the light of the factors set forth in the Act.

On the basis of the information before the Board, including, in particular, communications from the Commissioner of Banking for the State of Michigan, the Board finds that an emergency situation exists with respect to Bank that, pursuant to the provisions of the Bank Merger Act, requires expeditious action on the application.

The competitive effects likely to fall upon consummation of the proposal have been considered by the Board incident to its recent action approving the applications filed under the Bank Holding Company Act by Northern States Financial Corp. and Twin Gates Corp., above mentioned. These considerations and the Board's conclusions thereon are reflected in the Board's order of November 14, 1972 approving the Bank Holding Company Act applications. On the basis of these same considerations, the Board concludes that the proposed merger transaction should be approved. Further, the Board advises that consummation of the merger proposal should be consummated immediately.

It is hereby ordered, On the basis of the record, that the application be and hereby is approved and that the merger shall not be consummated before the fifth calendar day following the effective date of this order, nor later than 3 months after the date of this Order.

By order of the Board of Governors,[1] effective December 22, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-127 Filed 1-3-73;8:45 am]

FEDERAL NATIONAL BANKSHARES, INC.

Formation of Bank Holding Company

Federal National Bankshares, Inc., Shawnee, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 98 percent or more of the voting shares of the Federal National Bank & Trust Co., Shawnee, Okla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 22, 1973.

Board of Governors of the Federal Reserve System, December 26, 1972.

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

[FR Doc.73-128 Filed 1-3-73;8:45 am]

K.B.J. ENTERPRISES, INC.

Formation of Bank Holding Company

K.B.J. Enterprises, Inc., Sibley, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 percent or more of the voting shares of Sibley State Bank, Sibley, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than January 15, 1973.

Board of Governors of the Federal Reserve System, December 27, 1972.

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

[FR Doc.73-129 Filed 1-3-73;8:45 am]

MANUFACTURERS HANOVER CORP.

Order Approving Acquisition of Bank

Manufacturers Hanover Corp., Dover, Del., 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 Fidelity Bank of Colonie, Latham, N.Y. (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is the third largest banking organization in New York, controlling two banks with aggregate deposits of $9.2 billion representing 9.4 percent of all deposits of commercial banks in the State.[1] Acquisition of Bank (deposits of $33.1 million) would constitute applicant's initial entry into the Albany banking market and would not change applicant's ranking among banking organizations in the State.

Bank is the 11th largest of 14 banks in the Albany banking market, controlling 1.4 percent of total deposits in that market.[2] Applicant's nearest subsidiary office to Bank is approximately 140 miles distant. It appears that no meaningful competition exists between Bank and any of applicant's subsidiary banking offices. Further, it seems unlikely that meaningful competition would develop in the future between Bank and applicant in light of the facts presented, notably, the distances separating these banks and the New York statutes prohibiting applicant's subsidiaries from branching into the Albany banking market until 1976. It appears that acquisition of Bank would not have a significant adverse effect on the remaining banks in the relevant market nor foreclose entry by other bank holding companies into that market, as five independent banks would remain as potential members of other bank holding companies. Furthermore, entry by applicant may have a procompetitive effect by enabling Bank to compete more effectively with the two largest banks in the Albany market which control approximately 45 percent of market deposits. Consummation of the proposed acquisition would remove home office protection from the town of Latham and permit new competitors to enter this developing area. On the basis of the record before it, the Board concludes that consummation

[3] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Sheehan, and Bucher. Absent and not voting: Governors Daane and Brimmer.

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Bucher.

[1] All banking data are as of June 30, 1972, except for those relating to the Albany market, which are as of June 30, 1970, and are adjusted to reflect bank holding company formations and acquisitions approved by the Board through Nov. 30, 1972.

[2] The Albany market is approximated by Albany, Rensselaer, and Schenectady Counties and the southern tip of Saratoga County.

of the proposal herein would not have an adverse effect on competition in any relevant area.

The financial condition, managerial resources, and future prospects of applicant and its subsidiary banks appear satisfactory. As a result of the affiliation of applicant with Bank and applicant's commitment to make a significant contribution of additional capital to Bank, Bank's financial and managerial resources and future prospects are regarded as satisfactory. The expected strengthening of Bank's capital position lends weight to approval of the application. Considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order, or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, pursuant to delegated authority.

By order of the Board of Governors,[1] effective December 27, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-130 Filed 1-3-73;8:45 am]

NORTH AMERICAN MORTAGE CORP.

Order Approving Acquisition of Additional Shares in Bank

North American Mortgage Corp., St. Petersburg, Fla., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire an additional 27.1 percent of the voting shares of the American Bank, St. Petersburg, Fla. (American Bank).

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls the American National Bank of Clearwater, Clearwater, Fla. (American National), with deposits of $13.4 million, representing approximately 0.1 percent of total commercial deposits in the State.[2] Applicants recently obtained Board approval to acquire 23.9 percent of the voting shares of the American Bank, St. Petersburg, Fla. (American Bank) a proposed new bank (1972 Federal Reserve Bulletin 727). Acquisition of an additional 27.1 percent of the voting shares of American Bank from applicant's chairman will result in applicant's having a 51 percent majority interest in bank, and will not adversely affect competition in the relevant area nor significantly increase applicant's share of total deposits in the relevant area or within the State.

Applicant proposes to pay the same price for the additional 27.1 percent of the voting shares of American Bank as the subscription price paid for its original shares; an equal offer has been made to acquire all of the remaining outstanding shares of American Bank. Thus, the Board concludes that the transaction would not be detrimental to the minority stockholders of American Bank.

The financial and managerial resources and future prospects of applicant, American National, and American Bank are generally satisfactory and consistent with approval of the application. Considerations relating to the convenience and needs of the communities to be served are also consistent with approval of the application. The Board finds that the proposed application is in the public interest and should be approved.

Applicant is engaged in certain nonbanking activities, involving mortgage banking and operation of a general insurance agency, while its chairman and principal stockholder owns and operates a savings and loan association (Guaranty Federal Savings & Loan Association, St. Petersburg). Mortgage banking and insurance agency activities fall within the proviso in section 4(a)(2) of the Bank Holding Company Act, as amended, the so-called "grandfather" provision under which the Board may terminate such "grandfather" privileges if, having due regard to the purposes of the Act, the Board determines that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Accordingly, the Board has reviewed the activities of applicant for the purpose of determining whether the combination of banking and nonbanking interests in applicant's holding company system would be likely to have an adverse effect on the public interest. Notice of the Board's proposed review of the "grandfather" privileges of North American Mortgage Corp. (North American), and an opportunity for interested persons to submit comments and views or request a hearing was given (37 FR 21382). The time for filing comments, views and requests has expired, and none have been received.

Applicant is engaged in business only in Florida with its principal activities conducted in the "Tampa Bay" area. North American is engaged in the origination of mortgage loans of one to four family residential homes, over 99 percent of which are of the VA-FHA category. Guaranty Federal Savings & Loan Association is also engaged in the origination of residential loans, specializing in conventional loans. Combined, North American and Guaranty Federal originated but 2.2 percent of total mortgage originations in St. Petersburg in 1971. Thus, the two organizations would appear to have a negligible effect on competition for residential mortgages in the St. Petersburg area. Moreover, it is estimated that applicant writes about 1 percent of the total premium volume of insurance in the St. Petersburg area, where its insurance agency operations are conducted. It appears that the volume, scope, and nature of the activities of applicant and its subsidiaries do not indicate an undue concentration of resources nor is there any evidence before the Board of decreased or unfair competition, conflicts of interests, or unsound banking practices.

There appears to be no reason to require applicant to cease engaging in the activities it engages in directly, nor to require applicant to terminate its interests in its subsidiaries. However, this determination is not authority to enter into any activity applicant was not engaged in on June 30, 1968, and continuously thereafter, or any activity that is not the subject of this determination. It is the Board's judgment that at this time termination of the "grandfather" privileges of applicant is not necessary in order to prevent an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. A significant alteration in the nature or extension of applicant's activities, or a change in location thereof (significantly different from any described in this determination), will be cause for a reevaluation by the Board of applicant's activities under the provisions of section 4(a)(2) of the Act, whenever the alteration or change is such that the Board finds that a termination of the grandfather privileges is necessary to prevent an undue concentration of resources or any of the other evils designated in the Act. No merger or acquisition of assets, other than in the ordinary course of business, nor acquisition of any interest in a going concern to which the applicant or any nonbank subsidiary thereof is a party, may be consummated without prior approval of the Board. Further, the provision of any credit, property, or service by the applicant or any subsidiary thereof shall not be subject to any condition which if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970.

The determination herein does not preclude a later review by the Board of applicant's nonbanking activities, and a future determination by the Board in favor of termination of "grandfather" benefits of applicant. This determination is subject to the Board's authority to require modification or termination of the activities of applicant or any of its nonbanking subsidiaries as the Board finds necessary to assure compliance with the

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Bucher.

[2] Banking data are as of June 30, 1972.

provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasions thereof.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated: (a) Before the 30th calendar day following the effective date of this order, or (b) later than 3 months after the effective date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[2] effective December 22, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-131 Filed 1-3-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

TRANS-EAST AIR, INC.

Order Suspending Trading

DECEMBER 22, 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 26, 1972, through January 4, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-142 Filed 1-3-73;8:45 am]

SELECTIVE SERVICE SYSTEM

REGISTRANTS PROCESSING MANUAL

Armed Forces Examinations; Determination of Acceptability for Military Service

The Registrants Processing Manual is an internal manual of the Selective Service System. The following portions of that manual are considered to be of sufficient interest to warrant publication in the FEDERAL REGISTER. Therefore these materials are set forth in full as follows:

[Temporary Instruction 628-6]

ISSUED: December 29, 1972

SUBJECT: Armed Forces Examinations

1. Armed Forces Examinations for January 1973 and later months will, until further notice, be limited to, (a) registrants who will enter the Extended Priority Selection Group from the 1972 First Priority Selection Group (RSN 001-095) and, (b) any registrants who request examination in accordance with Paragraph 2 of § 628.3 of the RPM.

2. Except for (b) above, registrants born in 1953 will not be scheduled for examination or reexamination during January 1973 or later months. Any registrant born in 1953 who has been scheduled for Armed Forces examination in January 1973 or later months shall have his order to report for Armed Forces examination canceled.

3. Registrants born in 1953 shall not be ordered for Armed Forces examination in January 1973 or later months even though their Reexamination Believed Justified (RBJ) period has expired or will expire.

4. Registrants born in 1953 who are presently in an Acceptability Undetermined (AU) status shall have their orders to report for examination canceled.

5. Processing of medical consultations, "Papers Only" reviews and Registrant Medical Reevaluation and Reviews (RMR) for registrants born in 1953 will be terminated immediately and registrants will be advised that further processing is to be held in abeyance.

6. Any registrant born in 1953 who is overseas and is presently under an order to report for Armed Forces examination and whose examination has not been accomplished, shall have his order to report for examination canceled.

Temporary Instruction No. 628-5 is hereby rescinded.

This temporary instruction will terminate on June 30, 1973, unless sooner rescinded.

[Temporary Instruction 628-7]

ISSUED: December 29, 1972.

SUBJECT: Determination of Acceptability for Military Service.

Proposed regulations published in the FEDERAL REGISTER on November 25, 1972, which will become effective 11:59 p.m., e.s.t., December 31, 1972, will relieve the Selective Service System of the responsibility for making determinations of the medical acceptability of registrants.

Effective January 1, 1973, the provisions of section 628.2 of the Registrants Processing Manual (RPM) pertaining to the use of local board medical advisor in making a determination of a registrant's obviously disqualifying condition or defect will be discontinued. The determination of an obviously disqualifying condition or defect will be made only by the Armed Forces Examining and Entrance Station (AFEES) on the basis of medical documentation or statements submitted by the local board.

Effective January 1, 1973, the "Papers Only" evaluation by the AFEES as covered in section 628.13 and the Registrant Medical Reevaluation and Review (RMR) as covered in section 628.14 of the RPM will be discontinued.

This temporary instruction will terminate upon receipt of the next revision to Chapter 628 of the RPM.

BYRON V. PEPITONE,
Acting Director.

DECEMBER 29, 1972.

[FR Doc.73-170 Filed 1-3-73;8:45 am]

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Bucher. Absent and not voting: Governor Sheehan.

TARIFF COMMISSION

[AA1921-109]

KANEKALON WIGS FROM HONG KONG

Determination of No Injury or Likelihood Thereof

DECEMBER 29, 1972.

The Treasury Department advised the Tariff Commission on September 29, 1972, that Kanekalon wigs from Hong Kong are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted investigation No. AA1921-109 to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on November 17, 1972. Notice of the investigation and hearing was published in the FEDERAL REGISTER of November 1, 1972 (37 FR 23299).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of its investigation, the Commission has unanimously determined[1] that an industry in the United States is not being or is not likely to be injured, or is not prevented from being established, by reason of the importation of Kanekalon wigs from Hong Kong sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS[2]

Nearly all wigs sold in the United States are made from modacrylic fibers or human hair, or a combination of such materials. The wigs from Hong Kong sold at less than fair value (LTFV) are made of Kanekalon—a trade name for a modacrylic fiber manufactured in Japan. None of the U.S. producers use Kanekalon, but they make wigs of Dynel and Elura (modacrylic fibers produced in the United States). Wigs of Dynel and Elura are also imported into the United States, but none have been found to have been sold at less than fair value.

The imported Kanekalon wigs from Hong Kong are marketed in the United States by different techniques, are sold in markedly different price ranges, and generally supply a different sector of the U.S. market than domestic wigs.

Kanekalon wigs from Hong Kong are "prestyled" by the manufacturers and

[1] Commissioner Leonard did not participate in the decision.

[2] Commissioner Ablondi concurs in the result.

are generally sold to the consumer with no additional styling or customizing at the point of sale. They are sold chiefly through specialty shops catering to the mass market, the "budget" departments of department stores, discount houses, and mail order shops. Such market outlets are supplied almost wholly by imported wigs, and the very great bulk of imported wigs are sold through such markets. In contrast, wigs produced in the United States are usually made so as to be styled or customized at the point of retail sale to meet the needs of the individual buyer. They are generally sold directly to the consumer by the manufacturer or through salons and department stores selling more expensive types of merchandise; their sale requires the services of personnel specially trained in hair styling.

As would be expected, the wigs made in Hong Kong and those made in the United States are sold at widely different price ranges. In 1971–72, nearly all the wigs imported from Hong Kong retailed in the U.S. market at prices ranging from $10 to $25 each. Wigs produced in volume by domestic manufacturers retailed at prices ranging from $50 to $150; the remainder of the domestically produced articles were more expensive, some retailing for more than $2,000 each. Thus, the Hong Kong wigs of Kanekalon compete only indirectly with articles of domestic manufacture.

Although most of the Kanekalon wigs from Hong Kong were found by the Treasury to have been sold at less than fair value, the margin by which those LTFV wigs were sold below fair value could have contributed only a small part of the difference in retail prices between the Hong Kong and domestically produced articles. As is evident from price data given in the preceding paragraph, the wigs imported from Hong Kong generally were sold at retail in the U.S. market at prices ranging from $25 to $40 below the lowest priced domestic wigs. The amount of the LTFV margin represented only a very small fraction of the price differences, and could not have contributed to any significant degree to the amount the Kanekalon wigs imported from Hong Kong undersold the domestic articles.

On the basis of the foregoing, we conclude that a domestic industry is not being, or is not likely to be, injured by reason of imports of Kanekalon wigs from Hong Kong sold at less than fair value.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.73-11 Filed 1-3-73;8:45 am]

DEPARTMENT OF LABOR

Wage and Hour Division

LEARNERS AND STUDENT WORKERS

Certificates Authorizing Employment At Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.) and Administrative Order No. 621 (36 FR 12819) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations; such conditions in certificates not issued under the supplemental industry regulations are as listed:

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.20 to 522.25, as amended).

The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

Aalfs Mfg. Co., Sheldon, Iowa; 10-1-72 to 9-30-73; 10 learners (boys' jeans).

Alexandria Industrial Garment Mfg. Co., Alexandria, Tenn.; 10-8-72 to 10-7-73 (men's shirts).

Auburntown Industries, Auburntown, Tenn.; 10-31-72 to 10-30-73 (men's and boys' shirts).

Bob Evans of Kentucky, Inc., Burkesville, Ky.; 10-23-72 to 10-22-73 (nurses' and waitresses' uniforms).

Boonville Mfg. Corp., Boonville, Ind.; 11-1-72 to 10-31-73 (men's woven pajamas and shirts).

Brundidge Shirt Corp., Brundidge, Ala.; 9-26-72 to 9-25-73 (men's shirts).

Carolina Lingerie Co., Inc., Mocksville, N.C.; 10-19-72 to 10-18-73 (men's shirts).

Carthage Shirt Corp., Carthage, Tenn.; 11-3-72 to 11-2-73 (men's shirts and ladies' blouses).

Dunbrooke Sportswear Co., El Dorado Springs, Mo.; 10-1-72 to 9-30-73 (men's sport shirts).

Eatonton Mfg. Co., Inc., Eatonton, Ga.; 10-29-72 to 10-28-73 (men's trousers).

Elder Mfg. Co., Webb City, Pa.; 10-31-72 to 10-30-73 (men's, boys', and juveniles' shirts).

Freeland Shirt Co., Inc., Freeland, Pa.; 11-4-72 to 11-3-73 (men's, women's, and children's jackets).

Greenway Mfg. Co., Waynesburg, Pa.; 10-30-72 to 10-29-73 (boys', infants', and children's shirts).

Gross Galesbury Co., Chariton, Iowa; 10-19-72 to 10-18-73 (men's snowmobile suits and jackets).

Howard Industries, Dunlap, Tenn.; 10-23-72 to 10-22-73 (women's and girls' blouses).

Irene Sportswear Co., Inc., Nicholson, Pa.; 10-30-72 to 10-29-73; 10 learners (ladies' blouses).

Kenrose Mfg. Co., Inc., Roanoke, Va.; 11-15-72 to 11-14-73 (women's dresses).

Kenrose Pilot Plant, Saltville, Va.; 9-23-72 to 9-22-73 (women's dresses).

Murcel Mfg. Corp., Glennville, Ga.; 11-2-72 to 11-1-73 (nurses' and maids' uniforms and shirts).

Oshkosh B'Gosh, Inc., Celina, Tenn.; 10-8-72 to 10-7-73 (men's pants and shirts).

Pella Mfg. Corp., Pella, Iowa; 10-4-72 to 10-13-73; 10 learners (men's coveralls, overalls, and work shirts).

Publix Shirt Corp., Myerstown, Pa.; 10-25-72 to 10-24-73 (men's and boys' shirts).

Rappahannock Sportswear Co., Inc., Fredericksburg, Va.; 10-16-72 to 10-15-73 (men's trousers).

Rector Sportswear Corp., Rector, Ark.; 10-28-72 to 10-27-73 (men's plants).

Red Hill Apparel Co., Red Hill, Pa.; 10-15-72 to 10-14-73 (children's dresses).

Reidbord Brothers Co., Philippi, W. Va.; 9-22-72 to 9-21-73; 10 learners (men's work pants).

Ronco Mfg. Co., Ronco, Pa.; 10-30-72 to 10-29-73; 10 learners (children's coats).

J. H. Rutter Rex Mfg. Co., Inc., New Orleans, La.; 10-11-72 to 10-10-73 (men's and boys' work pants and shirts).

Salant & Salant, Lexington, Tenn.; 11-8-72 to 11-7-73 (men's and boys' pants).

Salant & Salant, Paris, Tenn.; 11-9-72 to 11-8-73 (men's and boys' shirts).

Sampson Sewing Co., Clinton, N.C.; 10-18-72 to 10-17-73 (children's car coats, jackets, jumpsuits, and boys' pants).

Shane Uniform Co., Inc., Evansville, Ind.; 11-6-72 to 11-5-73 (men's and women's service apparel).

The Solomon Co., Collinsville, Ala.; 10-5-72 to 10-4-73; 10 learners (men's slacks).

Stapleton Garment Co., Inc., Stapleton, Ga.; 9-23-72 to 9-22-73 (men's and boys' pants).

W. E. Stephens Mfg. Co., Inc., Carthage, Tenn.; 11-8-72 to 11-7-73; 10 learners (men's, boys', ladies', and girls' jeans).

Sullcraft Mfg. Co., Inc., Dushore, Pa.; 10-4-72 to 10-3-73; 9 learners (men's and boys' pajamas).

Tick Tock Frocks, Inc., Fall River, Mass.; 10-4-72 to 10-3-73; 5 learners (ladies' dresses).

Toll Gate Garment Co., Inc., Hamilton, Ala.; 10-1-72 to 9-30-73; 5 percent of the total number of factory production workers (men's shirts).

Tracy City Mfg. Co., Tracy City, Tenn.; 10-17-72 to 10-16-73 (men's and boys' shirts).

The Van Wert Mfg. Co., Van Wert, Ohio; 9-25-72 to 9-24-73; 10 learners (men's and women's work jackets).

Warner's, London, Ky.; 10-25-72 to 10-24-73 (women's brassieres and girdles).

Wentworth Mfg. Co., Florence, S.C.; 11-1-72 to 10-31-73 (women's dresses).

Wilcox Garment Co., Inc., Rochelle, Ga.; 9-26-72 to 9-25-73 (men's and boys' shirts).

The following plant expansion certificates were issued authorizing the number of learners indicated.

Arizona Slack Corp., Yuma, Ariz.; 9-26-72 to 3-24-73; 15 learners (men's slacks).

Dunbrooke Sportswear Co., Greenfield, Mo.; 10-30-72 to 4-29-73; 50 learners (men's outerwear jackets).

The Smockery, Inc., Charleston, S.C.; 10-2-72 to 4-1-73; 8 learners (children's dresses).

Cigar Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.80 to 522.85, as amended).

Universal Cigar Corp., Clearwater, Fla.; 9-24-72 to 9-23-73; 10 percent of the total number of factory production workers for normal labor turnover purposes (machine-made cigars).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.60 to 522.65, as amended).

Burnham-Edina Mfg. Co., Edina, Mo.; 10-4-72 to 10-3-73; 5 learners for normal labor turnover purposes (leather palm work gloves).

Good Luck Glove Co., Rosiclare, Ill.; 11-8-72 to 11-7-73; 10 learners for normal labor turnover purposes (work gloves).

Monte Glove Co., Maben, Mass.; 10-20-72 to 10-19-73; 10 learners for normal labor turnover purposes (work gloves).

St. Johnsbury Glovers, St. Johnsbury, Vt.; 10-4-72 to 10-3-73; 10 learners for normal labor turnover purposes (ladies' knit and leather gloves and men's gloves).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.40 to 522.43, as amended).

Amos Hosiery Mills, Inc., High Point, N.C.; 10-12-72 to 10-11-73; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's, boys', and misses' hosiery and anklets).

Excel Hosiery Mills, Inc., Union, S.C.; 9-27-72 to 9-26-73; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's and boys' hosiery).

V. I. Prewett & Son, Inc., Fort Payne, Ala.; 10-24-72 to 10-23-73; 5 percent of the total number of factory production workers for normal labor turnover purposes (infants' and children's hosiery).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.30 to 522.35, as amended).

Barad & Co., Salem, Mo.; 9-28-72 to 9-27-73; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' sleepwear).

Benham Corp., Scottsboro, Ala.; 10-8-72 to 10-7-73; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's and boys' underwear).

Boonville Mfg. Corp., Boonville, Ind.; 11-1-72 to 10-31-73; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's woven underwear).

Dothan Mfg. Co., Dothan, Ala.; 9-30-72 to 9-29-73; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's pajamas and shorts).

Isaacson-Carrico Mfg. Co., El Campo, Tex.; 9-11-72 to 9-20-73; 5 learners for normal labor turnover purposes (girls' underwear and sleepwear).

Junior Form Lingerie Corp., Boswell, Pa.; 9-23-72 to 9-22-73; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' underwear, petticoats, gowns, and pajamas).

Russell Mills, Inc., Alexander City, Ala.; 10-1-72 to 9-30-73; 5 percent of the total number of factory production workers for normal labor turnover purposes (knit underwear, sweatshirts, and athletic wear).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number of learners authorized to be employed, are indicated.

Bayuk Caribe, Inc., Ciales, P.R.; 10-4-72 to 10-3-73; 13 learners for normal labor turnover purposes in the occupation of cigar-making and packing, each for a learning period of 320 hours at the rates of $1.38 an hour for the first 160 hours and $1.42 an hour for the remaining 160 hours (cigars).

J. R. N. Mfg. Corp., Inc., Rio Grande, P.R.; 10-19-72 to 10-18-73; 10 learners for normal labor turnover purposes in the occupations of sewing machine operating and final pressing, each for a learning period of 320 hours at the rate of $1.14 an hour (men's and boys' pajamas).

Meyers & Son Mfg. Co. of P.R., Inc., Cidra, P.R.; 10-4-72 to 10-3-73; 10 learners for normal labor turnover purposes in the occupation of sewing machine operating, for a learning period of 320 hours at the rate of $1.24 an hour (coveralls).

Phillip Mfg. Corp., Rio Grande, P.R.; 10-19-72 to 10-18-73; 24 learners for normal labor turnover purposes in the occupations of sewing machine operating and machine pressing, each for a learning period of 320 hours at the rate of $1.14 an hour (men's and boys' shorts).

The following student-worker certificate was issued pursuant to the regulations applicable to the employment of student-workers (29 CFR 527.1 to 527.9). The effective and expiration date, occupations, wage rates, number of student-workers, and learning periods for the certificate issued under Part 527 are as indicated below.

Union Springs Academy, Union Springs, N.Y.; 10-16-72 to 8-31-73; authorizing the employment of 13 student-workers in the broom manufacturing industry in the occupations of broom maker, sorter, winder, stitcher, and related skilled and semiskilled occupations, for a learning period of 360 hours at the rate of $1.40 an hour.

The student-worker certificate was issued upon the applicant's representations and supporting materials fulfilling the statutory requirements for the issuance of such certificates, as interpreted and applied by Part 527.

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 15 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in 29 CFR Part 528.

Signed at Washington, D.C. this 22d day of December 1972.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[FR Doc.73-100 Filed 1-3-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 147]

ASSIGNMENT OF HEARINGS

DECEMBER 29, 1972.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 98945 Sub 8, Thomas Cartage, Inc., now assigned January 15, 1973, at Raton, N. Mex., is canceled and application dismissed.

MC 136672, Choice Messenger Service, Inc., now assigned January 22, 1973, at New York, N.Y., will be held in Room B-2231, Federal Plaza.

MC 113959 Sub 4, Lemmon Transport, Inc., contract carrier, extension waste products, now assigned January 23, 1973, at Richmond, Va., will be held in Room 1035, Federal Building, 400 North Eighth Street.

I&S M 26366, Bus Fares, between New York, N.Y., and New Jersey points, now assigned January 29, 1973, at New York, N.Y., will be held in Courtroom 4, U.S. Customs Courthouse, 1 Federal Plaza.

MC 117883 Sub 159, Subler Transfer, Inc., now assigned January 15, 1973, at Chicago, Ill., is postponed to February 20, 1973, at the Midland Hotel, Adams at La Salle Street, Chicago, Ill.

No. 35599, Southern Pacific Transportation Co., Pacific Motor Trucking Co., Bonded Draying Service, Transportation Service Co., and Aldo J. Scoffone—Investigation of practices, and

MC-C-7758, Southern Pacific Transportation Co., Pacific Motor Trucking Co., Silas F. Royster, doing business as Royster Trucking Co., Bonded Draying Service, Transportation Service Co., and Aldo J. Scoffone—Investigation of operations—now assigned January 31, 1973, at San Francisco, Calif., will be held in Room 112, U.S. Customhouse Building, 555 Battery Street.

MC-136070 Sub 1, John F. Schroeder, Inc., now assigned January 15, 1973, at Seattle, Wash., will be held in Room M-16 Arcade Building, 1319 Second Avenue.

MC-112989 Sub 25, West Coast Truck Lines, Inc., now assigned January 17, 1973, at Seattle, Wash., will be held in Room M-16, Arcade Building, 1319 Second Avenue.

MC-117304 Sub 30, Don Paffile, doing business as Paffile Truck Lines, now assigned January 18, 1973, at Seattle, Wash., will be held in Room M-16, Arcade Building, 1319 Second Avenue.

MC-124692 Sub 95, Sammons Trucking, a corporation, now assigned January 22, 1973, MC-116476 Sub 21, Leavitts Freight Service, Inc., now assigned January 25, 1973, at Portland, Oreg., will be held in Room 401, Multnomah Building, 319 Southwest Pine Street.

MC-118292 Sub 31, Ballentine Produce, Inc., now assigned January 29, 1973, at San Francisco, Calif., will be held in Room 112, U.S. Customhouse Building, 555 Battery Street.

MC-135524 Subs 6 and 7, G. F. Trucking Co., now assigned January 8, 1973, at Columbus, Ohio, is postponed indefinitely.

MC-C-7874, United Van Lines, Inc., investigation and revocation of certificate, now assigned January 22, 1973, at St. Louis, Mo., postponed to January 29, 1973, in Room 1612, Federal Building, 1520 Market Street, St. Louis, Mo. All other dates remain in effect as stated in the notice of assignment of hearing dated November 17, 1972.

MC 117940 Sub 66, Nationwide Carriers, Inc., MC 135873 Sub 1, KSS Transportation Corp., now assigned January 29, 1973, MC 133095 Sub 33, Texas Continental Express, Inc., now assigned January 30, 1973, MC 115841 Sub 435, Colonial Refrigerated Transportation, Inc., now assigned January 31, 1973, MC 113678 Sub 464, Curtis, Inc., now assigned February 1, 1973, MCC 7284, B & H Transfer, Inc., revocation of certificate, now assigned February 2, 1973, at New York, N.Y., will be held at the Tax Court, Room 208, 26 Federal Plaza.

MC 121658 Sub 2, Steve D. Thompson, continued to January 3, 1973, at the Holiday Inn Motel, 2102 Louisville Avenue, Monroe, LA.

MC-F-11563, Ross Truck Lines, Inc.—Purchase (portion)—Robert Foltz, now assigned January 18, 1973, at Kansas City, Mo., is postponed indefinitely.

MC-123048 Sub 219, Diamond Transportation System, Inc., now assigned January 18, 1973, at Milwaukee, Wis., is canceled and application dismissed.

MCC 7933, Bekins Van Lines Co., investigation and revocation of certificates, now being assigned hearing February 20, 1973, 4 days, at Chicago, Ill., February 26, 1973, 1 day at St. Paul, Minn., February 28, 1973, 3 days, at Denver, Colo., March 5, 1973, 3 days, at Los Angeles, Calif., March 9, 1973, 3 days, at San Francisco, Calif., March 15, 1973, 2 days, at Phoenix, Ariz., March 19, 1973, 3 days, at Jacksonville, Fla., March 23, 1973, Washington, D.C., April 2, 1973, 2 days, at Boston, Mass., April 9, 1973, 1 day, at Chicago, Ill., in hearing rooms to be later designated.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.73-191 Filed 1-3-73;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

DECEMBER 29, 1972.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG AND SHORT HAUL

FSA No. 42595—*Coarse Grains and Related Articles to Points in Texas.* Filed by Southwestern Freight Bureau, Agent (No. B-372), for and on behalf of carriers parties to schedule listed below. Rates on coarse grains and products thereof, in carloads, as described in the application, from points in Illinois, Iowa, Kansas, Missouri, and Nebraska, to points in Texas. Grounds for relief: Rate relationship. Tariff: Supplement 89 to Southwestern Freight Bureau, Agent, tariff ICC 4967. Rates are published to become effective January 23, 1973.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.73-184 Filed 1-3-73;8:45 am]

[Notice 39]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

DECEMBER 29, 1972.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-29130 (Deviation No. 12), THE ROCK ISLAND MOTOR TRANSIT COMPANY, Post Office Box 1355, Des Moines, IA 50305, filed December 21, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Lincoln, Nebr., over Interstate Highway 80 to junction U.S. Highway 81, at or near York, Nebr., thence over U.S. Highway 81 to junction U.S. Highway 136, at or near Hebron, Nebr., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Omaha, Nebr., over U.S. Highway 6 to Lincoln, Nebr., thence over U.S. Highway 77 to Beatrice, Nebr., (2) from Horton, Kans., over unnumbered highways via Mercier and Powhattan, Kans., to junction U.S. Highway 36, thence over U.S. Highway 36 to junction unnumbered highway about 2 miles west of Fairview, Kans., thence over unnumbered highway to Sabetha, Kans., thence over U.S. Highway 75 to junction unnumbered highway, thence over unnumbered highway via Berwick, Kans., to Bern, Kans., thence over unnumbered highway to junction Kansas Highway 63, thence over Kansas Highway 63 to the Kansas-Nebraska State line, thence over Nebraska Highway 50 to junction Nebraska Highway 65, thence over Nebraska Highway 65 to junction Nebraska Highway 4, thence over Nebraska Highway 4 to junction Nebraska Highway 3, thence over Nebraska Highway 3 to junction U.S. Highway 136, thence over U.S. Highway 136 to Fairbury, Nebr., and (3) from Fairbury, Nebr., over U.S. Highway 136 to Hebron, Nebr., thence over U.S. Highway 81 to Belleville, Kans., thence over U.S. Highway 36 to Smith Center, Kans., and return over the same routes.

No. MC-116004 (Deviation No. 11), TEXAS-OKLAHOMA EXPRESS, INC., 2515 Irving Boulevard, Dallas, TX 75221, filed December 20, 1972. Carrier's representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, Tex. 76102. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Kansas City, Kans.-Mo., over U.S. Highway 71 to junction U.S. Highway 66, thence over U.S. Highway 66 to Riverton, Kans., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: from Kansas City, Kans.-Mo., over U.S. Highway 69 to Crestline, Kans., thence over Kansas Highway 26 to Riverton, Kans., and return over the same route.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.73-189 Filed 1-3-73;8:45 am]

[Notice 107]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

DECEMBER 29, 1972.

The following publications[1] are governed by the new special rule 1100.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications *as filed* by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

[1] Except as otherwise specifically noted, each applicant (on applications filed after Mar. 27, 1972) states that there will be no significant effect on the quality on the human environment resulting from approval of its application.

No. MC 111103 (Sub-No. 37) (Republication) filed July 12, 1971, published in the FEDERAL REGISTER issue of September 10, 1971, and republished this issue. Applicant: PROTECTIVE MOTOR SERVICE COMPANY, INC., 725-29 South Broad Street, Philadelphia, PA 19147. Applicant's representatives: John M. Delany, 2 Nevada Drive, Lake Success, NY and Russell S. Bernhard, 1625 K Street NW., Washington, DC 20006. A supplemental order of the Commission, Operating Rights Board, dated June 7, 1972, and served July 6, 1972, finds (1) that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of coins between Culpeper, Va., on the one hand, and, on the other, Atlanta, Ga., Baltimore, Md., Birmingham, Ala., Boston, Mass., Buffalo, N.Y., Charlotte, N.C., Chicago, Ill., Cincinnati and Cleveland, Ohio, Dallas, Tex., Denver, Colo., Detroit, Mich., El Paso, Tex., Helena, Mont., Houston, Tex., Jacksonville, Fla., Kansas City, Mo., Little Rock, Ark., Los Angeles, Calif., Louisville, Ky., Memphis, Tenn., Miami, Fla., Minneapolis, Minn., Nashville, Tenn., New Orleans, La., New York, N.Y., Oklahoma City, Okla., Omaha, Nebr., Philadelphia and Pittsburgh, Pa., Portland, Oreg., Richmond, Va., St. Louis, Mo., Salt Lake City, Utah, San Antonio, Tex., San Francisco, Calif., Seattle, Wash., and Washington, D.C., under a continuing contract with General Services Administration, Washington, D.C., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; and (2) that the holding by applicant of the permit authorized to be issued in this proceeding, and the holding of applicant's commonly controlled affiliates in certificates Nos. MC-129742, MC-124688, MC-134213, and MC-135320 and subs thereunder, will be consistent with the public interest and the national transportation policy. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

NOTICES OF FILING OF PETITION

No. MC 30837 (Notice of Filing of Petition for Modification of Certificate), filed December 18, 1972. Petitioner: KENOSHA AUTO TRANSPORT CORPORATION, 4200 39th Avenue, Kenosha, WI 53140. Petitioner's representative: Paul F. Sullivan, 711 Washington Building, Washington, D.C. 20005. Petitioner states it files the instant petition for modification of a portion of its base certificate. As herein pertinent the portion of said base certificate presently reads as follows: "Motor vehicles (other than automobiles and trailers) and chassis, in secondary movements, in driveaway service, between points in the United States (except Alaska and Hawaii). Restriction: The service authorized immediately above is restricted to the transportation of vehicles which have previously been transported in initial movements from Bridgeport, Conn., Fort Wayne, Ind., and Springfield, Ohio; and parts of or accessories for such vehicles as are described above when transported with vehicles moving under the service described in the two paragraphs next above, between points in the United States (except Alaska and Hawaii)." Petitioner further states that the portion of its said authority to be modified would then read: "Between points in the United States (except Alaska and Hawaii). Restriction: The Service authorized immediately above is restricted to the transportation of vehicles which have previously been transported in initial movements from Bridgeport, Conn., Fort Wayne, Ind., Springfield, Ohio, *and Sioux City, Iowa*, and parts of or accessories for such vehicles as are described above when transported with vehicles moving under the service described in the two paragraphs next above, between points in the United States (except Alaska and Hawaii)." Petitioner further states, in short, the words italized above will be added to the authority concerned, thus enabling petitioner to continue to provide complete transportation service to International Harvester Co. and its dealer organization in connection with motor vehicles, including chassis, which have previously been transported in initial movement from Sioux City, Iowa. Any person desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11753. Authority sought for purchase by BOWMAN TRANSPORTATION, INC., 1010 Stroud Avenue, Gadsden, AL 35903, of a portion of the operating rights of FALLS CITIES TRANSFER AND STORAGE COMPANY, INCORPORATED, Post Office Box 766, Jeffersonville, IN 47130, and for acquisition by RALPH M. BOWMAN, also of Gadsden, Ala. 35903, of control of such rights through the purchase. Applicants' attorneys: Maurice F. Bishop, 327 Frank Nelson Building, Birmingham, Ala. 35203, and Robert W. Loser, Chamber of Commerce Building, Indianapolis, Ind. 46204. Operating rights sought to be transferred: *General commodities*, excepting among others, household goods, classes A and B explosives, and commodities in bulk, as a *common carrier* over irregular routes, between Louisville, Ky., and points in Kentucky within 10 miles of Louisville, on the one hand, and, on the other, points in Clark and Floyd Counties, Ind., not including Sellersburg, Speed, Memphis, Henryville and Borden, Ind. Vendee is authorized to operate as a *common carrier* in Georgia, South Carolina, North Carolina, Maryland, Alabama, Florida, Tennessee, Illinois, Indiana, Ohio, Mississippi, Arkansas, Kentucky, Louisiana, Virginia, Oklahoma, West Virginia, Michigan, Missouri, Texas, Delaware, New York, Connecticut, New Jersey, Iowa, Kansas, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, North Dakota, Pennsylvania, Rhode Island, South Dakota, Vermont, Wisconsin, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11754. Authority sought for purchase by TRYON MOVING AND STORAGE, INC., Post Office Box 2370, Sanford, NC 27330, of a portion of the operating rights of RABON TRANSFER, INC., Route 2, Box 235, Chadbourn, NC 28431, and for acquisition by GEORGE V. McOTTER, also of Sanford, N.C. 27330, of control of such rights through the purchase. Applicants' attorney: Ralph McDonald, Post Office Box 2246, Raleigh, NC 27602. Operating rights sought to be transferred: *Household goods*, as a *common carrier* over irregular routes, between Whiteville, N.C., and points in North Carolina within 50 miles of Whiteville, on the one hand, and, on the other, points in Florida, Georgia, South Carolina, Maryland, Pennsylvania, and the District of Columbia. Vendee is authorized to operate as a *common carrier* in North Carolina and South Carolina. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11755. Authority sought for purchase by BRIGGS TRANSPORTATION CO., 2360 West County Road C, St. Paul, MN 55113, of the operating rights and property of THEODORE RANZENBERGER, Caledonia, Minn. 55921, and for acquisition by GEORGE E. BRIGGS and MICHAEL P. WARDWELL, both of St. Paul, Minn. 55113, of control of such rights and property through the purchase. Applicants' attorney: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Operating rights sought to be transferred: *General commodities*, excepting among others, dangerous explosives, household goods, and commodities in bulk, as a *common carrier* over regular routes, between Spring Grove, Minn., and La Crosse, Wis., serving the intermediate point of Caledonia, Minn.,

restricted to traffic moving to or from La Crosse, Wis., between Caledonia and Eitzen, Minn. Vendee is authorized to operate as a *common carrier* in Minnesota, Illinois, Wisconsin, Iowa, Nebraska, Indiana, and Missouri. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.73-188 Filed 1-3-73;8:45 am]

[Notice 108]

MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER APPLICATIONS

DECEMBER 29, 1972.

The following applications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by special rule 1100.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall met the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing: (1) That it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

No. MC 6078 (Sub-No. 71), filed December 11, 1972. Applicant: D. F. BAST, INC., 1425 North Maxwell Street, Allentown, PA 18001. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Graphite, foundry facings, coke*, in containers, between Asbury, N.J., and Bethlehem, Pa., on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and Ohio. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 10914 (Sub-No. 10), filed November 27, 1972. Applicant: THE O'BRIEN & NYE CARTAGE CO., a corporation, 308 Central Viaduct, Cleveland, OH 44115. Applicant's representative: Donald J. O'Connor, 114 Engineers Building, Cleveland, OH 44114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale grocery and food business houses, and *advertising material* used in connection with advertising groceries and food products in insulated vehicles equipped with mechanical refrigeration, from Toledo, Ohio, to points in Allen, Auglaize, Champaign, Crawford, Darke, Defiance, Delaware, Fulton, Hancock, Hardin, Henry, Logan, Lucas, Marion, Mercer, Miami, Ottawa, Paulding, Putnam, Sandusky, Seneca, Shelby, Union, Van Wert, Williams, Wood, and Wyandot Counties, Ohio, and Hillsdale, Jackson, Lenawee, and Monroe Counties, Mich. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Toledo, Ohio.

No. MC 26396 (Sub-No. 68), filed November 29, 1972. Applicant: POPELKA TRUCKING CO., doing business as, THE WAGGONERS, a corporation, Post Office Box 990, Livingston, MT 59047. Applicant's representative: Jacob P. Billig, 1108 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Forest products*, from Laramie, Wyo., to points in North Dakota, South Dakota, Nebraska, Colorado, and Montana. NOTE: Applicant states that the requested authority can be tacked at specified points in Montana with the authority it holds in No. MC 26396 and subs thereunder to serve points in additional western and midwestern States. If a hearing is deemed necessary, applicant requests it be held at Billings, Mont.

No. MC 29910 (Sub-No. 126), filed November 30, 1972. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11th Street, Fort Smith, AR 72901. Applicant's representative: Thomas Harper, Post Office Box 43, Fort Smith, AR 72901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt and composition roofing materials*, from Shreveport, La., to points in Illinois. NOTE: Applicant states that the requested authority can be tacked possibly at Shreveport, La., with applicant's existing authority under MC 29910. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or New Orleans, La.

No. MC 50069 (Sub-No. 458), filed November 10, 1972. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Avenue, Oregon (Toledo), OH 43616. Applicant's representative: J. A. Kundtz, 1100 National City Bank Building, Cleveland, OH 44114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foundry facings, liquid mold release products, quenching compounds, and hydraulic fluids*, in bulk, in tank vehicles, from Howell, Mich., to points in Illinois, Indiana, and Ohio, and (2) *cutting oil, rust preventive compounds, soluble oils, metal working petroleum oils, and water based metal working lubricant*, from Howell, Mich., to points in Ohio, Indiana, Illinois, Missouri, Wisconsin, and Kentucky. NOTE: Dual operations and common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicative authority sought. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 61592 (Sub-No. 296), filed November 27, 1972. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's rep-

[1] Copies of special rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

resentative: Donald Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bathroom and plumbing fixtures, and parts, attachments and accessories* for bathroom and plumbing fixtures; (2) *plastic products;* (3) *shower stalls;* (4) *china and earthware goods;* and (5) *counter tops;* from the plantsites and warehouse facilities of Peerless Pottery, Inc., at or near Evansville, Ind., and Rockport Sanitary Pottery, at or near Rockport, Ind., to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, New Jersey, New York, North Carolina, Nebraska, Oklahoma, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin, and West Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 85465 (Sub-No. 52), filed November 16, 1972. Applicant: WEST NEBRASKA EXPRESS, INC., Post Office Box 952, Scottsbluff, NE 69361. Applicant's representative: Truman A. Stockton, The 1650 Grant Street Building, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except commodities in bulk and commodities requiring special equipment), serving the warehouse site of Western Electric Co., Inc., located at or near Underwood, Iowa, as an off-route point in connection with applicant's regular-route operations via, Omaha, Nebr. NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 102817 (Sub-No. 17), filed November 29, 1972. Applicant: PERKINS FURNITURE TRANSPORT, INC., Post Office Box 24335, Indianapolis, IN 46254. Applicant's representative: R. W. Loser, 1009 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New funiture and commercial and institutional furniture, fixtures, and equipment*, between points in Indiana, on the one hand, and, on the other, points in Maine, New Hampshire, Rhode Island, and Vermont. NOTE: Applicant states that tacking is possible at points in Indiana but does not contemplate tacking at this time. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind. or Washington, D.C.

No. MC 102817 (Sub-No. 18), filed November 30, 1972. Applicant: PERKINS FURNITURE TRANSPORT, INC., Post Office Box 24335 (5034 Lafayette Road), Indianapolis, IN 46254. Applicant's representative: R. W. Loser, 1009 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between Delphi, Ind., on the one hand, and, on the other, points in Mississippi, Alabama, and Louisiana. NOTE: Applicant states that tacking is possible at points in Indiana but does not contemplate tacking at this time. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind.

No. MC 106398 (Sub-No. 631), filed November 20, 1972. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, OK 74151. Applicant's representative Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, in initial movements, from points in Robeson County (except Maxton), N.C., to points in North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Charlotte, N.C.

No. MC 106644 (Sub-No. 146), filed November 13, 1972. Applicant: SUPERIOR TRUCKING COMPANY, INC., Post Office Box 914 (2770 Peyton Road NW.), Atlanta, GA 30301. Applicant's representative: Fred Coffman, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (except truck tractors), *tractor parts and attachments thereof*, from the plantsite of the Ford Motor Co. at Romeo, Mich., to points in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. NOTE: Applicant also holds contract carrier authority under MC 104724 (Sub-No. 13), therefore dual operations and common control may be involved. Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 107012 (Sub-No. 164), filed September 7, 1972. Applicant: NORTH AMERICAN VAN LINES, INC., Lincoln Highway East and Meyer Road, Post Office Box 988, Fort Wayne, IN 46801. Applicant's representative: Donald C. Lewis (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New appliances* (uncrated), (1) from Fallsington, Pa., to New Jersey, New York, Pennsylvania, Delaware, Maryland, Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, Vermont, the District of Columbia, and Virginia; (2) from Atlanta, Ga., to points in Georgia, North Carolina, South Carolina, Florida, Alabama, Tennessee, and Mississippi; (3) from Memphis, Tenn., to points in Mississippi, Louisiana, Arkansas, Missouri, Kansas, Oklahoma, Texas, Arizona, Tennessee, and New Mexico; and (4) from Des Moines, Iowa, to points in Iowa, Wisconsin, Illinois, Kansas, Nebraska, North Dakota, South Dakota, Minnesota, Colorado, Wyoming, and Montana. NOTE: Common control and dual operations may be involved. Applicant states that the requested authority can be tacked with its existing authority, (1) Memphis, Tenn., to points in the United States under MC 107012 (Sheet 13–14); (2) Memphis, Tenn., to points in the United States via Fort Smith, Ark., transporting uncrated refrigerators; (3) Atlanta, Ga., to points in the United States by tacking through Tennessee with MC 107012 (Sub-No. 61), on new kitchen equipment; and (4) Des Moines, Iowa, transporting new appliances, uncrated to points in the United States, via Nebraska in connection with applicant's authority in MC 107012 (Sub-No. 111). If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 107012 (Sub-No. 166), filed November 30, 1972. Applicant: NORTH AMERICAN VAN LINES, INC., Post Office Box 988, Lincoln Highway East and Meyer Road, Fort Wayne, IN 46801. Applicant's representative: Donald C. Lewis (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Kitchen equipment*, from Atlanta, Ga., to points in the United States (except Alaska and Hawaii). NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Washington, D.C.

No. MC 116632 (Sub-No. 15), filed December 4, 1972. Applicant: RALPH E. CURTIS & SON, INC., 123 Mount Hope Avenue, Bangor, ME 04401. Applicant's representative: Frederick T. McGonagle, 36 Main Street, Gorham, ME 04038. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wooden shingles*, from Van Buren, Maine, to points in New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, and the District of Columbia; and (2) *lumber and wooden pallets*, from points in Aroostook County (except Houlton, Smyrna Mills, and Marsardis), Maine and points in Penobscot

County (except Sherman Station and Staceyville), Maine, to points in New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Portland or Augusta, Maine, or Boston, Mass.

No. MC 117068 (Sub-No. 22), filed November 29, 1972. Applicant: MIDWEST HARVESTORE TRANSPORT, INC., 2118 17th Avenue NW., Rochester, MN 55901. Applicant's representative: Paul F. Sullivan, 711 Washington Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, supplies, and equipment* used or useful in the manufacture of seat cabs from Sioux City, Iowa, and Chicago, Ill., to points in Olmsted and Blue Earth Counties, Minn. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 129600 (Sub-No. 9), filed November 20, 1972. Applicant: POLAR TRANSPORT, INC., 27 York Avenue, Randolph, MA 02368. Applicant's representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Oleomargarine, mayonnaise, salad dressing, sandwich spreads, relish spreads, mustard, coleslaw dressing, puddings, and table sauces* (except in bulk), from Atlanta, Ga., to points in Arizona, Arkansas, California, Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, and *pallets, packaging materials, and supplies and materials* used in the manufacture of oleomargarine, mayonnaise, salad dressing, sandwich spreads, relish spreads, mustard, coleslaw dressing, puddings, and table sauces (except in bulk), from the above-described destination points to Atlanta, Ga., under a contract or continuing contract with J. H. Filbert, Inc., of Baltimore, Md. NOTE: If a hearing is deemed necessary, applicant requests it be held at Baltimore, Md., or Washington, D.C.

No. MC 118142 (Sub-No. 49), filed November 29, 1972. Applicant: M. BRUENGER & CO., INC., 6330 North Broadway, Wichita, KS 67219. Applicant's representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, Kans. 67202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such products as are dealt in by wholesale, retail and chain grocery and food business houses*, from the plant and storage facilities of Consolidated American Industries, Inc., at Wichita, Kans., to Denver, Colo.; Chicago and Peoria, Ill.; Fort Wayne and Indianapolis, Ind.; New Orleans, La.; Kansas City and St. Louis, Mo.; Fargo, N. Dak.; Oklahoma City and Tulsa, Okla.; Memphis, Tenn.; Dallas, Fort Worth, and Houston, Tex.; and Milwaukee, Wis. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Wichita, Kans.

No. MC 129600 (Sub-No. 10), filed November 9, 1972. Applicant: POLAR TRANSPORT, INC., 27 York Avenue, Randolph, MA 02368. Applicant's representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs and restaurant supplies*, except in bulk, from Brockton, Quincy, and Watertown, Mass., to points in Virginia, Delaware, and the District of Columbia; (2) *returned and rejected shipments* of the above-described commodities; from the above-named destination points, to the above-named origin points; and (3) *pallets*, between Brockton, Quincy, and Watertown, Mass., and points in Virginia, Delaware, and the District of Columbia. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Howard Johnson Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No. MC 134847 (Sub-No. 3) (Amendment), filed February 7, 1971, published in the FEDERAL REGISTER issue of June 10, 1971, and republished this issue. Applicant: BESSETTE TRANSPORT, INC., 505 Provost Street, Iberville, PQ, Canada. Applicant's representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108 and Adrien R. Paquette, 200 Rue St. Jacques, Montreal 126, PQ, Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bedford slate, slate detergent, and ammoniated stripper and slate detergent*, from ports of entry on the international boundary line between the United States and Canada at or near Champlain, Ogdenburg, and Rouses Point, N.Y., and Highgate Springs and Newport, Vt., to Atlanta, Ga., Baltimore, Md., Pennsacola, Fla., Cincinnati, Ohio, New Orleans, La., Jersey City, N.J., and Boston, Mass.; and (2) *slate*, from Bangor, Pa., East Rutherford, N.J., Grandville and Middle Grandville, N.Y., and Poultney and West Pawlet, Vt, to the international boundary line between the United States and Canada, at or near Champlain, Ogdenburg, and Rouses Point N.Y. and N.Y. and Highgate Springs and Newport, Vt. NOTE: The purpose of this republication is to indicate the additional requests for the authority in (2) above; to show the applicant's new representatives; and to advise interested parties that the hearing assigned January 15, 1973, at Boston, Mass. is postponed to a date to be later determined. Applicant states that the requested authority cannot be tacked with its existing authority.

No. MC 135280 (Sub-No. 8), filed November 27, 1972. Applicant: PEP LINES TRUCKING CO., a corporation, 15120 Third Avenue, Highland Park, MI 48203. Applicant's representative: J. A. Kundtz, 1100 National City Bank Building, Cleveland, Ohio 44114. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as is dealt in by mail order and chain retail department stores and in connection therewith, and materials and supplies used in the conduct of such business*, (1) from Frederick, Md. to Loudon, Fauquier, Warren, Clarke, and Frederick Counties, Va.; (2) from Landover, Md. to points in Virginia; (3) from Manassas, Va. to points in Maryland and the District of Columbia; and (4) returned shipments in (1), (2), and (3) above on return, with the operations in (1), (2), (3), and (4) above conducted under a continuing contract, or contracts, with Montgomery Ward & Co., Inc., at Baltimore, Md. NOTE: Applicant holds a motor common carrier certificate in No. MC 120184 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 135874 (Sub-No. 14), filed November 30, 1972. Applicant: LTL PERISHABLES, INC., Box 37468, Millard Station, Omaha, NE 68137. Applicant's representative: Donald L. Stern, 530 Univac Building, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Foodstuffs*, from Ames, Boone and Webster City, Iowa, to points in Nebraska, Illinois, Indiana, Minnesota, South Dakota, North Dakota, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr. or Des Moines, Iowa.

No. MC 136434 (Sub-No. 2), filed November 20, 1972. Applicant: PETE'S TRUCKING, INC., Post Office Box 1545, Charleston, WV 25326. Applicant's representative: C. L. Pauley, 616 Montrose Drive, South Charleston, WV 25303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Beer and empty containers* (a) from Baltimore, Md., to Charleston, W. Va.; and (b) from Winston-Salem, N.C., to Charleston, W. Va.; and (2) *petroleum* in cases and drum lots from Bradford, Pa., to Charleston, W. Va., under contract with Cardinal Distributing, Inc. and Pit-Stop Inc.

No. MC 138176 (Sub-No. 1), filed November 10, 1972. Applicant: MARVIN RENTZ, doing business as: RENTZ FARM SUPPLY, Route 1, Brinson, Ga. 31725. Applicant's representative: Guy H. Postell, Suite 713, 3384 Peachtree Road NE., Atlanta, GA 30326. Authority sought

to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer*, dry, from (1) Americus and Tifton, Ga., and Hartford, Ala., to points in Leon, Gadsden, Jefferson, and Taylor Counties, Fla., and (2) from Bainbridge, Ga., to points in Baker, Union, Columbia, Suwannee, Hamilton, Lafayette, Madison, Taylor, Jefferson, Leon, Wakulla, Gadsden, Liberty, Calhoun, Jackson, Franklin, Gulf, Bay, Washington, Holmes, Walton, Okaloosa, Santa Rosa, and Escambia Counties, Fla. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 138250, filed November 24, 1972. Applicant: ALZIG ENTERPRISES, INC., 115 Parsells Avenue, Rochester, NY 14612. Applicant's representative: Herbert M. Canter, 315 Seitz Building, 201 East Jefferson Street, Syracuse, NY 13202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Carbonated and noncarbonated soft drinks*, in bottles, cans, and stainless steel containers, and *flavoring extract* for soft drinks, from the town of Pittsford, Monroe County, N.Y., to points in New York, Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Ohio, and the lower peninsula of Michigan; and (2) *empty bottles, cartons, containers, and pallets* used in the outbound transportation of the above-described commodities, and *raw materials, ingredients, equipment, and supplies* utilized in the manufacture and marketing of soft drinks, from points in Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Ohio, and the lower peninsula of Michigan, to the town of Pittsford, Monroe County, N.Y., under a continuing contract, or contracts with Canada Dry Rochester Bottling Co., Inc. NOTE: Applicant states that it intends to make a motion to dismiss this application at time of hearing or on modified procedure on the contention that the service proposed has been performed by the supporting shipper in exempt private transportation by use of vehicles leased by it from the applicant. If a hearing is deemed necessary, applicant requests it be held at Rochester, Syracuse, or Buffalo, N.Y.

No. MC 138251, filed November 22, 1972. Applicant: GEORGE J. BETTENCOURT, doing business as CHELMSFORD FUEL TRANS. CO., 818 Main Street, Tewksbury, MA 01876. Applicant's representative: Joseph A. Kline, 31 Milk Street, Boston, MA 02109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metals*, from Tewksbury, Mass. to Providence and Cranston, R.I. NOTE: If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

APPLICATION FOR FILING BROKERAGE LICENSE

No. MC 130184, filed December 1, 1972. Applicant: SPLENDID TOURS CORPORATION, 156 East 52d Street, Room 902, New York, NY 10022. Applicant's representative: Morris Honig, 150 Broadway, New York, NY 10038. For a license (BMC–5) to engage in operations as a *broker* at New York, N.Y., in arranging for the transportation, by motor vehicle, in interstate or foreign commerce, of *passengers and their baggage*, in special or charter operations, between points in the United States. NOTE: Applicant states that the requested authority, and the service to be performed thereunder, is exclusively for travel agents in foreign countries.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.73-186 Filed 1-3-73;8:45 am]

[Notice 175]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 27, 1972.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 28067 (Sub-No. 15 TA), filed December 14, 1972. Applicant: WILLIAMS MOTOR TRANSFER, INC., South Vine Street, Barre, Vt. 05641. Applicant's representative: John P. Monte, 61 Summer Street, Barre, VT 05641. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Stone*, rough quarried and semifinished, from Providence, R.I., to Barre, Vt.; and (2) *quarrying equipment, machinery, and supplies* moving with shipments of stone, between Barre, Vt., and Providence, R.I., for 90 days. Supporting shipper: Rock of Ages Corp., Graniteville, Vt. 05654. Send protests to: District Supervisor Martin P. Monaghan, Jr., Bureau of Operations, Interstate Commerce Commission, 52 State Street, Room 5, Montpelier, VT 05641.

No. MC 69116 (Sub-No. 150 TA), filed December 15, 1972. Applicant: SPECTOR FREIGHT SYSTEM, INC., 205 West Wacker Drive, Chicago, IL 60606. Applicant's representative: J. S. Ruscetta (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberboard wallboard*, from the plantsite of the Celotex Corp. at Dubuque, Iowa to points in Ohio, Kentucky, West Virginia, Virginia, Pennsylvania, Maryland, Delaware, New Jersey, and New York, for 180 days. Supporting shipper: David H. Wetzel, Traffic Manager, the Celotex Corp., 1500 North Dale Mabury Highway, Tampa, FL 33662. Send protests to: District Supervisor Richard O. Chandler, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 110683 (Sub-No. 89 TA), filed December 18, 1972. Applicant: SMITH'S TRANSFER CORPORATION, Post Office Box 1000, Staunton, VA 24401. Applicant's representative: Harry J. Jordan, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen bakery goods*, between Pottstown, Pa., and Portsmouth, Va., for 180 days. Supporting shipper: Mrs. Smith's Pie Co., Pottstown, Pa. Send protests to: Clatin M. Harmon, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 215 Campbell Avenue SW., Roanoke, VA 24011.

No. MC 117013 (Sub-No. 1 TA), filed December 18, 1972. Applicant: THOMAS G. BURKHOLDER, Altoona, Pa. 16602. Applicant's representative: John A. Pillar, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper patterns, related fashion publications, fabrics, buttons, zippers, threads, and other articles* used in the home sewing market; *materials; equipment and supplies* used in the sale, production or distribution of the named commodities, between the facilities of the Butterick Fashion Marketing Co., a division of American Can Co. at Altoona, Pa., on the one hand, and, on the other, ports of entry in New York on the international boundary line between the United States and Canada; and (2) *fashion publications;* from Rockville, Md., and Bristol, Conn., to ports of entry in New York on the international boundary line between the United States and Canada, under continuing contracts with the Butterick Fashion Marketing Co., a division of American Can Co., and Butterick Canada, Ltd., for 150 days. Supporting shipper: Butterick Fashion Marketing Co., Division of American Can Co., Butterick Canada Ltd. 2900 Beale Avenue, Altoona, PA 16603. Send pro-

[1] Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

tests to: District Supervisor James C. Donaldson, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 117184 (Sub-No. 8 TA) (Correction), filed December 5, 1972, published in the FEDERAL REGISTER issue of December 19, 1972, and republished this issue. Applicant: APEX TRUCKING CO., INC., 330 West 42d Street, New York, NY 10036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Business forms*, between the warehouse site of Apex Trucking Co., Inc., at Secaucus, N.J., on the one hand, and, on the other, New York, N.Y., points in Nassau, Suffolk, Westchester, and Rockland Counties, N.Y., and Bergen, Passaic, Essex, Morris, Somerset, Middlesex, Monmouth, Hudson, Union, and Mercer Counties, N.J., for 180 days. Supporting shipper: Moore Business Forms, Inc., Attention: C. W. Dent, Niagara Falls, N.Y. 14302. Send protests to: Stephen P. Tomany, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1807, New York, N.Y. 10007. NOTE: The purpose of this republication is to name the supporting shipper which was inadvertently omitted in the previous issue.

No. MC 121060 (Sub-No. 24 TA), filed December 18, 1972. Applicant: ARROW TRUCK LINES, INC., Post Office Box 5568, 1220 West Third Street, Birmingham, AL 35207. Applicant's representative: William P. Jackson, 919 18th Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Construction materials and supplies* (except commodities in bulk), between points in Alabama, Arkansas, Florida, Georgia, Kentucky, Tennessee, Louisiana, Mississippi, North Carolina, and South Carolina, for 180 days. Supporting shipper: Jim Walter Corp., Post Office Box 22601, Tampa, FL 33622. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 814, 2121 Building, Birmingham, Ala. 35203.

No. MC 126246 (Sub-No. 5 TA), filed December 18, 1972. Applicant: AMERICAN TRANSFER AND STORAGE COMPANY, 950 West Mockingbird Lane, Post Office Box 47165, Dallas, TX 75247. Applicant's representative: W. N. McKinney (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Baxter, Cleburne, Conway, Faulkner, Fulton, Garland, Grant, Hot Springs, Independence, Izard, Jefferson, Lonoke, Marion, Perry, Prairie, Pulaski, Saline, Searcy, Sharp, Stone, Van Buren, and White Counties, Ark., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating and decontainerization of such traffic, for 180 days. Supported by: There are approximately 14 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor E. K. Willis, Jr., Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, TX 75202.

No. MC 126305 (Sub-No. 49 TA), filed December 18, 1972. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC. (O. TRACY PARKS, III: TRUSTEE), Route 1, Claton, Ala. 36016. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *comon carrier*, by motor vehicle, over irregular routes, transporting: *Paradichlorobenzene; insecticides*, other than agricultural; and *napthalene*, between the facilities of Standard Chlorine of Delaware, Inc., Delaware City, Del., Standard Chlorine Chemical Co., Inc., Kearny, N.J., and Cartersville, Ga., for 180 days. Supporting shipper: Standard Chlorine Chemical Co., Inc., 1035 Belleville Turnpike, Kearny, NJ 07032. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 814, 2121 Building, Birmingham, Ala. 35203. NOTE: The above commodities are restricted against transportation in bulk.

No. MC 128868 (Sub-No. 2 TA), filed December 13, 1972. Applicant: TEXAS CONSTRUCTION SERVICE COMPANY OF AUSTIN, Route 2, Box 78A, Round Rock, TX 78664. Applicant's representative: W. S. Levens (same address as above). Authority suoght to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime*, in bulk, from Blum, Tex., to Madison Parish, La., for 90 days. Supporting shipper: Round Rock Lime Co., Box 218, Round Rock TX 78664. Send protests to: Richard H. Dawkins, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 301 Broadway, Room 206, San Antonio, TX 78205.

No. MC 135489 (Sub-No. 2 TA), filed December 15, 1972. Applicant: BURLINGTON TRANSPORT SERVICE, INC., 6 Harris Circle, Arlington, MA 02174. Applicant's representative: George C. O'Brien 15 Court Square, Boston, MA 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tin plate*, in sheets, used in the manufacture of cans, from Trenton, N.J., to Woburn, Mass., for 180 days. Supporting shipper: Lipton Pet Foods, Inc., 209 New Boston Street, Woburn, MA 01801. Send protests to: G. Warren Flynn, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, Analex Building, Fifth Floor, 150 Causeway Street, Boston, MA 02114.

No. MC 136647 (Sub-No. 10 TA), filed December 18, 1972. Applicant: GREEN MOUNTAIN CARRIERS, INC., Post Office Box 1319, Albany, NY 12201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pharmaceutical products* (except in bulk) restricted to the use of vehicles equipped with mechanical temperature control and also restricted to a transportation service to be performed at plantsites, warehouses, or suppliers of Ayerst Laboratories, between Rouses Point, N.Y., on the one hand, and, on the other, Chicago, Ill.; Cleveland, Ohio, and Baltimore, Md., in connection with stop-off privileges to partially load or unload at Little Falls, N.J., Clifton, N.J., Albany, N.Y., and Detroit, Mich., from Rouses Point, N.Y., to Chamblee, Ga., with stop-off privileges to partially load or unload at Little Falls, N.J., Clifton, N.J., Albany, N.Y., and Baltimore, Md., for 180 days. Supporting shipper: Ayerst Laboratories, Division of American Home Products Corp., Rouses Point, N.Y. 12979. Send protests to: Joseph M. Barnini, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Albany, N.Y. 12207.

No. MC 136647 (Sub-No. 11 TA), filed December 18, 1972. Applicant: GREEN MOUNTAIN CARRIERS, INC., Post Office Box 1319, Albany, NY 12201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beef and pork products*, in vehicles equipped with mechanical refrigeration, from Omaha, Nebr., to the United States-Canada international boundary line at or near Highgate Springs, Vt., on shipments destined to points in the Province of Quebec, Canada, for 180 days. Supporting shipper: Letovaky Bros., Ltd., 6569–81 Papineau Avenue, Montreal, PQ, Canada. Send protests to: Joseph M. Barnini, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Albany, N.Y. 12207.

MOTOR CARRIERS OF PASSENGERS

No. MC 138260 TA, filed December 18, 1972. Applicant: CHARLES WILLIAM TATE, doing business as TATE'S MOTOR COACH, 1618 Oliver Street NW., Washington, DC 20015. Applicant's representative: George Francis Paxton, 1742 N Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers, church groups and social clubs*, between Washington, D.C., and points in New York, New Jersey, Pennsylvania, Virginia, Charleston, W. Va., Winston-Salem, Moorehead City, and Goldsboro, N.C., Charleston, S.C., Atlanta, Ga., Miami and Orlando, Fla., for 180 days. Supported by: There are approximately 15 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Robert D. Caldwell, District Super-

visor, Bureau of Operations, Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON, *Acting Secretary.*

[FR Doc.73-185 Filed 1-3-73;8:45 am]

[No. MC-110420 (Sub-No. 638)]

QUALITY CARRIERS, INC., BRISTOL, WIS.

Application for Certificate of Public Convenience and Necessity

Order. At a session of the Interstate Commerce Commission, Review Board No. 3, held at its office in Washington, D.C., on the 5th day of December 1972.

It appearing, that by application filed July 8, 1971, as amended, Quality Carriers, Inc., of Bristol, Wis., seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of chemicals, in bulk, from points in Maryland (except from the plantsite of the Firestone Tire and Rubber Co. and Firestone Plastic Co. at or near Perryville, Md.), and New Jersey (except from the plantsites of the B. F. Goodrich Chemical Co., a division of B. F. Goodrich Co., at or near Pedricktown, N.J.), to Janesville, Wis.;

It further appearing, that the application has been processed under the Commission's modified procedure; that applicant filed verified statements in support of the application; that protestants Chemical Leaman Tank Lines, Inc., Matlack, Inc., P. B. Mutrie Motor Transportation, Inc., and Coastal Tank Lines, Inc., all motor common carriers, have filed verified statements in opposition to the application; and that no rebuttal statements were filed;

It further appearing, that the evidence submitted in the form of verified statements, including the statement in support of the application by Northern Petrochemical Co., Varney Division, shows that shipper-receiver purchases principally vegetable oil products from suppliers located at Jersey City, Edison, Newark, Graselli, and Boonton, N.J., and Baltimore, Md., and points within the Baltimore commercial zone; that shipper has primarily utilized its own vehicles to move this traffic to Janesville; that applicant's services are used for the transportation of cleaning compounds outbound from Janesville to points in the eastern United States, including points in Maryland and New Jersey, on a weekly basis; and that shipper can coordinate applicant's outbound movements with the involved return movements which would permit shipper to have a coordinated, complete, and economical service;

It further appearing, that Chemical Leaman is authorized to transport liquid chemicals, in bulk, in tank vehicles, from points in New Jersey and Maryland to Janesville by observing a gateway at any point in Allegheny County, Pa.; that Matlack has been authorized to lease the operating rights of T. I. McCormack Trucking Co., Inc., and by combining its authorities with those leased, can transport liquid chemicals (except petroleum and petroleum products), from points in Maryland and New Jersey to Janesville by observing gateways at any point in Pennsylvania within 150 miles of Monongahela, Pa., then either Dover or Painesville, Ohio, then the plant site of B. F. Goodrich Co. at Milan Township, Ind.; that Coastal holds authority to transport (1) petroleum products from Bayonne, Tremley Point, Sewaren, Perth Amboy, and Paulsboro, N.J., and points within 5 miles of each, and Baltimore, Md., to Janesville, by traversing Natrium, W. Va., and Chicago, Ill., and (2) liquid chemicals from points in Maryland and New Jersey to Janesville by observing various gateways; and that Mutrie relies on an interline arrangement with a nonparty carrier to provide the proposed service;

It further appearing, that protestant Mutrie has not shown that the services of the specified nonparty interline carrier are available for movement of the traffic involved; that the services of protestants Chemical Leaman, Matlack, and Coastal involve circuity and the authority granted herein, as modified to conform to the evidence, will provide shipper with a coordinated and balanced transportation service and should not have any serious adverse affect upon protestants; that the public interest will best be served by authorizing the proposed operation; that the evidence submitted in the form of verified statements in support of the application warrants the grant of authority set forth below which has been modified to conform to the need for service as demonstrated by the supporting shipper; and that such evidence establishes that applicant is fit, willing, and able properly to conduct the operation authorized;

And it further appearing, that under certain extractive processes vegetable oil products may not be transported under "chemical" authority and that because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described below, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate request for intervention or other pleading setting forth in detail the precise manner in which it has been prejudiced;

Wherefore, and good cause appearing therefor:

We find, that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of vegetable oil products, in bulk, from Jersey City, Edison, Newark, Graselli, and Boonton, N.J., and Baltimore, Md., to Janesville, Wis.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; that following publication in the FEDERAL REGISTER of the authority actually granted, as noted in the last appearing paragraph herein, an appropriate certificate should be granted; that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969; and that the application in all other respects should be denied.

It is ordered, That said application, except to the extent granted herein, be, and it is hereby, denied.

It is further ordered, That upon compliance by applicant with the requirements of sections 215, 217, and 221(c) of the Act and with the Commission's rules and regulations thereunder, within the time specified in the next succeeding paragraph, and subject to prior publication in the FEDERAL REGISTER of a notice of the authority actually granted by this order, a certificate be granted to applicant authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle in the manner described above.

And it is further ordered, That unless compliance is made by applicant with the requirements of sections 215, 217, and 221(c) of the Act within 90 days after the date of service of this order, or within such additional time as may be authorized by the Commission, the grant of authority made herein shall be considered as null and void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

By the Commission, Review Board No. 3.

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

[FR Doc.73-190 Filed 1-3-73;8:45 am]

[No. MC-C-7963]

PORTLAND AIRPORT LIMOUSINE CO.

Petition for a Declaratory Order

DECEMBER 29, 1972.

Petitioner: PORTLAND AIRPORT LIMOUSINE COMPANY, Portland, Maine. Petitioner's representatives: Michael T. Healy, Verrill, Dana, Philbinck, Putnam & Williamson, 57 Exchange Street, Portland, ME 04111.

Petitioner transport passengers with their baggage from Portland International Airport in Portland, Maine, to points in Maine. Upon the request of certain airlines, petitioner transports in emergencies passengers and their baggage in interstate commerce. On occasion, petitioner has received requests from individual passengers to provide transportation in emergency situations from the Portland Airport to points outside of Maine. Petitioner seeks a declara-

tory order that the above operations are exempt from the economic regulation of the Interstate Commerce Commission pursuant to sections 203(b)(2) and 203(7)(a) of the Interstate Commerce Act.

Petitioner is hereby directed to explain the types of "emergencies" which give rise to its performance of interstate or foreign transportation and to list specific examples, if possible. Petitioner is also directed to specify the mileages involved in its transportation services, and list destinations which it has served or plans to serve in the future.

No oral hearing is contemplated at this time, but anyone wishing to make representations in favor, or against, the relief sought in the petition may do so by the submission of written data, views, or arguments. An original and 15 copies of such data, views, or arguments shall be filed with the Commission on or before Febraury 21, 1973. A copy of each representation should be served upon petitioner's representative. Written material or suggestions submitted will be available for public inspection at the offices of the Interstate Commerce Commission, 12th and Constitution, Washington, D.C., during regular business hours.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.73-187 Filed 1-3-73;8:45 am]

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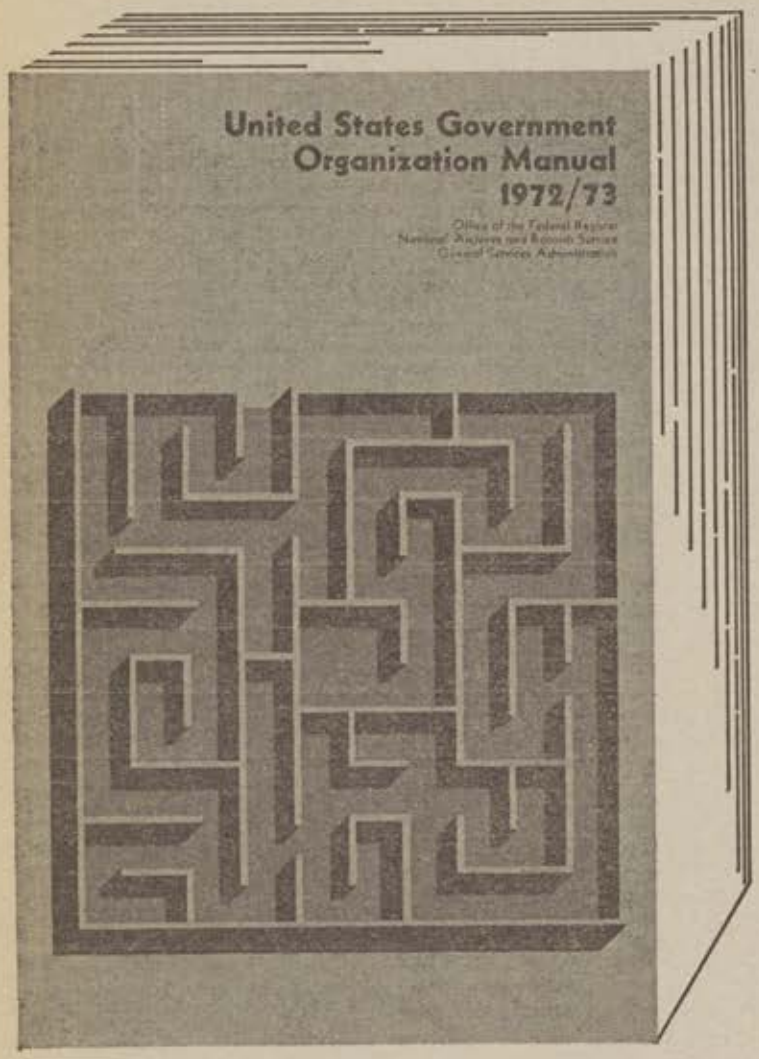

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