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PART I

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HIGHLIGHTS OF THIS ISSUE

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

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FEDERAL REGISTER

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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1973, and specifies how they are affected.

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Rules and Regulations

Title 6—ECONOMIC STABILIZATION

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Interest Expense on Long-Term Debt

The purpose of this amendment to Appendix II to Part 300 of the Price Commission's regulations (6 CFR Part 300) is to prescribe the procedures and Price Commission form to be used in accounting for interest expense on long-term debt in computing a firm's base period profit margin.

Instructions currently on Form PC-51—Report on Sales, Costs, and Profits provide for interest expense on long-term debt to be reported as nonoperating income (deduction) in Item 10 of that form. On September 8, 1972, the Price Commission announced that for fiscal years beginning after July 31, 1972, firms are to report interest on long-term debt as an operating expense when calculating their base period profit margins and current profit margins. To facilitate computation of a firm's adjusted base period profit margin to reflect the new policy, a new schedule R-3 is being prescribed for use in connection with form PC-51. Instructions on future editions of form PC-51 will be modified to reflect this policy change with respect to the computation of current profit margins.

To provide specific guidance pending the republication of modified Form PC-51, an addendum to the existing instructions for preparation of Form PC-51 is being prescribed.

Since these amendments provide immediate guidance and information for the effective implementation of the price stabilization program, further notice and procedure thereon is impracticable and good cause exists for making them effective in less than 30 days after publication in the FEDERAL REGISTER.

(Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Economic Stabilization Act Amendments of 1971, Public Law 92-210, 85 Stat. 743; Executive Order No. 11640, 37 FR 1213, January 27, 1972; Cost of Living Council Order No. 4, 46 FR 20202, October 16, 1971)

In consideration of the foregoing, Appendix II to Part 300 of Title 6 of the Code of Federal Regulations is amended as set forth below effective January 4, 1973.

Issued in Washington, D.C., on January 4, 1973.

By direction of the Price Commission.

JAMES B. MINOR,
General Counsel,
Price Commission.

Appendix II to Part 300 of Title 6 of the Code of Federal Regulations is amended by inserting the following addendum and new form immediately after the end of the "Instructions for preparation of Form PC-51" and before "Form PC-63":

ADDENDUM TO INSTRUCTIONS FOR THE PREPARATION OF FORM PC-51

ACCOUNTING FOR INTEREST EXPENSE

For fiscal years which began before August 1, 1972, interest expense on long-term debt must be reported in Item 10, Nonoperating Income (Deduction). For firms' fiscal years commencing on or after August 1, 1972, all interest expense must be reported in Item 6, Cost of Sales, if such is the customary practice of the firm, or, in the absence of such practice, in Item 8, Other Operating Expenses.

All firms must submit schedule R-3, "Computation of Adjusted Base Period Profit Margin," for fiscal years commencing on or after August 1, 1972. This submission must be made at the time Form PC-51 is filed.

A firm selecting different fiscal years for its base period, solely as a result of a change in the manner of reporting interest expense on long-term debt, must submit a new Form PC-50 and schedule R-3 when Form PC-51 is filed.

A firm which has increased prices above base prices before September 9, 1972, and which would be able to continue charging those prices above base prices except for this change in policy and the resultant effect on that firm's profit margin may request that an exception be granted by the Price Commission or Internal Revenue Service, as the case may be, to be allowed to continue charging those prices.

FORM PC-51 SCHEDULE R-3

PRICE COMMISSION
COMPUTATION OF ADJUSTED BASE PERIOD PROFIT MARGIN
(To give consistent effect to accounting for interest expense)

OMB No. 161-R0007 Approval expires April, 1973

REFERENCE NO.

PART I. IDENTIFYING DATA

1. FILING DATE OF THIS SCHEDULE (MO DA YR)
2. DUN-S IDENTIFICATION NO. OF PARENT FIRM
3. PERIOD COVERED BY FORM PC-51 SUBMITTED WITH THIS SCHEDULE — FROM (MO DA YR) TO (MO DA YR)

4A. NAME OF PARENT FIRM

B. ADDRESS (Street, City, State and ZIP Code)

PART II. CALCULATION

(ALL DOLLAR AMOUNTS IN THOUSANDS)

ITEM	BASE PERIOD YEARS (from Form PC-50) FISCAL YEAR ENDED (MO DA YR)	FISCAL YEAR ENDED (MO DA YR)	TOTAL (Sum of Cols b and c on this form)
a.	(Col (b) on Form PC-50) b.	(Col (d) on Form PC-50) c.	d.
1. NET SALES (Item 5, Form PC-50 "Covered")			
2. OPERATING INCOME (Item 9, Form PC-50 "Covered")			
3. INTEREST EXPENSE ON LONG-TERM DEBT (Included in Item 10, Form PC-50 "Covered")			
4. TOTAL (Item 2 minus Item 3)			
5. ADJUSTED BASE PERIOD PROFIT MARGIN (Item 4 ÷ Item 1) (Enter this amount on Form PC-51, Item 22, covering fiscal years commencing on or after August 1, 1972.)			%

PART III. CERTIFICATION

I CERTIFY that the information submitted with this Schedule R-3 is in accordance with Economic Stabilization Regulations (Title 6, Code of Federal Regulations) and instructions to Form PC-51. This Schedule R-3 is submitted with and made part of Form PC-51 dated _____.

TYPED NAME AND TITLE (Chief Executive Officer of parent firm or other authorized Executive Officer)

SIGNATURE

DATE

Mailing Address: Price Commission, PC-51 Submission, 2000 M Street, N. W., Washington, D. C. 20508

FORM PC-51 DEC 72

[FR Doc.73-469 Filed 1-5-73;10:01 am]

Title 7—AGRICULTURE

Chapter XVIII—Farmers Home Administration, Department of Agriculture

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FHA Instruction 444.3]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Security for Rural Housing Loans

Section 1822.30, Part 1822, Title 7, Code of Federal Regulations (35 FR 14913), is amended to permit section 504 loans of up to $1,500 to be taken without requiring a real estate mortgage as security.

In accordance with 5 U.S.C. 553 this amendment is being published without prior rulemaking because a delay in making available assistance provided by this amendment would be contrary to the public interest.

§ 1822.30 as amended, reads as follows:

§ 1822.30 Security.

Section 504 loans that exceed $1,500 will be secured by a mortgage on the borrower's real estate. Real estate security also will be taken for loans of less than $1,500, whenever the loan approval official determines that such security may be needed to reasonably assure repayment of the loan. The title requirements of Part 1807 of this chapter will not be applicable; however, the county supervisor will use all practical means to verify that title and lien information furnished by the applicant is complete and accurate. If the loan approval official determines that other security is needed to assure repayment of the loan or to accomplish the purposes of the loan, a mortgage may be taken on the applicant's chattels or other assets. § 1831.32(v) of this chapter will be followed when chattels are taken as security for the loan.

(Sec. 510, 63 Stat. 437, 42 U.S.C. 1480; Order of Act. Sec. of Agr., 36 FR 21529, 37 FR 22008; Order of Asst. Sec. of Agr. for Rural Development and Conservation 36 FR 21529)

Dated: January 2, 1973.

DARREL A. DUNN,
Acting Administrator,
Farmers Home Administration.

[FR Doc.73-494 Filed 1-9-73;8:45 am]

SUBCHAPTER E—ACCOUNT SERVICING

[FHA Instruction 456.1]

PART 1864—DEBT SETTLEMENT

Compromise and Adustments

On page 20335 of the FEDERAL REGISTER of September 29, 1972, there was published a notice of proposed rulemaking to amend Part 1864, "Debt Settlement," Title 7, Code of Federal Regulations as follows:

1. Section 1864.3(b) has been revised by deleting the requirement that collections cannot be made without suit in effecting compromises and adjustments of debts of $20,000 or less.

2. Section 1864.3(b)(1) and subdivisions (i) and (ii) have been added to provide factors for consideration in determining inability to collect a debt in full and to provide appropriate language under the debtor's offer and certification under Part V, paragraph D of Form FHA 456-1, "Application for Settlement of Indebtedness."

3. Section 1864.3 (b)(1) and (b)(2) are renumbered to (b)(2) and (b)(3), respectively.

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

Effective date: January 10, 1973.

Dated: December 27, 1972.

J. R. HANSON,
Acting Administrator,
Farmers Home Administration.

As amended, § 1864.3 (b)(1), (b)(2), and (b)(3) read as follows:

§ 1864.3 Compromise and adjustments.

* * * * *

(b) Debts of $20,000 or less, exclusive of interest, which cannot be compromised or adjusted under the provisions of paragraph (a) of this section may be compromised or adjusted in the following instances, even though the debtor may have the ability to pay in full, unless there is an indication of fraud or misrepresentation on the part of the debtor. (Where there is an indication of fraud or misrepresentation, see § 1864.2(j) for handling.)

(1) *Inability to collect.* Inability to collect is when the full amount cannot be collected because of the refusal of the debtor to pay the debt in full and the OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings.

(i) In determining inability to collect, the following factors will be considered:

(*a*) Availability of assets or income which may be realized upon by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law.

(*b*) Inheritance prospect within a reasonable time.

(*c*) Likelihood of debtors obtaining nonexempt income within a reasonable time out of which there could be collected a substantially larger sum than the amount of the present offer.

(ii) For this type of settlement an asterisk (*) will be inserted in Part V of Form FHA 456-1 after "(D)" and before the word "I." In the blank space below Part V (E) of Form FHA 456-1 the following will be inserted:

*With knowledge of the penalties for false statements provided by 18 U.S.C. 1001 ($10,000 fine and/or 5 years imprisonment) and with knowledge that this financial statement is submitted by me (us) to affect action by the Department of Agriculture.

(2) *Litigative probabilities.* When the OGC has advised in writing that:

(i) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and

(ii) The amount offered represents a reasonable settlement considering:

(*a*) The probability of prevailing on the legal issues involved.

(*b*) The probability of proving facts to establish full or partial recovery, having due regard to the availability of witnesses and other pertinent factors.

(*c*) The probable amount of court costs which may be assessed against the Government if it is unsuccessful in litigation.

(3) *Costs of collecting debt.* When the cost of collecting the debt does not justify enforced collection of the full amount, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigative costs of collection. Such discount will not exceed $250 unless the OGC advises that in the particular case a larger discount is appropriate. Costs of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

* * * * *

(Sec. 339, 75 Stat. 318, 7 U.S.C. 1989; sec. 510, 63 Stat. 437, 42 U.S.C. 1480; sec. 4, 64 Stat. 100, 40 U.S.C. 442; sec. 602, 78 Stat. 528, 42 U.S.C. 2942; sec. 301, 80 Stat. 379, 5 U.S.C. 301; order of Acting Secretary of Agriculture, 36 FR 21529; order of Assistant Secretary of Agriculture for Rural Development and Conservation, 36 FR 21529; order of Director, OEO, 29 FR 14764)

[FR Doc.73-495 Filed 1-9-73;8:45 am]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter III—Economic Development Administration, Department of Commerce

PART 301—ESTABLISHMENT AND ORGANIZATION

Financial Advisors

Part 301, Subpart E of Chapter III, Title 13, of the Code of Federal Regulations (31 FR 11292 and 31 FR 16673) is amended to provide for requirements to be followed in engaging a Financial Advisor when needed for an EDA public works project. A new § 301.65 is added to Subpart E as follows:

§ 301.65 Financial advisors.

(a) *Purpose.* This section describes EDA regulations to be followed in engaging a Financial Advisor when needed for an EDA public works project.

(b) *Policy.* EDA will authorize as an allowable project cost the use of a Financial Advisor when needed to complete funding of an approved public works project. All such Financial Advisors will be selected by the grantee and approved by the Agency. Fees for these services must be reasonable and EDA will participate in accordance with the grant percentage.

(c) *Definition.* A "Financial Advisor" is an individual or firm which is qualified by reason of training and experience to advise the applicant on structuring and marketing a private bond issue needed to complete funding of an approved EDA public works project. It may be an investment banker who deals with municipal securities; a commercial bank with a syndicate department or comparable capability; or a municipal financial consultant who advises on municipal underwritings.

(d) *Financial Advisor services.* (1) The major objectives in the incurrence of long term debt by a unit of local government are:

(i) The adequacy of the loan and the assurance that funds will be available when needed.

(ii) The arrangement of the loan so that it blends into the existing overall debt structure.

(iii) The issuance and sale of bonds at the lowest interest cost consistent with all other considerations.

(2) Services normally performed by the Financial Advisor are:

(i) *Survey of financial resources.* The Financial Advisor shall make a survey of the financial resources of the issuing subdivision to determine the extent of its borrowing capacity. Such a survey shall include an analysis of the existing debt structure as compared to existing and projected sources of income which may be pledged to secure payment of debt service.

(ii) *Financial plan.* On the basis of information developed by the survey, the Financial Advisor shall establish a financial plan which shall be submitted to the governing body of the issuing subdivision. The financial plan shall be complete as to maturity schedule and estimated interest rate of the proposed bonds and shall reflect the resulting overall amount of debt service requirements as compared to existing and projected income sources.

(iii) *Bond elections.* If a bond election is deemed necessary, the Financial Advisor shall assemble and transmit to the bond attorneys such data as is required in preparation of the necessary petitions, resolutions, notices, etc.

(iv) *Terms of bond issue.* The Financial Advisor shall submit his written recommendations as to the various provisions, terms, and conditions of the proposed bond issue. He shall make recommendations as to the date of the issue, interest payment dates, schedule of maturities, options of prior payment, and place of payment. He shall also, whenever possible, suggest additional security provisions designed to make the issue more attractive to investors.

(v) *Selecting date of bond sale.* In the event the bonds are to be sold at competitive bidding, the Financial Advisor shall make a recommendation as to the date on which bids are to be considered. This recommendation shall be based on an estimate of expected market conditions, having given due consideration to such factors as the general trend of the bond market, conflict with offerings of other such divisions and other known relevant factors.

(vi) *Notice of sale.* If required in the marketing of bonds, the Financial Advisor will be expected to prepare and submit the following:

(A) Official Notice of Sale, into which shall be incorporated all necessary information as to time and place of the bond sale, the conditions under which the bonds shall be amended, and the terms and conditions of delivery.

(B) Prospectus: Which shall be fully descriptive of the bonds offered and which shall additionally contain complete information on the issuing subdivision.

(C) Uniform Bid Form: Containing provisions recognized as standard by the municipal securities industry.

(D) Bond Rating: If proper and desirable, to submit to the national bond rating agencies financial and economic data necessary to obtain a rating on the proposed issue.

(vii) *Bond Sale—award of bonds.* The Financial Advisor shall be represented at the bond sale by experienced personnel whose services shall be available to the issuing government in the tabulation and comparison of bids.

(viii) *Issuance of bonds.* As soon as a bid for the bond shall be accepted by the issuing agency, the Financial Advisor shall proceed at once with the general consideration of the efforts of all concerned to the end that the bonds may be delivered and paid for as expeditiously as possible. His services shall be available in the passage or adoption of all required ordinances, resolutions and documents which may be required by the Attorney General of the State in which the issuing subdivision is located.

(ix) *Delivery of bonds.* It shall be the duty of the Financial Advisor to inform and assist all concerned with the delivery of the bonds, and to generally coordinate their efforts. He shall notify the purchasers of the time that payment for the bonds can be made and shall assist the issuer in the escrow of closing documents and the giving of proper instruction for the receipt and transfer of bond proceeds.

(3) The fee for Financial Advisory services shall be reasonable and be in keeping with the magnitude of the service performed. Instances may arise where the preparation of the financial package for a relatively small issuer may be intricate and time consuming. The converse situation may also arise where the preparation of a large issue for a municipality with an extensive marketing history may warrant a lower fee than might normally be expected. The financial staff, Technical Support Division, shall review and approve the Financial Advisor's fee submitted with the public works application.

(e) *Selection and approval of Financial Advisors.* Selection of a Financial Advisor for a public works project will be made by the grantee. Those firms interested in participating in the solicitation of financial advisory contracts shall file their qualifications and experience with the appropriate EDA Regional Offices. The financial staff, Technical Support Division, shall review these submissions and notify approved firms that their fees may be considered as acceptable project costs.

(f) *Financial Advisor precluded as bidder.* The Financial Advisor shall be precluded from bidding except in those cases where the best interests of the grantee and the Federal Government make it necessary that they be the bidder. Any request for a right to bid on all or a part of the issue by the Financial Advisor shall be initiated by the grantee.

(g) *Written agreement with Financial Advisor.* Agreement between the grantee and the Financial Advisor shall be in writing and shall include a listing of the services to be performed, substantially as outlined in paragraph (d) of this section, and provisions for reimbursement for services rendered and precluding the Financial Advisor from bidding except in certain circumstances. The contract shall be approved by the financial component of the Office of Public Works.

This section became effective November 17, 1972.

ROBERT A. PODESTA,
Assistant Secretary for Economic Development.

Dated: January 3, 1973.

[FR Doc.73-510 Filed 1-9-73;8:45 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 12472; Amdt. No. 91-109]

PART 91—GENERAL OPERATING AND FLIGHT RULES

Experimental Aircraft; Operating Limitations

The purpose of this amendment to Part 91 of the Federal Aviation Regulations is to clarify the regulation currently prescribed in § 91.42(c) for the operation of an aircraft that has an experimental certificate.

The current regulation prohibits the operation of an experimental aircraft over a densely populated area or in a congested airway with one exception. This amendment more clearly expresses the intent of the regulation regarding that exception, which is to permit an experimental aircraft to be operated over a densely populated area or in a congested airway only when conducting a takeoff or landing for which the FAA has issued special operating limitations and when conducting the takeoff or landing in accordance with the terms and conditions of those operating limitations.

Since this amendment is clarifying in nature, I find that notice and public procedure thereon is unnecessary and that good cause exists for making it effective on less than 30 days' notice.

In consideration of the foregoing, Part 91 of the Federal Aviation Regulations is amended, effective January 10, 1973, by amending § 91.42(c) to read as follows:

§ 91.42 Aircraft having experimental certificates; operating limitations.

* * * * *

(c) Unless otherwise authorized by the Administrator in special operating limitations, no person may operate an aircraft that has an experimental certificate over a densely populated area or in a congested airway. The Administrator may issue special operating limitations for particular aircraft to permit takeoffs and landings to be conducted over a densely populated area or in a congested airway, in accordance with terms and conditions specified in the authorization in the interest of safety in air commerce.

* * * * *

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1424; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on January 3, 1973.

J. H. SHAFFER,
Administrator.

[FR Doc.73-490 Filed 1-9-73;8:45 am]

[Docket No. 12460; Amdt. 846]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC 20591 or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAPs effective February 1, 1973.

Lancaster, Pa.—Lancaster Airport, VOR Runway 31, Amdt. 6.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAPs effective January 18, 1973.

Crossville, Tenn.—Crossville Memorial Airport, LOC Runway 25, Original.
Milwaukee, Wis.—General Mitchell Field, LOC Runway 19R, Original.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs effective February 22, 1973.

Chicago, Ill.—Chicago O'Hare International Airport, NDB Runway 9R, Amdt. 4.
Chicago, Ill.—Chicago O'Hare International Airport, NDB Runway 14L, Amdt. 13.
Chicago, Ill.—Chicago O'Hare International Airport, NDB Runway 14R, Amdt. 12.
Chicago, Ill.—Chicago O'Hare International Airport, NDB Runway 27R, Amdt. 12.

* * * effective January 18, 1973.

Milwaukee, Wis.—General Mitchell Field, NDB Runway 19R, Amdt. 5, Canceled.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs effective February 22, 1973.

Chicago, Ill.—Chicago O'Hare International Airport, ILS Runway 9R, Amdt. 2.
Chicago, Ill.—Chicago, O'Hare International Airport, ILS Runway 14L, Amdt. 17.
Chicago, Ill.—Chicago O'Hare International Airport, ILS Runway 14R, Amdt. 18.
Chicago, Ill.—Chicago O'Hare International Airport, ILS Runway 27R, Amdt. 14.
Chicago, Ill.—Chicago O'Hare International Airport, Parallel ILS Runway 27R, Amdt. 3.

5. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs effective February 22, 1973.

Greer, S.C.—Greenville-Spartanburg Airport, RNAV Runway 21, Original.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510; sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on January 4, 1973.

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

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610), approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.73-489 Filed 1-9-73;8:45 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 19—CHEESES, PROCESSED CHEESES, CHEESE FOODS, CHEESE SPREADS, AND RELATED FOODS

Cottage Cheese; Definitions, Standards of Identity, and Confirmation of Effective Date

In the matter of establishing a definition and standard of identity for low fat cottage cheese (21 CFR 19.531); amending the identity standard for cottage cheese (21 CFR 19.525) and changing the name of the food to "cottage cheese dry curd"; and amending the identity standard for creamed cottage cheese (21 CFR 19.530) by changing the name of the food to "cottage cheese" and requiring declaration of the milkfat content:

An order in the above identified matter was published in the FEDERAL REGISTER of June 30, 1972 (37 FR 12934). No objections were filed to the order, but communications requesting changes in the order were received from a cottage cheese manufacturer and an association representing cottage cheese manufacturers. The following changes in the identity standard for cottage cheese were requested:

1. To permit the collective ingredient declaration "vegetable gum" in lieu of the specific names for carob (locust) bean gum, guar gum, gum karaya, and gum tragacanth in order to simplify the ingredient statement and permit interchanging of these ingredients without making changes in the labels used.

2. To permit the required declaration of the percentage of fat contained in the food on any appropriate information panel rather than on the principal display panel, thus preventing overcrowding of that panel.

3. To permit use of the declaration "__ percent milkfat," the blank being filled in with the percentage of milkfat contained, as an alternative to the declaration "not less than 4 percent milkfat." The shorter declaration would conserve label space and would be more informative to consumers of cottage cheese having a milkfat content significantly greater than 4 percent by weight of the food, i.e., cottage cheese containing 5 percent or 6 percent fat which is marketed in some areas of the United States.

There is significant consumer interest that labels of standardized foods bear complete information as to the ingredients contained in the food and the Commissioner of Food and Drugs in an earlier publication (37 FR 5120, March 10, 1972) expressed agreement that such complete ingredient declaration is in the interest of consumers. The Commissioner therefore concludes that there is good reason for retaining the provision in the June 30, 1972, order that

vegetable gums should be identified by their specific common names.

An increase in the fat level of cottage cheese dressing tends to increase the palatability of the product. However, some consumers wish to reduce their intake of fat. It is reasonable to conclude that statements giving the fat content of cottage cheese products would less likely to be read by consumers at the time of purchase if they appeared on a panel other than the principal display panel. This information, moreover, is part of the common or usual name of the food, and thus must appear wherever the name is used. The requirement of the June 30, 1972, order regarding placement of the fat declaration on labels is retained.

The Commissioner is also of the opinion that the declaration "not less than 4 percent milkfat" should be retained for cottage cheese having fat content at or slightly above 4 percent. Cottage cheese is composed of curd which has a negligible amount of fat and a creaming mixture having a high fat content. The food is not homogenous, and variations in the ratio of curd to creaming mixture from package to package of the finished product cannot be avoided. Manufacturers must maintain an average fat content in excess of 4 percent to assure that each individual package meets the 4 percent minimum fat content specified by § 19.530(a). Under these circumstances the declaration "Not less than 4 percent milkfat" is more truthful than the statement "4 percent milkfat." The Commissioner concludes that the alternate statement "4 percent milkfat minimum," which is somewhat shorter but conveys the same meaning as "Not less than 4 percent milkfat," should also be permitted. Further, he is of the opinion that cottage cheese containing significantly more than 4 percent milkfat should be labeled with a declaration that more accurately reflects the actual fat percentage contained, and the editorial amendment set forth below provides for such declaration.

The June 30, 1972 cottage cheese order gave notice of the intention of the Commissioner that not only the fat content, but also the caloric content and other information shall appear on cottage cheese product labels as may be required by the forthcoming nutrition labeling regulations. An association representing cottage cheese manufacturers has taken exception to this, on grounds that nutrition labeling should be voluntary, rather than mandatory. Although the nutrition labeling plan proposed in the FEDERAL REGISTER of March 30, 1972 (37 FR 6493) is a voluntary one, it would require that labels may not give only partial nutritional information (such as fat content), but must give the complete information required by the nutrition labeling regulations so that consumers can fully evaluate the total nutritional value of the food. Cottage cheese products are frequently used by persons on restricted diets, and the Commissioner is of the opinion that complete nutritional labeling on these products would be of benefit to consumers. Even without full nutrition labeling, moreover, § 125.6 would require declaration of caloric content for a lowfat food.

The amendments promulgated by the order published June 30, 1972 (37 FR 12934), were to become effective 1 year later unless stayed by the filing of proper objections. A number of forthcoming regulations will involve significant changes in the labeling requirements for packaged food. The Commissioner is aware of the unnecessary costs which would be incurred by the food industry resulting from a series of individual labeling changes made over a relatively short period of time and that such costs would likely be passed on to the consumer in the form of higher food prices. Accordingly, he concludes that it would be in the interest of the consumer and food industry alike to establish a new effective date which would provide adequate time for bringing all affected products into full compliance with these amendments.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120), notice is given that no objections or requests for a hearing were filed to the order in the above identified matter published in the FEDERAL REGISTER of June 30, 1972 (37 FR 12934). Accordingly, the amendments promulgated by that order and the editorial amendment set forth below shall become effective December 31, 1974, except that any affected product for which labeling is ordered on or after December 31, 1973 must be brought into full compliance with these amendments at the time such labeling is placed into use, regardless of time. The editorial amendment is as follows:

In § 19.530(c), subparagraph (2) is revised to read as follows:

§ 19.530 **Cottage cheese; identity; label statement of optional ingredients.**

* * * * *

(c) * * *

(2) The statement "not less than ____ percent milkfat" or "____ percent milkfat minimum", the blank being filled in with the whole number that is closest to, but does not exceed, the actual fat content of the product.

* * * * *

Effective date. This regulation shall become effective on December 31, 1974, except that any affected product for which labeling is ordered on or after December 31, 1973, must be brought into full compliance with these amendments at the time such labeling is placed into use, regardless of time.

(Secs. 401, 701, 52 Stat. 1046, 1055–1056, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: January 2, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-481 Filed 1-9-73;8:45 am]

PART 51—CANNED VEGETABLES

Canned Vegetables Other Than Those Specifically Regulated; Use of Safe and Suitable Organic Acid; Confirmation of Effective Date

In the matter of amending the standard of identity for canned vegetables other than those specifically regulated (21 CFR 51.990) to provide for the optional use of any safe and suitable organic acid, with label declaration, as an alternative to the use of a vinegar for acidification as a processing aid.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed in response to the above-identified order which was published in the FEDERAL REGISTER of October 14, 1972 (37 FR 21807). Accordingly, the order became effective December 13, 1972.

Dated: January 2, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-483 Filed 1-9-73;8:45 am]

PART 121—FOOD ADDITIVES

Glycerol Ester of Wood Rosin; Adjustment of Density of Citrus Oils in Beverage Preparation

In the FEDERAL REGISTER of August 28, of Food and Drugs proposed that 1971 (36 FR 17360) the Commissioner § 121.1084 (21 CFR 121.1084), the food additive regulation providing for the use of glycerol ester of wood rosin to adjust the density of citrus oils used in the preparation of beverages, be amended to restrict usage by imposing a tolerance of not more than 100 parts per million of the additive in the finished beverage. In response to the proposal, the following three comments were received:

1. One comment was made indicating that a tolerance level in excess of 100 parts per million of the additive in the final beverage would be justified on the basis that such higher levels have been used for some time without any apparent harmful effects. It was also stated that a joint survey is underway concerning the usage of the additive, and it was requested that a final decision on the proposal be delayed until completion of the survey.

Since the available toxicological data do not support usage levels of the additive in excess of 100 parts per million, and no new data have been presented, the Commissioner concludes that there is no basis for deferring a final decision on the proposal.

2. Another comment concerned the subject of a notice of filing of a petition (FAP OA2513) published in the FEDERAL REGISTER of May 23, 1970 (35 FR 7996), requesting the use of glycerol ester of

tall oil rosin for the same use as is permitted for glycerol ester of wood rosin. The petitioner commented that glycerol ester of tall oil rosin is identical in chemical composition and safety to glycerol ester of wood rosin, and requested that the regulation be amended to authorize the use of glycerol ester of tall oil rosin to the same extent as the ester from wood rosin.

The Commissioner concludes that, although the glycerol ester of tall oil rosin is quite similar to glycerol ester of wood rosin, it is not identical and an adequate analytical method is needed for enforcement of the tolerance limitation to complete the petition requirements prescribed by § 121.51 (21 CFR 121.51).

3. A third comment offered no objection to imposing the tolerance limitation, but suggested that a period of 9 months be permitted for products containing glycerol ester of wood rosin to be brought into compliance with the proposed tolerance limitation.

The Commissioner concludes that the requested 9 months extension is reasonable and will protect the public health.

Therefore, having considered the comments received and other relevant information, the Commissioner concludes that the subject proposal should be adopted as set forth below. Accordingly, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.1084 is amended by revising paragraph (b) to read as follows:

§ 121.1084 Glycerol ester of wood rosin.

* * * * *

(b) It is used to adjust the density of citrus oils used in the preparation of beverages whereby the amount of the additive does not exceed 100 parts per million of the finished beverage.

Effective date. This order shall become effective on October 9, 1973.

(Sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d))

Dated: January 2, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-484 Filed 1-9-73;8:45 am]

SUBCHAPTER C—DRUGS

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE-(OR TETRACYCLINE-) CONTAINING DRUGS

Veterinary Use of Tetracycline Hydrochloride Intramuscular and Tetracycline Phosphate Complex Intramuscular; Revocation

Based on a notice of withdrawal of approval of a new animal drug application (Docket No. FDC-D-570) appearing elsewhere in this issue of the FEDERAL REGISTER, the Commissioner of Food and Drugs concludes that the antibiotic drug regulations should be amended to revoke provisions for the veterinary use of tetracycline hydrochloride intramuscular and tetracycline phosphate complex intramuscular.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 507, 512, 59 Stat. 463, as amended, 82 Stat. 343-351; 21 U.S.C. 357, 360b) and under authority delegated to the Commissioner (21 CFR 2.120), § 146c.221 *Tetracycline hydrochloride for intramuscular use; tetracycline phosphate complex for intramuscular use* is amended by revoking paragraph (c)(2).

Within 30 days after publication hereof in the FEDERAL REGISTER any person who will be adversely affected by the removal of any such drug from the market may file objections to this order stating reasonable grounds for their objections and may request a hearing on such objections. Objections and request for a hearing should be filed in quintuplicate with the Hearing Clerk, Food and Drug Administration, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852.

If a hearing is requested, the objections must identify the claimed errors in the NAS/NRC evaluation and any adequate and well-controlled investigations which would indicate conclusively that the drug would have the claimed effectiveness. Objections and requests for a hearing which are received in response to this order may be seen in the above office during business hours, Monday through Friday.

Effective date. This order shall become effective February 19, 1973.

(Secs. 507, 512, 59 Stat. 463, as amended, 82 Stat. 343-351; 21 U.S.C. 357, 360b)

Dated: January 2, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-561 Filed 1-9-73;8:45 am]

Title 29—LABOR

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

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Utah Developmental Plan

1. *Background.* The State of Utah submitted on September 20, 1972, a plan pursuant to Part 1902 requesting approval of the plan by the Assistant Secretary of Labor for Occupational Safety and Health. On October 21, 1972, a notice was published in the FEDERAL REGISTER (37 FR 22781) concerning the submission of the plan, the fact that the question of approval was in issue before the Assistant Secretary, and an invitation for public comments thereon.

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

The plan includes proposed draft legislation to be considered by the Utah Legislature during its 1973 session amending title 35, Chapter 1 of the Utah State Code and related provisions, to bring them into conformity with the requirements of Part 1902.

Under this legislation all occupational safety and health standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in 29 CFR 1910.13, 1910.14, 1910.15, and 1910.16 (ship repairing, shipbuilding, shipbreaking, and longshoring) will, after public hearing by the Utah agency be adopted and enforced by that agency. The plan sets forth a timetable for the proposed adoption of standards.

The legislation will give the Utah Industrial Commission full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State. It also proposes to bring the plan into conformity in procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; procedures for variances and the protection of employees from hazards; a safety and health program for public employees; and a statewide system of encouraging voluntary compliance. This enforcement will be accomplished through the utilization of State employees hired under an approved merit system.

The proposed legislation will insure employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during, and after inspections; protection of employees against discharge or discrimination in terms and conditions of employment; notice to employees of their protections and obligations; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; and employer's right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings.

Included in the plan is a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent

with the constitution and laws of Utah. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislation by State legislature.

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

Written comments concerning the plan were submitted on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), Utah Manufacturers Association, United States Steel Corp., Associated General Contractors of America, the Horne Construction Corp. There were no requests for an informal hearing.

2. *Issues.* The public comments and the national office review of the plan raised significant issues. The first regards section 6(2)(f)(i) of Utah's proposed legislation. This section, which concerns temporary variances, differs from the Federal Act. It does not have a maximum duration limit for temporary variances whereas OSHA has a 1-year limitation. The public comments expressed concern that temporary variances could last indefinitely. Utah has responded to this problem in a letter to the Director of Federal and State Operations of the Occupational Safety and Health Administration, dated December 11, 1972, in which they propose to include the following clause in their enabling legislation, "In no case shall the period of an temporary order exceed one (1) year." This appears satisfactory and conforms to 29 CFR 1902.4(b)(2)(iv).

Another significant issue is the thoroughness of Utah's program for public employees. Section 15 of Utah's proposed legislation did not clearly state what the elements of the public employee program would be. However, in a letter to the OSHA Director of Federal and State Operations, dated December 8, 1972, Utah stated that the public employee program would be "the same as" the private sector program with one exception. There will be no monetary sanctions assessed against political subdivisions. All such sanctions will be in the form of "close orders." This is consistent with 29 CFR 1902.3(j) and section 18(c)(6).

Another significant issue concerns the composition of the Utah Occupational Safety and Health Review Commission. The Commission is similar to the Federal Commission except that its members are chosen from the Utah Industrial Commission, the agency designated to administer and enforce the Act. Public comments expressed concern that this structure would not comply with due process and afford contesting parties a fair and objective review. The composition of the Utah Commission is acceptable on the assumption that once in operation, it will comply with basic procedural safeguards for fairness such as separation of functions at staff levels.

Public comments also expressed concern that in cases where an employee suffers discrimination due to the exercise of rights afforded him under the State plan, the Utah Review Commission may restrain such discrimination and afford the employee any appropriate relief through the issuance of an order. Under the Federal program (OSHA section 11(c)(2)) the Secretary cannot act directly but must file an action in a United States district court. In each situation, the remedies available to an employee would be identical. Utah's decision to grant such remedies, when appropriate, administratively rather than judicially does not diminish the effectiveness of their antidiscrimination provision. It may be more effective than the Federal procedure by being more efficient. It is, of course, assumed that due process will be complied with and employers will be afforded notice and an opportunity to be heard.

The public comments also raise the issue of whether the results of medical examinations required by standards will be furnished to employers. The concern expressed was that employers would not have access to those records. Section 6(2)(g) of Utah's proposed legislation mirrors OSHA, section 6(b)(7) verbatim with regard to this question. Furthermore, Utah proposes to adopt Federal standards without alteration. Therefore, Utah standards should provide for employer access to medical records whenever a corresponding OSHA standard so provides.

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

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

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

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

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

(a) Introduction of enabling legislation in State legislature during January 1973.

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

(c) Formal adoption of Federal standards and revocation of existing Utah State standards by September 1, 1973.

(d) Adoption of safety standards for agriculture by September 1, 1974.

(e) Formal adoption of 29 CFR Parts 1903, 1904, and 1905 as rules and regulations of Utah by July 1974.

(f) Effective date of new standards, commencement of State enforcement by September 1973.

(g) A management information system by July 1, 1974.

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

Subpart E—Utah

Sec.

AUTHORITY: Sec. 18, Public Law 91–596, 84 Stat. 1608; 29 U.S.C. 667.

Subpart E—Utah

§ 1952.110 Description of the plan.

(a) The plan identifies the Utah State Industrial Commission as the State agency designated to administer the plan throughout the State. It defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). The plan states that the Utah Industrial Commission currently is exercising statewide inspection authority to enforce many State standards. It describes procedures for the development and promulgation of additional safety standards, rule making power for enforcement of standards, laws, and orders in all places of employment in the State; the procedures for prompt restraint or elimination of imminent danger conditions; and procedures for inspection in response to complaints. The plan includes proposed draft legislation to be considered by the Utah Legislature during its 1973 session amending title 35, chapter 1 of the Utah State Code and related provisions, to bring them into conformity with the requirements of Part 1902. Under this legislation all occupational safety and health standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in 29 CFR 1910.13, 1910.14, 1910.15, and 1910.16 (ship repairing, shipbuilding, shipbreaking, and longshoring) will, after public hearing by the Utah agency be adopted and enforced by that agency. The plan sets forth a timetable for the proposed adoption of standards. The legislation will give the Utah Industrial Commission full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State. It also proposes to bring the plan into conformity in procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances and the protection of employees from

hazards. The proposed legislation will ensure employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during, and after inspections; protection of employees against discharge or discrimination in terms and conditions of employment; notice to employees of their protections and obligations; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; and employer's right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings.

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

(c) The plan includes the following documents as of the date of approval:

(1) The plan with appendixes.

(2) A letter from Carlyle F. Gronning, Chairman of the Utah Industrial Commission to the Office of State Programs with an attached memo sheet of clarifications dated October 27, 1972.

(3) A letter from Carlyle F. Gronning to the Office of State Programs dated December 3, 1972, clarifying issues raised in the plan review.

(4) A letter from Carlyle F. Gronning to the Office of Federal and State Operations dated December 11, 1972, clarifying the remaining issues raised in the review process.

§ 1952.111 Where the plan may be inspected.

A copy of the complete Utah plan may be inspected and copied during normal business hours at the Utah Industrial Commission, Safety Division, 158 Social Hall Avenue, Salt Lake City, UT 84114. A copy of the complete Utah plan may also be inspected and copied during normal business hours at (a) the Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Federal Building, Room 15010, Post Office Box 3588, 1961 Stout Street, Denver, CO 80202; and (b) Office of Federal and State Operations, OSHA, U.S. Department of Labor, Room 305, Railway Labor Building, 400 First Street NW., Washington, DC 20210.

§ 1952.112 Level of Federal enforcement.

Pursuant to § 1902.20(b)(1)(iii) of this chapter of Federal Regulations, the present level of Federal enforcement in Utah will not be diminished. Among other things, the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(g), continue its Target Safety and Target Health Programs, and inspect a cross-section of all industries on a random basis.

§ 1952.113 Developmental schedule.

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

(a) Introduction of resulting legislation in State Legislature during January 1973.

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

(c) Formal adoption of Federal standards and revocation of existing Utah State standards by September 1, 1973.

(d) Adoption of safety standards for agriculture by September 1, 1974.

(e) Formal adoption of Parts 1903, 1904, and 1905 of this chapter as rules and regulations of Utah by July 1974.

(f) Effective date of new standards, commencement of State enforcement by September 1973.

(g) A management information system by July 1, 1974.

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

Signed at Washington, D.C., this 4th day of January 1973.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.73-487 Filed 1-9-73;8:45 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 16495; FCC 72-1198]

PART 25—SATELLITE COMMUNICATIONS

Establishment of Domestic Communications-Satellite Facilities by Nongovernmental Entities

Memorandum opinion and order. In the matter of establishment of domestic communications-satellite facilities by nongovernmental entities, Docket No. 16495.

1. The Commission has before it six petitions for reconsideration or clarification of the "Second Report and Order (Second Report)" issued in this proceeding on June 16, 1972 (35 FCC 2d 844); various responsive and reply pleadings related to such petitions; a memorandum of understanding and supplementary agreement submitted by Communications Satellite Corp. (Comsat) and MCI Lockheed Satellite Corp. (MCIL); and comments and reply comments on such memorandum of understanding and supplementary agreement.[1] Those seeking reconsideration or clarification are: American Telephone and Telegraph Co. (A.T. & T.); Comsat; RCA Global Communications, Inc. and RCA Alaska Communications, Inc. (the RCA applicants); Network Project; National Association of Educational Broadcasters (NAEB); and Western Union International (WUI).

2. The "Second Report" adopted a policy of affording a reasonable opportunity for entry into the domestic communications satellite field by qualified applicants, subject to certain showings and conditions. Apart from the showings required by statute and an additional showing required of all common carrier applicants now engaged in providing essential communications services to the public ("Second Report", paragraph 18), special conditions were placed on some pending applicants ("Second Report", paragraphs 21-32, 34). The special conditions that are relevant to the instant petitions may be summarized briefly as follows:

a. A.T. & T.'s use of domestic satellites would be limited initially to MTT, WATS, AUTOVON, emergency restoration in the event of terrestrial outage, and possibly other services in the case of Alaska, Hawaii, and Puerto Rico-Virgin Islands (paragraph 21).

b. The Comsat/A.T. & T. proposal based on their contractual lease arrangement would be disallowed (paragraph 22).

c. A.T. & T. would have the option of applying for authority to own and operate domestic satellite facilities, or of leasing transponders under tariff from Comsat or any other carrier who elects to proceed solely as a carrier's carrier (paragraph 22).

d. Comsat would be required to elect between pursuing its multi-purpose application or serving A.T. & T. If it elected to serve A.T. & T., Comsat would be required to operate exclusively as a carrier's carrier pursuant to tariff offerings and to provide some capacity for use by carriers other than A.T. & T. (paragraph 23).

e. In the event Comsat should elect to proceed other than as a carrier's carrier, it would be prohibited from owning or operating domestic satellite facilities at any overseas point served by Intelsat facilities (paragraph 26).

f. A.T. & T. and other terrestrial carriers seeking domestic satellite authorizations would be required to submit for Commission approval, prior to action on their applications, a description of the kinds of interconnection arrangements they will make available to other domestic satellite system or earth station licensees (paragraph 34).

3. The "Second Report" also adopted policies relating to service to Alaska, Hawaii, Puerto Rico, and educational entities, which are under dispute in the instant pleadings. With the advent of service via domestic satellites, it would be Commission policy to integrate charges for services between Alaska, Hawaii, and Puerto Rico and the contiguous 48 States into the domestic rate patterns (paragraphs 35-41). Toward this end (id.):

a. Domestic satellite applicants authorized to serve these points would be required, within 6 months from the issuance of the authorization, to submit

[1] A request for stay of the effectiveness of the Second Report was granted in part and otherwise denied by a memorandum opinion and order issued on Sept. 14, 1972 (FCC 72-807).

a specific proposal for revised rates for MTT service for review and approval of the Commission prior to the commencement of service (paragraph 37).

b. Record carriers now serving these points would be required to submit a proposal for integration within the same time frame (paragraph 38).

c. A.T & T. would provide MTT service via domestic satellites to these three points, in conjunction with the appropriate local carrier, with a possible exception for GTE Satellite Corp. (GTE)[1] in the case of Hawaii in the event GTE makes certain showings to justify authorization of its proposed system (paragraph 39).

d. Alaska, Hawaii, and Puerto Rico would be afforded an opportunity to obtain specialized services via the same satellites and earth stations used for MTT service, without precluding the authorization of additional, independent domestic satellite facilities to provide specialized services to these points (paragraph 40).

e. The system authorized to provide interstate MTT service to Alaska would be required to afford access to the same system for intra-Alaska service, if desired (paragraph 41).

With respect to the terms of access to domestic satellite facilities by public broadcasting and other educational interests, the "Second Report" stated the Commission's willingness to entertain specific proposals by carriers or users for the prescription of preferential rate classifications, but declined to initiate any requirement as to common carriers or to enunciate any general statement of policy (paragraph 43).

4. It appears to us, upon reviewing the petitions for reconsideration and other pleadings, that the principal issues posed by the A.T. & T. and Comsat petitions and by the Comsat/MCIL Memorandum of Understanding are interrelated and involve primarily the same portions of the "Second Report"; whereas other issues raised in their petitions, and in the petions of the RCA applicants, the Network Project, NAEB and WUI, go to different policy determinations in the "Second Report." The principal requests of the A.T. & T. petition are that the Commission reconsider the conditions limiting its initial use of domestic satellites to particular services and disapproving the Comsat/A.T. & T. lease arrangement. Comsat also challenges the disallowance of the Comsat/A.T. & T. lease agreement, as well as the requirement that it elect between serving A.T. & T. and other carriers as a carrier's carrier or serving entities other than A.T. & T. on both a "retail" and "wholesale" basis as proposed in Comsat's multipurpose application. Comsat has further requested that its memorandum of understanding with MCIL be regarded as supplemental information to its petition for reconsideration, and has indicated that Commission approval of that proposal may moot some issues in its petition. Under the memorandum of understanding, MCIL reserves the right to terminate in the event that the Commission grants that portion of A.T. & T.'s petition challenging the initial limitation on the service it may provide via domestic satellite. Accordingly, we will first address these aspects of the A.T. & T. and Comsat petitions and related pleadings, and then turn to the petitions of others and the remaining questions raised by A.T. & T. or Comsat.

I. A.T. & T.'s Initial Use of Satellite, the Comsat/A.T. & T. Lease Agreement, the Comsat Election Requirement, and the Comsat/MCIL Memorandum of Understanding

A. Pleading of the Parties

1. A.T. & T. Comsat and MCIL

5. "A.T. & T." urges that the condition limiting its initial use of domestic satellites to specified services (MTT, WATS, AUTOVON, emergency restoration in the event of terrestrial outage and possibly other services in the case of Alaska, Hawaii and Puerto Rico) is unsupported by the record, unsound as a matter of policy, and contrary to the Commission's decision in "Specialized Common Carrier Services," 29 FCC 2d 870. It sees no basis for the concerns expressed in paragraphs 9–12 of the "Second Report" and claims that considerations of this nature would not, in any event, justify the restriction. A.T. & T. also asserts that the limitation would unnecessarily fragment the network function, inject unnecessary costs by requiring A.T. & T. to segregate the segment of private line services eligible for satellite transmission from ineligible services, and deny the public the benefits of full integration of domestic satellites into the nationwide network. A.T. & T. further states that there is no rational basis for singling out only one Government system, AUTOVON, from other essential private line Government services, and that it should, in any event, be authorized to provide any U.S. Government private line service by means of its initial domestic satellite system.

6. Both "A.T. & T." and "Comsat" urge that their lease agreement should not be rejected. A.T. & T. claims that the rejection is without justification and that the Commission should permit any applicant, including A.T. & T., to determine for itself the appropriate means of providing its domestic satellite system. Comsat claims that the disallowance of the agreement constitutes a severe penalty for it, without adequate justification, and that no other system applicant has been treated so harshly. To the extent that this action was affected by A.T. & T.'s stock ownership in Comsat and ability to elect three members of Comsat's Board of Directors, Comsat deems such concern to be baseless. In any event, it asserts that restrictions on Comsat are ineffective and inappropriate to deal with a situation over which Comsat has no control. There is also, Comsat asserts, no basis for concern that the agreement would restrain it from competing vigorously in the specialized market, contrary to its own self-interest, or that revenues from the lease would give it an advantage over other domestic satellite entrants.

7. "Comsat" further urges that the "Second Report" unnecessarily weakens competition and "artificially divides the market available to competitive suppliers of satellite services by forbidding anyone who serves A.T. & T. (the largest part of the carrier portion of the market) to serve also the retail or specialized services market." It claims that, if permitted to function without this restriction, Comsat would be a most energetic competitor to A.T. & T. and would not squeeze out potential competition from future entry. Comsat asserts that the tariff alternative is illusory because A.T. & T. would probably opt for system ownership in preference to turning to a carrier's carrier offering tariffed services to A.T. & T. and other carriers. Comsat further alleges that it has no reasonable chance of attracting the business of other carriers in view of the stated intentions of Western Union and GTE in response to paragraph 45(b) of the "Second Report."

8. According to "Comsat/MCIL" their memorandum of understanding, as supplemented by the agreement of October 3, 1972,[2] contemplates a joint enterprise to establish and operate a multipurpose domestic satellite system. This would be accomplished, subject to Commission approval, through a restructured and renamed MCI Lockheed Satellite Corp., owned jointly and equally by Comsat, MCI Satellite, Inc., and Lockheed Aircraft Corp. New cash in the total amount of $1,750,000 would be contributed by Comsat ($750,000), Lockheed ($500,000) and MCI Satellite ($500,000) to cover foreseeable preoperating expenses of the new corporation. When the funding requirements of the construction phase are known, the management and directors of the jointly held corporation would determine the nature of the necessary financing. The agreement provides for a 16-member Board of Directors. Each of the three stockholders would elect four directors, and all of the stockholders unanimously would elect four independent directors. In order to assure that major decisions of the joint enterprise could not be vetoed by one of the three stockholders or affirmatively forced by any two stockholders, the agreement provides that the vote of 11 directors is required for specified major matters and a majority vote for other matters. However, notwithstanding that provision, a majority of the whole Board, exclusive of all "interested directors" elected by affected stockholders, is required to authorize any contract or transaction (including the issuance, reacquisition or redemption of any securities of the corporation) between the corporation and any

[1] Since the Second Report, GTE Service Corp. and the GTE operating companies seeking domestic satellite authorizations have transferred their applications to a newly formed corporation, GTE Satellite Corp.

[2] The agreement was negotiated by Comsat, Lockheed Aircraft Corp., MCI Communications Corp., MCI Satellite, Inc., and MCI Lockheed Satellite Corp.

entity owning 10 percent or more of the outstanding stock of the corporation.[4]

9. The stockholders would have "pro rata" preemptive rights in any new issues of securities. The corporation and the stockholders would have successive options to purchase at book value the interest of a stockholder who wishes to dispose of its equity.[5] This requirement would be binding for 2 years or until a public issue of securities, whichever came first. The agreement would terminate in 5 years, or on the effective date of a registration statement or a public issue of securities, whichever is earlier.

10. In pertinent essence,[6] the memorandum of understanding makes the obligations of the parties contingent upon Commission approval of the Comsat/A.T. & T. lease agreement appended to the latters' applications for domestic satellite facilities. If the Comsat/A.T. & T. applications are granted and the proposed joint venture is allowed, the parties will request dismissal of the Comsat multipurpose application and such portions of the Comsat petition for reconsideration as are moot, as well as a grant of the MCIL application as modified to reflect the proposed restructuring. The parties will also request the Commission to hold that the limitation precluding Comsat participation in services or facilities at overseas domestic points served by Intelsat facilities is no longer relevant. In the event that the Commission should decline to approve the memorandum of understanding and supplementary agreement as consistent with the policies underlying the "Second Report" or to waive any variances, the memorandum of understanding would be null and void. MCIL reserves the right to terminate the memorandum of understanding if the Commission should grant A.T. & T.'s request for reconsideration of the service limitation on its initial use of satellites.

11. In a statement submitted on September 8, 1972, with the memorandum of understanding, "MCIL" set forth arguments in support of its view that the objectives stated in paragraph 7 of the "Second Report" (35 FCC 2d at 846) would be promoted by the Comsat/MCIL proposal. It is asserted that "the coalescence of know-how and expertise represented by Comsat in space communications operations, by MCI in marketing specialized services and by Lockheed in advanced space technology would 'maximize the opportunities for the early acquisition of technical, operational and marketing data and experience in the use of this technology as a new communications resource for all types of service.'" This in turn would allegedly afford an "excellent opportunity for a strong, new, and independent entity 'to demonstrate how any operational and economic characteristics peculiar to the satellite technology can be used to provide existing and new specialized services more economically and efficiently than can be done by terrestrial facilities'" (id.). MCIL further claimed that the restructuring would result in a corporate entity with a life of its own, under independent management, with no single owner in a position to dominate corporate or management decisions. As a consequence, MCI stated, "any restraints and inhibitions which some may fear Comsat suffers as a consequence of A.T. & T.'s minority equity position in Comsat and the business relationship that exists, or will exist, between the two are virtually eliminated by the circumstances of Comsats' minority position in MCIL" and the Commission's objective (c) would be served (35 FCC 2d at 847). With respect to the Commission's objective (d), it is asserted that the Comsat/MCIL proposal would "in no way derogate the 'leeway and flexibility' the Commission proposed to retain in the Second Report" (id.).

12. In addition, MCIL urged that the proposal would serve the more specific policies enunciated in paragraphs 8–11 of the "Second Report" (35 FCC 2d at 847–848) and eliminate the necessity for some of the conditions imposed by a then divided Commission in paragraphs 13, and 22–26 thereof (35 FCC 2d at 848–849, 852–853). In claiming that the concern about A.T. & T. expressed in paragraphs 9–11 of the "Second Report" would be "greatly eased" by the proposal, MCIL stated:

> The proposed ownership structure of MCIL bars A.T. & T. from influence over MCIL operations. The restrictions of paragraph 21 of the Second Report, which MCIL urges must be maintained, excludes A.T. & T.'s presence in the satellite specialized services market for the present and thus eliminate the problems of cross-subsidy discussed in paragraphs 10-11 of the Second Report.

Noting further that the conditions adopted in paragraphs 13, 22–26 of the "Second Report" were based on the proposals then pending before the Commission (i.e., the ownership and operation by Comsat of the space segment portion of a satellite system dedicated to the exclusive use of A.T. & T. and the ownership and operation of a multipurpose system by Comsat for other carriers and users), MCIL asserted that the current Comsat/MCIL proposal, if approved, would constitute a significant change (i.e., the multipurpose application of Comsat will be dismissed and Comsat would assume a minority position in MCIL). To the extent that the Commission, in paragraph 14 of the "Second Report" (35 FCC 2d at 849), found reinforcement for these conditions in the equity ownership position of A.T. & T. in Comsat, MCIL claimed that the current proposal legally and practically insulates the restructured MCIL applicant from any inhibitions or restraints that might otherwise carry over from that relationship. Finally, MCIL urged that the restriction in paragraph 26 of the "Second Report", prohibiting Comsat from owning or operating domestic satellite facilities to provide "retail" services at any overseas point served by Intelsat, should be eliminated because the concern as to a potential conflict of interest by Comsat would be diluted to insignificance if its interest were reduced to that of a minority participant in an independent domestic system.

2. Comments of Other Parties

13. A.T. & T.'s request for reconsideration of its initial service limitation was opposed by "RCA Global Communications, Inc." and "RCA Alaska Communications, Inc." (the RCA applicants); "Fairchild Industries, Inc." (Fairchild); "Western Union International, Inc." (WUI) and "Western Telecommunications, Inc." (WTCI). In its statement filed on September 8, 1972, in response to paragraph 45(b) of the "Second Report," MCIL also stated that it regards this limitation as "essential to the undertakings proposed in its application and the (memorandum of) understanding." These parties claimed that A.T. & T. is reiterating arguments previously advanced and well known to the Commission. They further urged that the "Second Report" sufficiently sets forth the policy considerations underlying this condition, which they deem to be sound and necessary in the public interest to afford a reasonable opportunity for entry by others to offer specialized communications services via domestic satellite facilities. While all such parties supported

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[4] We note that the major matters requiring 11 votes are (bylaws annexed to the agreement, Articles II and III): (i) Election of the chief executive officer of the corporation; (ii) approval of the capital budgets of the corporation and any capital expenditures that would materially exceed previously approved budgets; (iii) financial plans, including any security offering and mortgage or pledge of corporation property in excess of $100,000; (iv) declaration of any dividend or return of capital on any shares of the corporation's capital stock; (v) authorization of the redemption, reacquisition or retirement of any securities of the corporation (except as required pursuant to the terms of any such security); and (vi) approval of the configuration and design of any system of communications satellite facilities, including without limitation earth stations, to be established and operated by the corporation, but not including subsystems or components of any such system. See also, Articles IV and V of the bylaws relating to the powers of the executive committee and the officers of the corporation.

[5] The agreement states in this respect that if the corporation elects to purchase none or less than all of the securities of the selling stockholder, then other stockholders have the option to purchase all or any part of their respective pro rata shares of the securities of the selling stockholder. If the corporation and/or the remaining stockholders do not exercise their successive options within 120 days, the selling stockholder may otherwise dispose of the securities.

[6] Both Comsat and MCIL reserve the right to pursue their pending applications in the event the proposed joint venture is not approved by the Commission or is terminated for other reasons, and MCIL reserves the right then to oppose the Comsat multipurpose application. Various provisions in the memorandum of understanding relating to the rights of the parties should they fail to reach agreement, now appear moot in light of the agreement filed on October 3, 1972.

retention of this condition.[7] WUI made the additional argument that it would be preferable to delete the exception for AUTOVON. These same parties also oppose those portions of the A.T. & T. and Comsat petitions for reconsideration that challenge the disallowance of the Comsat/A.T. & T. lease agreement, on substantially similar grounds.

14. In their initial comments on the Comsat/MCIL memorandum of understanding, which were filed on September 26, 1972, before the supplementary agreement of October 3, 1972, was submitted, various parties urged that the memorandum was contingent on reaching an unknown agreement, and did not afford any adequate basis for a decision by the Commission or for comments by the parties. By order issued on October 11, 1972 (FCC 72-903), the Commission afforded interested parties an opportunity to submit comments and reply comments on the October 3 agreement supplementing the Comsat/MCIL memorandum of understanding. The principal contentions on the merits are as follows.

15. "A.T. & T." has no objection to Commission consideration of the memorandum of understanding and supplemental agreement, and expresses no views on the merits of these undertakings. However, it expressly adheres to its request for reconsideration of the condition limiting its initial use of domestic satellites to particular services and the condition disallowing the Comsat/A.T. & T. proposal, and urges that these questions be resolved on their merits without being delayed or otherwise affected by the Comsat/MCIL proposal.

16. The "RCA" applicants, "Fairchild, American Satellite Corporation and WUI" are opposed to approval of the Comsat/MCIL proposal and urge that the memorandum of understanding and supplemental agreement do not obviate the considerations underlying the conditions imposed in the "Second Report." Specifically, it is asserted that the agreement does not assure that Comsat will not become the dominant partner in view of its experience in Intelsat and financial resources, as compared to MCI and Lockheed, and its position to influence Lockheed through Comsat's procurement powers in both the international and domestic satellite fields.[8] Under the agreement (bylaws, Article III, section 9), they point out, the corporation's financial plans and the system configuration and design are left for future decision by the Board of Directors, and hence are presently unknown to the Commission. Moreover, they claim that the provisions for preemptive rights in new or additional securities issues and for transfer of stockholder securities (agreement, sections 4 and 5), do not assure that Comsat would not ultimately emerge as the dominant stockholder. The provisions relating to the selection of directors and voting (agreement, section 7 and bylaws, Articles II, III and IV) allegedly do not afford an adequate safeguard because the so-called independent Class B directors (and possibly even the directors selected by Lockheed or MCI) might have to accommodate Comsat's private interests in order to avoid an operational stalemate, or might be influenced by Comsat's experience and talent reservoir or its procurement powers for the Intelsat and proposed A.T. & T. system. Further, while the agreement makes no representation as to whether a public offering is intended or not, virtually all of the restrictive provisions would disappear in the event of a public offering (agreement, section 5(g) and section 9).

17. These parties urge that no justification has been shown for departing from the conditions imposed on Comsat by the "Second Report." The RCA applicants claim that the Commission now lacks sufficient information to approve the Comsat/MCIL propopsal, and that even with a minority interest the alleged Comsat conflict of interest with its role in Intelsat would remain at offshore domestic points (see "Second Report," paragraph 26). Fairchild and WUI argue that the disallowal of the Comsat/A.T. & T. lease agreement should stand and that Comsat must be prohibited from engaging in the dual role of retailer, including offshore operations, and wholesaler to A.T. & T.[9] Fairchild further alleges that the Comsat/MCIL arrangement could, without proper safeguards, have an adverse effect on future international satellite procurement, and requests the imposition of safeguards in this area.

18. Other parties commenting take miscellaneous positions. "Western Union" states that the questions raised by the Comsat/MCIL agreement (e.g., composition of the applicant and Board of Directors, stock structure, and rights of positive and negative control) are matters that are ordinarily considered in the course of processing and acting on the application, and should be deferred to that stage. It further supports the policies and procedures of the "Second Report," and comments that the Comsat/MCIL proposal seems like evidence of the anticompetitive tendency which the Commission foresaw when it prescribed limitations on Comsat in the "Second Report." The "State of Alaska" expresses concern that if a new corporation supplants Comsat in the multipurpose domestic field, there may be a shift in attitude toward service in Alaska. However, the State urges favorable consideration of the proposal, because it believes its interests would be best served by the possibility of a continuing commitment from the new corporation (in the event the Commission is unwilling to reconsider its limitation on Comsat service to offshore points) and because the design of the corporation appears fairly to meet the Commission's earlier objection. "Hughes" has no objection to a delay in resolving the ultimate roles of A.T. & T., Comsat and MCIL in the domestic satellite field, so long as the Hughes/GTE role can be determined at the same time. "Data Transmission Company" (Datran) asserts that the Comsat/MCIL proposal does not ameliorate all of the Commission's reservations concerning the Comsat/A.T. & T. system, particularly the conclusion that if Comsat were to serve A.T. & T. it must operate exclusively as a carrier's carrier and serve all carriers indiscriminately. Since approval of the Comsat/A.T. & T. lease agreement would effect a reduction in the options available to terrestrial carriers, the Commission should first ascertain whether there is adequate assurance that satellite capacity will be available to terrestrial carriers other than A.T. & T. on a fully nondiscriminatory basis. The "Corporation for Public Broadcasting" (CPB) and the "Public Broadcasting Service" (PBS) comment that there appears to be a commitment on the part of the parties to the joint venture that the restructured corporation would prosecute the pending MCIL application, and specifically that the present MCIL proposal for service to public broadcasting would remain an obligation of the newly constituted applicant. On that basis, PBS has no objection however, if the parties to the joint venture have a different view, they should state their position at this time and CPB and PBS should be afforded an opportunity to comment on the question.

3. Replies of MCIL and Comsat

19. In reply to the contention that Comsat, by virtue of its alleged superior financial position and its satellite operating experience, would inevitably achieve dominance of the restructured MCIL Corporation even though the parties and the Commission intended otherwise, "MCIL" asserts that the provisions of the agreement governing the election of directors and voting will accomplish the purpose of independence. With this structure, MCIL contends, no single shareholder could control decisions made in vital matters except with the concurrence of both other stockholders or of another stockholder and at least three of the Class B directors. MCIL further urges that under the provisions affording preemptive rights to the stockholders with respect to any securities involving voting rights, every stockholder has the right to, and the capability of, avoiding dilution of its interest and control vis-a-vis any other shareholder and

[7] ITT World Communications, Inc. (ITT Worldcom) and All America Cables and Radio, Inc. (AAC&R) also filed comments generally supporting the Second Report, with specific comments on other aspects of the A.T. & T. and Comsat petitions.

[8] The RCA applicants note that Comsat's initial one-third ownership is greater than the A.T. & T. ownership in Comsat.

[9] In this connection, Fairchild asserts that the Comsat/MCIL proposal gives rise to a greater need for barring any dual role. Otherwise, it is claimed, the ability of other applicants to compete would be seriously impacted by the circumstance that Comsat's investment in multipurpose operations would be lessened while it continued to derive benefits from its private arrangement with A.T. & T. and possibly shared them with only one of the competitors for the specialized service market, MCIL.

of preventing the issuance of any securities of the corporation which would cause a shift in the control of the corporation. MCIL sees no merit in the argument that regardless of the manner in which the corporation is structured, MCI and Lockheed will be unable to exercise their rights in a manner that would avoid de jure or de facto control by Comsat at some time in the future. Apart from the asserted intent of MCI and Lockheed to the contrary, any future changes that might lead to such a result could not be accomplished without prior written consent of the Commission pursuant to section 310(b) of the Communications Act. Thus, MCIL takes the position that this is not a speculation with which the Commission must deal at this stage.

20. With respect to the contention that the reframed Comsat/MCIL proposal does not obviate the anticompetitive concerns set forth in the "Second Report", MCIL asserts that the danger the Commission sought to avoid by the election requirement is negated by the fact that, under the management structure, Comsat alone will not and cannot control the retail marketing decisions of a multipurpose system in which it holds a minority interest. Moreover, under the proposal any threat of a Comsat advantage over others by virtue of revenues from the Comsat lease agreement would be eliminated because the corporation would not receive these revenues. Though such revenues may constitute resources that Comsat could use for capital contributions to the corporation, MCIL notes this situtation pertains to every domestic satellite applicant whose stockholders have other profitable businesses through which they are able to make capital available to domestic satellite undertakings.

21. In requesting Commission approval of the proposal, MCIL states that Comsat/MCIL is not seeking complete and final approval of the technical and financial qualifications of the corporation, but rather a determination on threshold policy issues. It notes that the technical parameters of the system and the financial plans of the restructured MCIL applicant will be known by the time of, and can be treated in connection with, the Commission's consideration of whether the necessary authorizations should be issued. However, contrary to the contention of Western Union, MCIL urges that a resolution of the policy questions should not be deferred to processing of the applications, which would allegedly place Comsat and MCIL in an inequitable position vis-a-vis other applicants.

22. On November 13, 1972, "Comsat" submitted its reply to comments on the Comsat/MCIL agreement, together with a motion for acceptance of late filing which is hereby granted. Comsat states that: Under our policy of open entry, the Commission has in effect relied upon the forces of competition to ameliorate the potential harmful effects and should not now impose artificial restrictions which would eliminate the most effective potential entrants. Any attempt by one of the three shareholders to weaken the corporation's competitive ability in order to foster external private interests, such as a reluctance to compete with other terrestrial facilities or desire to favor a particular hardware supplier regardless of cost and quality, would redound to the detriment of the corporation and the other two stockholders and is therefore unlikely to succeed. While Comsat does not anticipate that each of the three partners in the corporation would entirely ignore its own self-interest, it urges that the agreement has taken more steps than any other applicant (such as the RCA applicants) to reduce potential conflicts of interest. The necessity to accommodate the widely divergent interests of Comsat, MCI and Lockheed within the framework of the proposed corporate structure that has been established would tend to promote decision-making independence. Comsat further asserts that the comments of other parties challenging the effectiveness of the safeguards in the agreement are not well founded. In any grant of applications the Commission can retain jurisdiction to assure that the representations of the Comsat/MCIL applicant are honored.

23. Specifically, with respect to Fairchild's request for safeguards to prevent an adverse impact on future international procurement competition, Comsat states that even if it were disposed to abuse its fiduciary responsibilities to Intelsat, the procurement regulations of Intelsat and its process for review and evaluation of proposals afford a sufficient safeguard. In any event, the mere fact that Lockheed is a participant in the domestic corporation would not provide sufficient incentive for Comsat to compromise the interests of Intelsat, and its own very substantial investment therein, by attempting to influence the procurement of a spacecraft that was not the best available in terms of price and technical quality. Comsat is also opposed to Western Union's suggestion that consideration of the Comsat/MCIL agreement, and a ruling on its consistency with the Commission's policy objectives, be deferred to the application processing stage.

B. DISCUSSION AND CONCLUSIONS

1. Service limitation on A.T. & T.'s initial use of satellites

24. Turning first to A.T. & T.'s request for reconsideration of the condition in the "Second Report" limiting its use of domestic satellites to specified services, we agree with A.T. & T.'s contention that this issue must be considered on its merits without being affected by the Comsat/MCIL proposal or MCIL's reservation of the right to terminate the memorandum of understanding in the event A.T. & T.'s request should be granted. While Comsat may seek dismissal of issues raised in its own petition for reconsideration, neither Comsat nor MCIL can waive A.T. & T.'s right to pursue its petition for reconsideration of this challenged limitation.

25. On the merits, we are of the opinion that A.T. & T. has not shown any sufficient reason for granting reconsideration of this condition in the public interest except with respect to private line services provided to the Federal Government. The exception for AUTOVON was made in the light of comments by the Department of Defense in response to our "Memorandum Opinion and Order issued herein on March 17, 1972 inviting comments on the staff recommendation (34 FCC 2d 1, 2, 8, 51-53). Although the Department of Defense did not seek any exemption for other private line services to the Federal Government, we are persuaded by the arguments made in paragraphs 10-11 of A.T. & T.'s petition for reconsideration that the condition should be modified to permit A.T. & T. to use any domestic satellite facilities authorized for its use to provide all U.S. Government private line services. In addition to the circumstance that there are many such services besides AUTO VON which are at least as vital to the national defense and security, private line services to the U.S. Government are peripheral to the kind of specialized service markets the "Second Report" was seeking to afford the competitive domestic satellite entrants a reasonable opportunity to develop (35 FCC 2d at 847-848, paragraphs 9-12).

26. In all other respects, we think that A.T. & T. is merely reiterating arguments made prior to the "Second Report," in its written comments and in the views expressed by other parties, and that such arguments do not call for a different conclusion upon reconsideration. We adhere to the considerations and conclusions set forth in paragraphs 4-12, and 21 of the "Second Report," with the exception discussed above and the following amplification.

27. A.T. & T.'s assertion that this initial limitation would artificially and unnecessarily fragment the network function, inject unnecessary costs by requiring it to segregate eligible from ineligible services for purposes of satellite transmission, and deny the public the benefits of full integration of domestic satellites into the nationwide network, is unsupported by cost data or other factual detail. We note that A.T. & T. does not contend that it is impracticable to segregate the services, or that the cost is such as to affect significantly its revenue requirements applicable to its public offerings of service. The "Second Report" adequately treats the policy foundation for this initial condition which is subject to reexamination no later than 3 years after A.T. & T. commences domestic satellite operations.[30] Moreover, A.T. & T. has con-

[30] While A.T. & T. renews its previous contention that it does not presently intend to offer satellite only services or to depart from terrestrial tariffs, we think that the 3-year limitation affords greater assurance of a fixed grace period to domestic satellite entrants seeking to serve the specialized markets than a statement of "present" intentions that is subject to change at the discretion of A.T. & T.

sistently maintained that while the pending proposal for its first venture in domestic satellites utilizing 4 and 6 GHz frequencies offers certain operational advantages and an opportunity for experimentation—which justify the conceded costs in excess of utilizing terrestrial facilities only, its principal interest in the domestic satellite technology lies in the potential afforded by the large number of frequencies allocated for communications satellite use higher in the spectrum (see "Second Report," paragraph 3; 34 FCC 2d at 18, 51). We do not yet have any application of A.T. & T. for use of the higher frequencies and hence cannot predict whether the initial service limitation will have been reexamined and/or modified before A.T. & T. seeks to commence domestic satellite operations on any more substantial basis.[11] However, since the opportunity for reexamination of the initial limitation in the light of then prevailing conditions comes in a relatively short time, we fail to see how the limitation could operate to deny the public any benefits to be derived from full integration of domestic satellites into the nationwide network of A.T. & T. over any significant period. In any event, in our judgment, the public benefits to be anticipated from this initial limitation—in the form of an enhanced opportunity for other domestic satellite entrants to develop the competitive specialized markets and for users to have "a wider range of choices as to how they may best satisfy their expanding and changing requirements for specialized communication service" ("Specialized Common Carrier Services," 29 FCC 2d 870, 909–910)—outweigh any inconvenience to A.T. & T. as well as its bare assertion of temporary drawback to its customers.

28. With respect to A.T. & T.'s further contention that the initial service limitation is contrary to the policies adopted in "Specialized Common Carrier Services" and other Commission precedent and beyond the Commission's authority, we note the following. As reflected in paragraph 12 of the "Second Report" (35 FCC 2d at 848), we consider the measure adopted there—toward the end that competitive entry is a meaningful reality in the high capacity satellite field—to be reasonable and compatible with our decision in "Specialized Common Carrier Services," which stressed that "our policy determination as to new specialized carrier entry terrestrially, does not afford any measure of protection against domestic communications satellite entry or otherwise prejudge our determination in Docket No. 16495 as to what course would best serve the public interest in the domestic satellite field" (29 FCC 2d at 920).[12] We further believe this initial limitation to be well within our authority under sections 4 (i) and (j), 214, 303, and 307–309 of the Communications Act, and consonant with section 313(a) of the Communications Act and the policies underlying the antitrust laws. For example, we have previously exercised similar authority in connection with the authorization of the TAT IV cable to enhance the potential for competition among international carriers ("American Telephone and Telegraph Company," 37 FCC 1151, 1158–1160 (1964)). See also, the authority conferred by section 303(b) of the Communications Act to: "Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class" as "public convenience, interest or necessity requires"; and innumerable Commission actions prescribing the nature of the service to be provided by various classes of stations, including those licensed to miscellaneous domestic common carriers (e.g., §§ 21.705, 87.181, 91.2, 93.2, 95.83, and 74.431, 74.531, 74.631, 74.731, 74.831, 74.931, and 74.1231 of the Commission's rules and regulations).

29. Concerning the question of removal of the limitation, we have set forth the two occurrences when this will be considered (see paragraph 21, "Second Report"). We cannot now prejudge the action a future Commission may find necessary to protect the public interest. But we can delineate the appropriate burdens of the interested parties and a timetable for decision. The burden should not be upon A.T. & T. to prove a negative—that its unconditional use of satellite facilities for competitive services will not adversely affect other carriers' domestic satellite undertakings in such a way as to run counter to the public interest. These other carriers are in the most appropriate position to advance any claim of adverse impact affecting the public interest, and the burden is upon them to come forward with a detailed, convincing showing for the continuation of this limitation upon A.T. & T., to which showing A.T. & T. will be afforded an opportunity to respond. Further, the decision on any A.T. & T. request to end this condition should not be delayed for a substantial time period, so that in practical effect—simply because of a delay in administrative procedures—the 3-year initial or "grace" period becomes 4, 5 or 6 years. Accordingly, we specify that the limitation shall end at the earliest of the following occurrences: (a) Upon a finding by the Commission that domestic satellite licensees authorized to offer specialized common carrier services have achieved substantial utilization of their satellite capacity; or, in any event, (b) upon the expiration of a 3-year period after the commencement of domestic satellite operations by A.T. & T. unless the Commission acts to extend the limitation upon consideration of a petition filed by an interested party at least 6 months before the expiration date. In either of the above two circumstances, however, removal of the limitation will depend upon whether the A.T. & T./Comsat ownership issue (see following discussion) has been satisfactorily resolved, either through divestiture by A.T. & T of its stock ownership in Comsat or approval by the Commission of an acceptable plan for such divestiture.

30. Thus, there is one burden that A.T. & T. will be expected to meet as part of any request to use its satellite facilities for competitive specialized services—and that is a showing of elimination of the basic problem which stems from the interrelationship between A.T. & T. and Comsat represented by A.T. & T.'s part ownership of Comsat. It is our view that such interlocking arrangements are not compatible in the long term with the type of competitive environment in the domestic satellite communications that our policies in this and related proceedings (e.g., "Specialized Common Carrier Services," 29 FCC 2d 870) seek to create and maintain. This concern is exacerbated by the proposed interrelationship between Comsat and MCI, considering MCI's competitive posture vis-a-vis A.T. & T. in terrestrial lead-line services.

31. When the Satellite Act was enacted, Congress, in order to assure that the fledgling corporation—Comsat—received needed communications expertise and guidance, made provision for communications common carriers to own up to 50 percent of Comsat stock and to elect six members of Comsat's Board of Directors. Pursuant to this provision, A.T. & T. acquired its 29 percent ownership in Comsat in 1964 and other carriers also acquired substantial interests.[13] Comsat was created by Congress primarily for the important and immediate purpose of representing and promoting this Nation's interests in the establishment and operation, in conjunction with other nations, of a global international communications satellite system. That mission, with the aid and support of A.T. & T. and other carriers, has been achieved with a high degree of success. Comsat is now seeking entry into the domestic communications field to compete with A.T. & T. and other carriers in supplying new and improved domestic communications services. However, in this field the underlying considerations which motivated Congress to permit and

[11] However, even assuming that any such application for use of the higher frequencies should be forthcoming and processed in time for the facilities to become operational prior to reexamination of the service limitation, we are of the view that the initial 3-year limitation is nevertheless warranted in the public interest.

[12] Nor do we see any inconsistency between the Second Report and our decision on reconsideration in the Computer Inquiry (Docket No. 16979), 34 FCC 2d 557, which confirmed the Commission's jurisdiction to adopt the restrictions there imposed on non-A.T. & T. carriers eligible to engage in data processing services.

[13] The right of any carrier to own stock was not intended by Congress to be an absolute right. Rather, only those carriers authorized by the Commission upon a finding that their ownership would be consistent with the public interest could become stockholders (see section 304(b) (1) and (2) of the Satellite Act). The FCC issued the appropriate authorization to A.T. & T. on April 29, 1963.

encourage A.T. & T.'s ownership in Comsat are no longer controlling. On the contrary, the competitive roles which Comsat and A.T. & T. are assuming in the domestic communications field dictate the need for maximum independence from each other and an arm's-length relationship.

32. Consideration of Comsat's current posture in the international arena does not override the foregoing conclusion. For conditions have changed markedly from 1964 and stock ownership by A.T. & T. in Comsat is no longer necessary to further the policies of the Communications Satellite Act. Since that time, Comsat has developed its own expertise and is a viable entity in its own right, thus obviating the need for the internal guidance and assistance of A.T. & T. and other carriers. Furthermore, the Congress has recognized the diminution, with time, of the importance of carrier participation in the internal affairs of Comsat. Thus, in 1969, Congress amended the 1962 Satellite Act [14] to provide that carrier representation on the Comsat Board of Directors will be proportionate to the amount of stock they collectively own in Comsat, as contrasted with the original Act which provided for six carrier directors regardless of the amount of carrier stock ownership. The major carriers, with the exception of A.T. & T., have all divested themselves of their shareholdings with the result that only A.T. & T. is now eligible to nominate and elect carrier directors and, in fact, there are currently only three carrier directors on the Comsat Board, all of whom represent A.T. & T.

33. In light of the foregoing considerations, we believe that A.T. & T. has the burden of showing that it has either wholly eliminated the problems stemming from stock ownership in Comsat or is well on its way to doing so in accordance with a plan of divestiture approved by the Commission. That is the only burden of proceeding that we impose upon A.T. & T., in connection with removal of the limitation in question. We will, of course, consider appropriately filed pleadings of interested persons in response to any request of A.T. & T. with respect to this matter.

2. The Comsat/A.T. & T. lease agreement and the requirement of the Second Report that Comsat elect between roles

34. The Memorandum of Understanding between Comsat and MCIL and the supplementary agreement have a direct impact on the basic reasons for our requirement in the "Second Report" that Comsat elect between operating exclusively as a carrier's carrier for A.T. & T. and others pursuant to tariff or pursuing its multipurpose application. Accordingly, we deem it appropriate to take this into account in determining whether we should grant the requests of A.T. & T. and Comsat for reconsideration of the disallowal of their lease agreement in the "Second Report" and Comsat's request for reconsideration of the aforementioned election requirement. For, if we decide that the Comsat/A.T. & T. lease agreement, the applications predicated thereon, and the applications of the restructured MCIL Corp. should be accepted for processing in the present circumstances,[15] it may be unnecessary to reach the question of whether reconsideration is warranted for the reasons stated in the A.T. & T. and Comsat petitions for reconsideration. Comsat has represented that it would dismiss these portions of its petition in the event of a favorable Commission decision on the lease agreement and on its proposal to proceed in dual roles now before us. A.T. & T. has not sought reconsideration of the Comsat election requirement and will not be prejudiced if the relief it seeks as to the lease agreement is granted, albeit on grounds asserted by others.

a. *The Comsat/MCIL proposal.* 35. A combination of MCI, Lockheed and Comsat would bring together some of the basic elements that are conducive to the likelihood of the successful provision of communication common carrier services via domestic satellites. It would coalesce in one stronger applicant the retail marketing know-how of MCI, derived from its existing and proposed operations as a terrestrial specialized carrier; the technical talents of Lockheed as a major manufacturer of space hardware; and the considerable experience of Comsat in the international communications satellite field as manager of the Intelsat system and as a carrier's carrier for U.S. authorized users, as well as the strengthening factor of Comsat's financial position. This in turn would promote achievement of our objectives: "To maximize the opportunities for the early acquisition of technical, operational, and marketing data and experience in the use of the technology as a new communications resource for all types of services" ("Second Report," par. 7(a)); "to afford a reasonable opportunity for multiple entities to demonstrate how any operational and economic characteristics peculiar to the satellite technology can be used to provide existing and new specialized services more economically and efficiently than can be done by terrestrial facilities" ("Second Report," par. 7(b)); to "afford an opportunity for access to the satellite technology by retail carriers who lack sufficient existing or potential traffic to warrant the investment required for ownership of space segment facilities" ("Second Report," par. 24); and, in light of the predominant position of Hughes at this time in the field of commercial communications satellite procurement, to encourage "entry by different equipment manufacturers to demonstrate rival technologies" ("Second Report," par. 19; "Memorandum Opinion and Order" issued on March 17, 1972 herein, pars. 84–86, 34 FCC 2d 1, 44–45). In our judgment, the addition of Comsat offers a more solid foundation for an early partial realization of these objectives through implementation of the tripartite proposed system than does either the MCIL application or the Comsat multipurpose application, standing alone.

36. On the other hand, the contingencies upon which the Comsat/MCIL proposal is premised conflict on their face with the policy conditions adopted in the "Second Report" that bar consideration of the Comsat/A.T. & T. proposal based on their lease agreement and require Comsat to elect between operating solely as a carrier's carrier serving A.T. & T. and other carriers pursuant to tariffs or serving entities other than A.T. & T. as a "retail" and/or "wholesale" carrier ("Second Report," paragraphs 13–14, 22–23). Thus, the threshold question for present resolution is whether the Comsat/MCIL proposal constitutes such a significant change in circumstances as to substantially alleviate the concerns underlying those requirements and to warrant deletion or modification of such requirements upon reconsideration.

37. The nub of the dispute between the parties on this point seems to turn on the issue of the degree of potential Comsat influence over the restructured MCIL applicant. As previously indicated, the basic thrust of MCIL's position is that Comsat's minority participation in the new corporation poses a situation fundamentally different from its multipurpose application, because the corporation is so structured under the agreement as to preclude dominance or control by any one of the three owners and to reduce to a minimum any restraints or inhibitions that might flow from Comsat's corporate and business relationship with A.T. & T. or its roles in the Intelsat system. Those challenging this position contend principally that the agreement does not suffice to assure that Comsat would not in fact become the dominant partner because of its experience in Intelsat, financial resources and procurement powers, or as a result of future changes in the initial stock ownership pattern.

38. Upon considering the agreement in light of the contentions of the parties, we are persuaded that it constitutes a good faith endeavor by Comsat, MCI and Lockheed to structure an applicant in which all three could participate as equals, without placing any single owner in a position to control or dominate corporate or management decisions or depriving the corporation of flexibility to make future decisions on the basis of evolving circumstances. With respect to the provisions of the agreement relating to election of directors and voting on specified major matters and transactions between the corporation and a stockholder (agreement, section 7 and bylaws, articles III–V), we think that Comsat/MCIL have been reasonably successful in achieving independent management—that is, "independent" in the sense that of being not subject to control by any one stockholder without the substantial

[14] 47 U.S.C. 733.

[15] We are not, of course, in a position—prior to the processing of perfected applications—to make any determination as to whether the pending Comsat/A.T. & T. applications or any future applications incorporating the Comsat/MCIL proposal should be granted.

concurrence of both other stockholders or at least one other stockholder and most of the Class B directors.[16] While Comsat's voice might be more influential to some directors because of its experience in Intelsat and procurement powers, it could not join forces with Lockheed to compel action contrary to the views of MCI (or vice versa), unless it also succeeds in persuading at least three of the four Class B directors that such action is in the best interest of the corporation.

39. The aspect of the agreement giving rise to greater concern is the presently unknown nature of future management and/or stockholder decisions concerning financing and securities (new issuances, transfers and/or a public offering). Though Comsat, MCI, and Lockheed would each furnish preoperational capital in approximately equal amounts, the agreement leaves for future decision by the board of directors the plans for financing the system, including any security offering and mortgage or pledge of corporation property in excess of $100,000 (agreement, section 3; bylaws, Art. III, section 9(a)(iii)). Moreover, while Comsat, MCI, and Lockheed would each own one-third of the initial stock of the corporation (agreement, section 3), each such stockholder would have the preemptive right to subscribe for all or any part of its pro rata share of any new or additional securities issued by the corporation (agreement, section 4); the corporation and the stockholders would have successive options during a 2-year initial period to purchase the interest of a stockholder wishing to dispose of its equity or of a bankrupt or breaching stockholder (agreement, sections 5 and 6); and the duration of the agreement is only for 5 years or "until the day preceding the effective date of a registration statement under the Securities Act of 1933 relating to a public, underwritten offering of securities of the corporation (whether such offering is made by the corporation or by its stockholders, or both), whichever shall come first" (agreement, section 5(g)). As some parties point out, the agreement does not preclude the possibility of an enhanced Comsat role due to, for example, a management decision to obtain all or a disproportionate part of future financing from Comsat, or an increased Comsat ownership interest, or de facto control by Comsat in the event of a public offering.

40. Further, apart from the agreement, we see some basis for concern as to interlocking directorates and the possibility of conflicting fiduciary duties of directors. For example, MCI would probably disclose to the corporation's board of directors its long-range plans for utilizing terrestrial and satellite facilities and its marketing plans in the specialized field so that intelligent decisions could be made with respect to such matters as the location of earth stations, assignment of transponders and the breakdown of channels within transponders. Comsat's representatives on the corporation's board of directors who became privy to MCI's plans would, in turn, be required to report to Comsat's board of directors on which three representatives of A.T. & T. sit. Two of the present A.T. & T. nominees on the Comsat Board are active officials in A.T. & T., one being a vice president of A.T. & T. and president of the Long Lines Department, which would appear to be primarily charged with meeting potential MCI competition.[17] These corporate relationships give rise to the possibility that A.T. & T., through its representatives on the Comsat Board of Directors, would have some indirect influence on decisions of the Comsat/MCIL management or on decisions of the Comsat Board affecting the interests of Comsat/MCIL, as well as access to proprietary information of Comsat/MCIL and MCI.

41. In view of the foregoing uncertainties and potential conflicts of interest, we cannot conclude on the basis of the agreement alone that Comsat's role in the restructured corporation would actually be of such nature as to minimize any restraints that might flow from its corporate and business relationship with A.T. & T. However, it is not necessary to bar the Comsat/MCIL and Comsat/A.T. & T. proposals from further consideration on that ground,[18] for we can and will condition further implementation of those proposals upon the following requirements to safeguard the public interest.

42. First, since Comsat and MCIL have premised their request for approval of the presently proposed dual role by Comsat on the representation that Comsat would be a minority participant in the restructured MCIL Corp., we will hold the Comsat/MCIL applicant to that standard for so long as Comsat provides, or proposes to provide, domestic satellite service to A.T. & T. As a prerequisite to any authorization, the corporation will be required to show not only that it is financially qualified, but also that its financial plans are not in derogation of that standard, directly or indirectly, and that there have been no changes in ownership interest such as to affect the minority status of Comsat. Any grant will be upon condition that the corporation obtain prior written consent from the Commission, whether or not required by section 310(b) of the Communications Act, for any securities acquisition by the corporation or the stockholders pursuant to section 4 or section 5 of the agreement or any public offering that would increase directly or indirectly the ownership position of Comsat beyond 33⅓ percent or in any other way place it in a position where it could exercise de facto control.

43. Second, we will not grant any application for authorization under section 212 of the Communications Act to permit any person holding the position of officer or director in A.T. & T. to serve on the Comsat board of directors.[19] Since 1964 the Commission has approved, on an annual basis, applications for section 212 authorization of interlocking relationships between A.T. & T. and Comsat on the ground that the representatives nominated by A.T. & T. were experienced officials whose expertise would benefit Comsat.[19a] In addition to Comsat's present lack of need for such expert assistance ("Second Report," paragraph 14; 35 FCC 2d at 849), authorization of the Comsat/MCIL proposal would preclude us from finding that "neither public nor private interests will be adversely affected" by authorizing interlocking relationships between A.T. & T. and Comsat (section 212).

44. Third, we think it necessary to condition any approval of the Comsat/A.T. & T. lease arrangement upon further requirements to mitigate the potential conflict of interest. The foregoing condition would not suffice to preclude A.T. & T. from nominating to the Comsat Board of Directors other persons closely identified with A.T. & T.'s interests, such as former officers or directors or present or past employees of A.T. & T. Accordingly, the Comsat/A.T. & T. lease arrangement will be approved only upon condition that any members of the Comsat Board nominated by A.T. & T. shall be persons who do not have any present or past affiliation with A.T. & T.; and that Comsat submit for Commission approval prior to authorization, a statement of the procedures that the Comsat Board of Directors will follow to avoid any participation by A.T. & T. elected

[16] We are not persuaded by the argument of the RCA applicants that these provisions afford each of the three stockholders such a degree of veto power as to make some accommodation of private stockholder interests a prerequisite to the corporation's ability to act. The provision for 11 out of 16 director votes for major matters does not confer a veto power upon any one stockholder alone, though it requires a relatively high degree of unanimity among directors not elected by a particular stockholder for action contrary to the desires of that stockholder. See also, agreement, bylaws, articles IV and V.

[17] Another of A.T. & T.'s nominees on the Comsat Board of Directors is a vice president and general counsel of A.T. & T., and the third is a former vice chairman of the A.T. & T. Board of Directors.

[18] Contrary to the suggestion of Western Union, we will not defer the threshold policy questions for resolution in the course of processing and acting on the applications. It appears more equitable and in the public interest to set forth now for the guidance of all applicants the conditions to which any grant would be subject.

[19] This condition is consistent with the provisions of section 303 of the Communications Satellite Act of 1962, as amended in 1969 (47 U.S.C. 733). That Act does not require that members elected by A.T. & T. need be officers or directors of A.T. & T., or override provisions of section 212 of the Communications Act that are not inconsistent with the Satellite Act.

[19a] While the most recent authorization issued on April 14, 1972, by the staff under delegated authority was not specifically limited to 1 year, we do not construe that authorization as extending beyond the customary 1-year period.

members in matters involving the Comsat/MCIL domestic satellite venture or disclosure to such members of confidential aspects of the plans and operations of that venture. These requirements in combination with the requirements for divestiture of A.T. & T.'s stock in Comsat described in paragraphs 29–33, supra, will in our judgment protect the public interest. The Commission will study whether further actions are required in this matter.

45. In this connection, we note that Comsat has not sought reconsideration of the requirement of the "Second Report" that it form a separate corporation to engage in any domestic satellite venture whether or not entailing service to A.T. & T. (paragraph 26, 35 FCC 2d at 853). In light of the dual capacity in which Comsat now proposes to proceed, the Comsat/MCIL Corp. does not encompass the aspect of furnishing domestic satellite facilities for the use of A.T. & T. Moreover, the formation of a separate corporate subsidiary to engage in all domestic satellite activities of Comsat, including its participation in the Comsat/MCIL Corp., will assist in separating such activities from Comsat's role in Intelsat. Since such separate corporate subsidiary would not come within the provisions of section 303(a) of the Communications Satellite Act of 1962 relating to the nomination of directors by A.T. & T., we anticipate that the board of directors for this separate corporate subsidiary of Comsat will not include any representatives of A.T. & T.

46. Finally, in agreement with the position of Comsat, we reject the argument of various parties that additional safeguards are necessary to avoid the possibility that Lockheed would be overly subject to influence by Comsat because of the latter's proceurement powers for the Intelsat system and for the proposed Comsat/A.T. & T. system (see pars. 16–17, above). With respect to any procurement matter coming before the management of Comsat/MCIL the provisions of the agreement and bylaws relating to election of officers and voting afford a reasonably adequate assurance that the independent corporate interests of Lockheed and/or Comsat are unlikely to dictate management decisions contrary to the best interests of the corporation (see pars. 38–42 above). Insofar as procurement for the Intelsat system and the proposed Comsat/A.T. & T. system is concerned, we think that Intelsat and A.T. & T. are in the best position to protect their own interests.[39b] Significantly, Hughes, which has a record of being the predominant supplier of spacecraft to Intelsat, has not objected to the Comsat/MCIL proposal on this ground or urged that safeguards are necessary in order to afford it a realistic opportunity to compete for the procurement business of Comsat/A.T. & T. or other domestic satellite applicants.

47. In light of all of the foregoing, we conclude that the Comsat/MCIL proposal as conditioned herein constitutes a significantly different situation from that before us at the time of the "Second Report" and that the public interest does not now require that Comsat elect between participating in the Comsat/MCIL applicant or serving A.T. & T. We turn next to the related question of whether Comsat should be permitted to serve A.T. & T. on the basis contemplated by their lease agreement in the present circumstances.

b. *The Comsat/A.T. & T. lease agreement.* 48. The disallowance of the Comsat/A.T. & T. lease agreement in the "Second Report" was premised largely on the following considerations (paragraph 13, 35 FCC 2d at 848–849): Concern that Comsat would be unlikely to compete vigorously with A.T. & T. in the provision of specialized domestic services because A.T. & T. would be the principal source of the domestic revenues Comsat would seek to obtain; concern that the revenues from its contractual arrangement with A.T. & T. would give Comsat an extraordinary advantage and head-start over domestic satellite entrants seeking to compete with Comsat and with A.T. & T.'s terrestrial services; and concern that Comsat's expertise and facilities would not be available to the public and carriers other than A.T. & T. if Comsat elected to serve A.T. & T. (paragraph 24, 35 FCC 2d at 852–853).

49. To a significant extent these concerns have been ameliorated by the nature of the Comsat/MCIL proposal and the conditions attached above for further consideration of that proposal and the Comsat/A.T. & T. lease agreement. Thus, even assuming that should Comsat feel some constraint about competing vigorously with A.T. & T., it will not be in a position to preclude the directors selected by MCI and Lockheed and the Class B directors, who are not so constrained, from taking such action as they believe to be most conducive to successful operations by the corporation. Indeed, their predominant role and influence may encourage Comsat to adopt a more aggressive competitive stance than it would assume if it were solely responsible for a domestic satellite system offering specialized services in competition to A.T. & T.'s terrestrial offerings. Moreover, while Comsat's participation in the corporation and its overall financial position, including its revenues from the A.T. & T. lease agreement, may make it easier for the corporation to obtain equity or debt financing, it does not follow that the Comsat/MCIL system would be financed primarily or to any substantial degree out of revenues from A.T. & T. As MCIL points out, such revenues flow to Comsat and not to the Comsat/MCIL Corp. Even if Comsat should use revenues derived from A.T. & T. for a further capital investment in, or loan to, the corporation, the conditions specified in paragraphs 41–42 above would preclude authorization of any financial plan of the corporation that changes Comsat's presently proposed minority status, directly or indirectly, unless the Commission should find that the public interest will be served thereby in light of the circumstances then prevailing.

50. Acceptance of the Comsat/A.T. & T. lease agreement for further consideration would deprive other carriers of an opportunity to lease transponders on the same system from Comsat under a tariff offering, as developed in the "Second Report" (paragraphs 24–25; 35 FCC 2d at 852–853). However, the present Comsat/MCIL proposal and the proposal of American Satellite Corp., submitted on October 16, 1972, would, if authorized, increase the likelihood that such carriers will have other available options. Such carriers would also have the option of leasing transponder capacity in the Western Union System, if authorized, or that of any other carrier entrant offering this type of service. Comsat's expertise would be available to other carriers and to the public through the Comsat/MCIL system, if desired. In the present circumstances, we conclude that the public interest does not require that other carriers have access to the system used by A.T. & T. under a tariff offering by Comsat. However, the special conditions in the "Second Report" and in paragraphs 64–76 below require A.T. & T. to permit access to its facilities by other carriers, whether by lease or otherwise, for the purpose of service to Alaska, Hawaii, and Puerto Rico.

51. There remains the question of whether one common carrier should be permitted to provide space segment capacity or other domestic satellite system services and/or facilities to another common carrier on a nontariff basis. The "Second Report" did not raise any question about the Hughes/GTE applications on the ground that GTE was proposing to lease transponder capacity from a private entity on a nontariff basis. However, aside from the policy conditions relating to Comsat and A.T. & T., the "Second Report" adopted a general requirement that other common carriers authorized domestic satellite system facilities shall offer all services, incuding services and facilities to other carriers, pursuant to tariff schedules setting forth all terms and conditions relating to each class of offering ("Second Report," paragraph 31, 35 FCC 2d at 854–855). This requirement was deemed particularly essential for domestic satellite system common carrier licensees offering both "wholesale" and "retail" services (i.e., the provision of services and facilities to other carriers and the provision of end-to-end services to noncarrier customers) to insure that "other carriers leasing transponder or

[39b] As Comsat points out, procurement for Intelsat is governed by its procurement regulations and proposals for spacecraft procurement are evaluated not only by the manager but also by the interim committee and the technical subcommittee. Moreover, under the definitive arrangements Comsat will not have a veto power as a member of the board of governors. Further, it is subject to instructions from the U.S. Government insofar as its vote on the interim committee or the board of governors is concerned.

satellite system facilities are not burdened with any portion of the revenue requirements applicable to the supplying carrier's retail offerings". (id.)[20] It also constitutes an appropriate means of implementing the statutory requirements contained in sections 202(a) and 203(c) of the Communications Act.

52. The Comsat/A.T. & T. agreement presents a somewhat different situation in that the entire capacity of the proposed space segment facilities would be leased to A.T. & T. In view of our determination that the public interest does not require that Comsat offer service to other carriers on the same system in light of other available options,[21] the principal purpose of a tariff filing embodying the Comsat/A.T. & T. contractual terms would be to afford A.T. & T. the protections of sections 203–205 of the Communications Act. Since GTE would be permitted to forego these protections in the event that the Hughes/GTE proposal is authorized, we will accord A.T. & T. a similar option.[22] In other words, Comsat's provision of facilities and services to A.T. & T. pursuant to their lease agreement will be treated as a noncommon carrier activity not requiring a tariff filing.

53. Accordingly, in light of the changed circumstances now before us, the Comsat/A.T. & T. applications based on their lease agreement will be accepted for further consideration under the policy conditions of the "Second Report" as modified herein.

c. *The A.T. & T. and Comsat petitions for reconsideration.* 54. Having decided to accept the Comsat/MCIL and Comsat/A.T. & T. proposals for further consideration, for the reasons and under the conditions specified above, we find it unnecessary to reach the merits of those portions of the Comsat and A.T. & T. petitions that seek reconsideration of the disallowal of the Comsat/A.T. & T. lease agreement or of Comsat's request for reconsideration of the election requirement of the "Second Report."[23] Since the Comsat/MCIL proposal is a substitute for Comsat's multipurpose application, the latter application will be dismissed. In view of Comsat's minority role in the Comsat/MCIL Corporation, which substantially obviates the potential conflict of interest formerly posed by its multipurpose application vis-a-vis Comsat's responsibilities to the Intelsat system, we will not impose any general prohibition that would preclude the Comsat/MCIL Corporation from being authorized to own or operate domestic satellite facilities at any overseas point served by Intelsat facilities. However, like other applicants, the Comsat/MCIL applicant will be subject to our determinations as to conditions under which domestic satellite facilities to serve Alaska, Hawaii and/or Puerto Rico-Virgin Islands will be authorized.

II. Service To Alaska, Hawaii, and Puerto Rico-Virgin Islands

A. Pleadings of the Parties

1. The RCA Petition for Reconsideration

55. The "RCA applicants" have requested clarification or partial reconsideration of paragraphs 35–42 of the "Second Report" insofar as they relate to service to Alaska. RCA Alascom supports the fundamental policy that, upon the advent of domestic satellite service, Alaska (along with Hawaii and Puerto Rico), should be included in the uniform mileage rate pattern that now obtains for interstate message telephone service (MTT) in the contiguous States "with all that such approach implies in terms of nationwide cost averaging and equalizations for interstate rate making purposes" ("Second Report," paragraph 37). However, RCA Alascom urges that it should be permitted to interconnect with A.T. & T. in the contiguous States, in accordance with existing interconnection policy and practice,[24] and it should provide the facilities between Alaska and the contiguous States, either through use of the proposed system of the RCA applicants or through an appropriate ownership interest in the A.T. & T. system. RCA Alascom further urges that it should be the only carrier authorized to provide record services to Alaska, and that rate levels for such services should be the "lowest reasonable," rather than made comparable to mainland charges, since they would not derive any subsidy from the interstate MTT "pool" of revenues.

56. According to RCA Alascom, the most important specific issue in its Petition relates to the points at which it will interconnect with A.T. & T.'s network for MTT service. RCA Alascom claims that its continued right to provide the interstate service with interconnection in the contiguous States is the foundation of its entire ability to service Alaska, as well as essential to fulfillment of its existing commitments to improve and expand both interstate and intrastate service for Alaska at greatly reduced rates. In order to be able to continue to provide present services and to make major investments for intrastate service, RCA Alascom asserts that it must be permitted to make additional necessary investments in interstate facilities and to derive a reasonable rate of return on interstate service.

57. In this connection, RCA Alascom alleges that it faces an unusual and difficult situation. It points out that a very high percentage of its existing facilities are leased rather than owned, and rental expense does not contribute to a carrier's return or profit from its participation in the interstate MTT pool of revenues.[25] Rather, return or profit is related to the carrier's investment in facilities used to participate in the rendition of interstate MTT service, which currently constitutes about 80 percent of its total operating revenues, and intrastate service is currently provided below cost. The State of Alaska has a land area comprising some 586,000 square miles, a total population of only 302,000 persons, and few population centers of any substantial size.[26] RCA Alascom states:

> With intrastate routes of 1,000 miles or more leading to very small population centers, with an obligation to provide telephone service to 142 Indian and Eskimo villages at costs which greatly exceed the revenues than can ever be expected from them and with all of its other obligations to serve Alaska under conditions which make that service a high risk undertaking, RCA Alascom is wholly dependent upon interstate business and revenues, which constitute its life blood.

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[20] Although paragraph 31 of the Second Report is phrased in terms of "terrestrial carriers," our intent was not so narrow. That paragraph is hereby modified to delete the word "terrestrial" from the first and second sentences.

[21] While A.T. & T. may be required to permit other carriers to have access to its leased transponder capacity as a result of our policy determinations with respect to service to Alaska, Hawaii, and Puerto Rico, this requirement does not entail any arrangement between Comsat and such third parties or raise any question of possible cross-subsidy insofar as Comsat is concerned.

[22] This does not mean, of course, that we are abdicating our responsibility to assure that customers of A.T. & T. and/or GTE, and/or the RCA applicants, are not burdened with unreasonable costs. In the event that we should subsequently find in a rate making context that A.T. & T., or GTE, or the RCA applicants have not properly discharged their obligation to obtain and operate facilities in the most economical and efficient manner possible, any excess costs will not be included in any rate base, or charged to expense for rate purposes, but will be charged against surplus.

[23] Although Comsat requested oral argument in its petition for reconsideration, the pleadings of the parties afford an adequate basis for decision and that request is hereby denied.

[24] RCA Alascom relies on: The Alaska Communications Disposal Act, 40 U.S.C. 771 et seq.; its legislative history (e.g., S. Rept. No. 213 (pp. 8, 9–10) and H. Rept. No. 662 (p. 4), 90th Cong., 1st sess.; and "RCA Alaska Communications, Inc. et al.," 26 FCC 2d 466, 473–474 (1970). RCA Alascom states that acting in reliance on present interconnection practices and its authorizations from the FCC and the Alaska Public Utilities Commission to effectuate the Alaska Communications Disposal Act, it has already cut rates by approximately one-third and has spent more than $45 million of the $56 million it is committed to invest by 1974. It stands ready to invest millions more in domestic satellite system facilities if authorized to do so.

[25] RCA Alascom does not have any substantial ownership interest in local exchange facilities in Alaska used to provide the "local loop" portion of interstate service or intrastate toll service.

[26] We note that the 1970 census reflects the following with respect to larger population centers and census divisions (equivalent in Alaska to a county):

City	Population	Census division	Population	Land area square miles
Anchorage	48,081	Anchorage	126,333	927
Fairbanks	14,771	Fairbanks	45,864	7,074
Juneau	6,050	Juneau	13,556	1,286
Bethel	2,416	Bethel	7,767	19,642

58. While conceding that the existing interconnection practice for Alaska interstate service could be "maintained simply by affording RCA Alascom the right to an appropriate ownership interest in the A.T. & T. system," RCA Alascom urges that use of the proposed system of the RCA applicants would be preferable. It claims that unit costs per transponder on the RCA system would be less than on A.T. & T.'s system, that coverage of Alaska by means of the elliptical main beam proposed by the RCA applicants is superior to the type of spot beam coverage proposed by A.T. & T., and that interconnection at multiple earth station points in the contiguous States, as proposed by RCA, would do more to deemphasize distance as a cost factor than would A.T. & T.'s proposal for interconnection at a single gateway earth station on the west coast.[27] RCA Alascom further notes that, unlike the RCA proposal, the A.T. & T. system does not include any proposal for the use of 2 GHz frequencies for instructional television and intrastate radio service with small, low cost earth stations. Though claiming that there is no basis for an assumption that A.T. & T. has greater ability to load a high capacity domestic satellite system, RCA Alascom states that it "is prepared to proceed on the basis that the costs of its satellite facilities and earth station facilities in the contiguous States utilized to derive message telephone circuits and thus included in the calculation of its share of revenues from the interstate telephone 'pool' would be based on a loading substantially equal to that" of A.T. & T., and that the "RCA applicants and their parent corporation, rather than the rate paying public, would assume the risk involved in being unable to 'achieve a substantial initial loading.' "

2. Other Parties

59. In its petition for reconsideration, "A.T. & T." comments on the question of service to Alaska, Hawaii, and Puerto Rico, but does not expressly seek reconsideration of this portion of the "Second Report." A.T. & T. is of the view that these off-shore points should receive a high quality of service at rates supported by costs, with the ultimate objective that rate levels should be comparable to those provided on the mainland. However, A.T. & T. questions whether this objective should be realized simultaneously with the advent of domestic satellites, and states that rates for services between these points and the mainland should not be made uniform with the mainland rate structure by imposing on mainland users the burden (which it estimates to approximate $100 million) of subsidizing the allegedly higher costs of such service.[28] Moreover, a diversity of facilities, both cable and satellite, is allegedly essential for the protection of services. Both cable and satellite costs are declining dramatically, and over a reasonable period of time would permit rate reductions to levels that approach the mainland rate structure.

60. A.T. & T.'s opposition to RCA's petition may be summarized as follows: The Commission has correctly concluded that Alaska should receive domestic satellite MTT service as an integral part of a larger domestic system. A.T. & T. points out that it has previously offered the use of its system for this purpose. Making available to other carriers transponders in the A.T. & T. system for the purpose of furnishing domestic satellite service to Alaska in conjunction with such carriers is the appropriate means of providing efficient and economical service to Alaska. Duplicate construction and operation by RCA of earth stations in the contiguous States, whether or not there is a duplicate space segment, would result in the expenditure of substantial sums—ultimately to be borne by the interstate rate payers. RCA's cost arguments are allegedly infirm, because they are based on the assumption of a 100 percent fill of the satellites and do not take account of the costs of earth stations, connecting terrestrial facilities, and additional multiplex costs attributable to RCA's multiple earth station access proposal. There are diseconomies and inefficiencies in the RCA proposal, such as having multiple carriers access a single transponder from separate earth stations—which may require a reduction in circuit capacity by one-half or more. According to A.T. & T., directing many small circuit groups to several different earth stations, rather than one large group to a single earth station, reduces significantly the traffic handling capability of each individual circuit.

61. The "State of Hawaii" generally supports paragraphs 35–40 of the "Second Report" and urges that it is important to the people of Hawaii that implementation of this goal proceed without further delay. The State "views with considerable alarm the position taken by A.T. & T." in its petition for reconsideration, and urges the Commission to reject that position as invalid and not in the public interest. It urges that A.T. & T. has not defined the "inherent physical characteristics of service" which it alleges justify tariffs higher than mainland rates or the basis for its estimate for a $100 million burden on mainland rate payers if Hawaii, Alaska, and Puerto Rico are integrated in the mainland rate pattern. The State of Hawaii also urges that GTE and other system applicants propose a type of geographic integration that is superior in certain respects to that proposed by A.T. & T., for, whereas they propose access to multiple earth stations in the contiguous States, A.T. & T. is proposing to include Hawaii in point-to-point linkage with only one gateway earth station on the west coast, "thus perpetuating the 'umbilical cord' service" that Hawaii now has.

62. "The State of Alaska" also approves of the Commission's decision to require integration of the cost of interstate Alaska service into the nationwide rate structure, and requests firm adherence to that policy. However, it is concerned that the "Second Report" may operate to the State's disadvantage in the area of improved intrastate service insofar as it eliminated Comsat as a contender for service to Alaska via domestic satellite. The State values the presence in Alaska of the most experienced and technically proficient company now operating in the field of satellite communications, and the potential of competition as a spur to innovation. It asserts that there is room for competition in the provision of some services to Alaska, and requests that all generally authorized carriers willing to assume the financial risks of entry be permitted to serve Alaska, including the Comsat/MCIL applicant.

63. "WUI" urges that RCA Alascom should not be granted a monopoly position for all services to Alaska. It requests that capital investment positions in the facilities of domestic satellite systems authorized to serve Alaska, Hawaii, and Puerto Rico be made available to qualified entrants for the purpose of providing services other than MTT. In its petition for clarification of the "Second Report," WUI also argues that Western Union is precluded by section 222 of the Communications Act from operating between Hawaii or Puerto Rico and the mainland, and from owning or operating earth stations at these locations. WUI claims that services to such points are not "domestic" under law, and should be treated as "overseas" services in accordance with past practice.

B. DISCUSSION AND CONCLUSIONS

1. Service to Alaska, Hawaii, and Puerto Rico

64. RCA's request for clarification or partial reconsideration of the "Second Report" is premised on valid concerns insofar as it may be construed as contemplating that MTT service between Alaska and the contiguous States would be furnished by means of satellite facilities owned or operated by A.T. & T. We are constrained to agree with RCA Alascom that in acquiring the Alaska Communications System (ACS) pursuant to the Alaska Communications Disposal Act, it succeeded to the right and responsibility of its predecessor to provide the facilities

[27] The RCA applicants concede that, for the purpose of serving Alaska, access to satellite transponders through a single gateway earth station may result in a more efficient utilization of transponder capacity than would be achieved through access by multiple earth stations. However, in their reply comments the RCA applicants outline an approach for handling traffic, which they allege would minimize the difference between the two methods insofar as efficient use of transponder capacity is concerned. The RCA applicants state that they expect to file an amendment to their applications incorporating this approach.

[28] A.T. & T. is supported in this position by All America Cables and Radio, Inc., and ITT World Communications, Inc.

for the transmission of MTT traffic between Alaska and the contiguous States. We acknowledged RCA Alascom's entitlement to perform this service in "RCA Alaska Communications, Inc. et al.," 26 FCC 2d 466, 473–474 (1970). Thus, we recognized the importance and desirability of giving RCA Alascom "every legitimate opportunity to improve and expand interstate communications between Alaska and the lower 48 States." Hence, we stressed that we would not adhere to the practices applicable to overseas MTT service under which mainland carriers and their correspondents at the overseas locations interconnect at the satellite. As we indicated in that decision, RCA Alascom's offer, accepted by the Government, proposed to succeed to the interstate operations of ACS and anticipated that, regardless of the mode of communication it may be authorized to engage in, the interconnection practices previously followed by ACS would apply. ACS's practice was to interconnect with A.T. & T.'s domestic system at a gateway in or at the boundaries of the contiguous States and not at a midpoint between Alaska and the lower 48 States.

65. While the Commission qualified its action in the aforementioned proceedings as not being controlling of matters that may come before us in the future, we believe that the considerations which underpinned our ruling at that time are equally relevant to a resolution of the questions raised by RCA Alascom's instant petition. In other words, it is our view that in the interest of assuring that RCA Alascom shall have a bona fide opportunity to establish and maintain a viable financial condition required to discharge its obligations with respect to the development and improvement of services, RCA Alascom should have reasonable access to the revenues and earnings that may derive from interstate MTT operations. Accordingly, the policies formulated herein should accord to RCA Alascom, to the extent consistent with the public interest in efficient and economic service, appropriate responsibility for the operations involved in the rendition of interstate MTT service between Alaska and the lower 48 States.

66. It is our opinion that this objective can be realized in a manner consistent with the other objectives set forth in our "Second Report," particularly that Alaska shall be integrated into the uniform mileage rate pattern that now obtains for the contiguous States. However, we are not in a position to conclude that these objectives will be met by authorizing, at this time, the provision of interstate MTT service to Alaska on independent satellite system facilities entirely owned by the RCA applicants. We recognize that the proposed system of the RCA applicants may offer some technical advantages (e.g., the use of an elliptical main beam covering the contiguous States and Alaska and the use of 2 GHz frequencies in addition to 4 and 6 GHz) which might benefit the State of Alaska with respect to such services as interstate television program transmission for reception at less expensive earth stations such as might be used by a community and for intrastate instructional television and radio service to "bush" communities.

67. There are, however, a number of uncertainties which we are unable to resolve on the basis of the record before us as to whether interstate MTT service to Alaska as proposed by the RCA applicants can be provided either as efficiently, or more efficiently and economically, than would be possible by reliance on the A.T. & T. system proposal. For example, it is not clear that the proposed RCA system would be implemented as promptly as the A.T. & T. system which is premised largely on developed technology whereas RCA's proposal is premised on largely undemonstrated technology. Nor is it clear that the RCA proposed system would be likely to achieve a level of traffic loading or fill sufficient to make a cost per unit of MTT service comparable to or more favorable than the unit costs derived from a domestic satellite system, such as proposed by A.T. & T., integrated into the nationwide MTT terrestrial network. In this connection, the record does not provide an adequate basis for evaluating the effects of RCA's proposed operation of multiple earth stations in the contiguous States on the efficient use of satellite transponder circuit capacity in the rendition of MTT service or the extent to which additional multiplex costs will be generated by RCA's multiple earth station access proposal.

68. The foregoing is not to be construed as foreclosing our consideration of a future application by the RCA applicants for authorization to transfer Alaskan service, including MTT, to the RCA system in the event that this system is implemented.[*] In this connection, we also take official notice that the RCA applicants are negotiating for the use of the Canadian Telsat satellite system as an interim measure for its provision of MTT services between Alaska and its own earth stations in the contiguous States. However, our authorization of either of these systems must be predicated upon a more convincing showing than has thus far been made that the cost of using such facilities for interstate MTT service to Alaska would be less than or approximately equivalent to the use of the domestic satellite system facilities of A.T. & T. as discussed in paragraphs 65–66 above.

[*] Contrary to the construction of the RCA applicants, the Second Report does not require that MTT service to Alaska be provided exclusively on domestic satellite facilities or bar the use of alternative facilities for diversity purposes. We are concerned that the nationwide MTT and other interstate services not be burdened with costs that are greater than necessary in order to integrate Alaska into domestic rate patterns, and that full advantage be taken of any cost savings that can be derived from the use of domestic satellite facilities. However, the extent to which domestic satellites should be utilized is a matter the RCA applicants can address in their application to acquire circuit capacity in the satellite system facilities of A.T. & T., and will be resolved in that context.

69. It is our view that until such showing is made by the RCA applicants, we shall require that A.T. & T. extend to the RCA applicants appropriate access, by lease or otherwise, to the circuit capacity in the A.T. & T. facilities involved in serving Alaska. We shall therefore condition any authorization of satellite and earth station facilities issued to A.T. & T. accordingly. Any such arrangement will, of course, be subject to prior approval by this Commission.

70. By such arrangements, the RCA carriers, rather than A.T. & T., will be responsible for the costs associated with that portion of the satellite circuit facilities involved in providing MTT service between Alaska and those locations in the contiguous States where such facilities interconnect with the terrestrial MTT network of A.T. & T. In this context, we perceive no cost or other detriment to the interest of the general public in the availability of efficient and economic MTT service. Nor do we perceive any reason why such arrangements should thwart our policy objective of promoting the integration of Alaska in the uniform mileage rate pattern as discussed in paragraphs 35–40 of the "Second Report."

71. From a cost of service standpoint, there should be no significant difference to the total MTT service depending upon how cost responsibility for this increment of satellite circuit capacity is arranged. Although as a result of integrating Alaska into the interstate MTT uniform rate schedule, the costs related to such facilities may, to some extent, be subsidized by the interstate nationwide MTT pool of revenues, the total cost of nationwide MTT will not be significantly different whether A.T. & T. or RCA Alascom is responsible for those costs. However, the arrangement is significant in terms of maintaining RCA Alascom's established role and responsibility as the supplier of interstate service between Alaska and the contiguous States.

72. We do not here resolve the question of whether service to Alaska and/or Hawaii (in the event of a determination that the A.T. & T. rather than the GTE system should be utilized for MTT service to Hawaii) should be through one gateway earth station, as proposed by A.T. & T., or through multiple earth stations, as proposed by GTE and the RCA applicants and as urged by the State of Hawaii. Our policy objective is that service between Alaska, Hawaii, and Puerto Rico and all mainland points shall be provided at rates and on terms comparable to those obtaining within the contiguous States and at the lowest possible cost. It is anticipated that A.T. & T. and those carriers affected will work together in an effort to propose a mutually satisfactory solution, for the Commission's approval, which will best accomplish this objective considering all pertinent factors. In the event that they are unable to reach agreement, the applicants can address this matter in their application for authority to acquire circuit capacity in the A.T. & T. system facilities. A.T. & T. will also be afforded an opportunity to submit a showing in support of

its position, as will the State of Hawaii and carriers now serving that State in the event of a determination that the GTE system should not be utilized for MTT service to Hawaii. Our decision as to what method would be less costly (all relevant factors considered) and should therefore be employed, will be made after consideration of such submissions.

73. However, we hereby reaffirm the policy determinations in paragraphs 35–38 and 40–41 of the "Second Report" (35 FCC 2d at 856–859) that rates for interstate services to Alaska, Hawaii, and Puerto Rico shall not be higher because one or the other method is authorized, and that the advent of domestic satellite service will be accompanied by the integration of all interstate services between the mainland and Alaska, Hawaii, and Puerto Rico into an enlarged domestic rate pattern. As specified in paragraphs 37–38, the timetable for accomplishing this and the question of whether any deviations should be permitted will be determined after consideration of the specific proposals for revised rates and supporting showings to be submitted by the affected carriers for Commission approval no later than 6 months after the issuance of authorizations for the system or systems to serve these points. We will at that time determine whether any further procedures are necessary and, if so, of what nature.

74. We also reaffirm our decision that carriers now providing services other than MTT to Hawaii, Alaska, and Puerto Rico shall be afforded appropriate access to the A.T. & T. system (and/or GTE system) and to the earth stations in Hawaii, Alaska, and Puerto Rico used for the provision of interstate MTT service (paragraphs 38 and 40 of the "Second Report"). While this requirement pertains only to carriers now engaged in providing non-MTT services to these points, we do not foreclose consideration of an application by another carrier for authority to acquire a similar right of access to such facilities to provide non-MTT services upon a showing that the public interest would be served thereby (see paragraph 54 above). The question of whether such "appropriate access" should be afforded pursuant to a tariff offering by the supplying carrier or through a proportionate investment or rental interest in the facilities of the supplying carrier will be determined upon consideration of applications for authority to obtain such access and the responsive pleadings of the supplying carrier.

75. As indicated in paragraphs 38 and 40 of the "Second Report" such right of access to the satellite system facilities used for interstate MTT is designed to facilitate implementation of our goal that all interstate services to these three points shall be integrated into domestic rate patterns. It is also predicated on our belief that the public in Alaska, Hawaii, and Puerto Rico should have an opportunity to take advantage of the potential cost savings in obtaining specialized services on the same satellite system facilities used for MTT without the necessity for duplicate earth station and space segment facilities. However, as stated in the "Second Report", we do not preclude the authorization of independent domestic satellite system facilities to provide specialized interstate services to these points. In view of our policy determinations above with respect to the Comsat/MCIL proposal, and upon consideration of the arguments of the RCA applicants and the State of Alaska, we will consider on their merits applications from the Comsat/MCIL applicant or any other eligible applicant desiring to provide specialized interstate and/or intrastate services to these points, including Alaska, by means of independent satellite system facilities owned by such applicants.[30] We do not regard this policy as unduly prejudicial to RCA Alascom, since no duplicate facilities will be authorized for the provision of the interstate MTT service which concededly constitutes the bulk of the interstate business and revenues that are its "life blood." Furthermore, such applicants will be required to show with specificity how a grant of their application will serve the public interest and how they will provide tangible benefits in the form of new and better service, lower rates, etc. We will also consider the impact of a grant on the ability of RCA Alascom to discharge its responsibility to Alaska.

76. It is not practicable, however, to authorize all of the pending system applicants to serve Alaska, Hawaii, and Puerto Rico or to adopt a licensing standard that makes the desire of a qualified applicant to serve one or more of these points the sole controlling consideration. There are only seven available orbital locations (at 3° separations) capable of viewing all 50 States at 4 and 6 GHz frequencies. While the system or systems authorized to provide MTT service to Alaska, Hawaii, and Puerto Rico will not utilize all of these locations, we will not authorize use of the remaining locations for 4 and 6 GHz operations, in whole or in part, unless in addition to meeting the standard set forth above the applicant shows that it will provide an additional service which should be made available to all 50 States on the same system (e.g., interstate television program transmission) or that it will provide some service on terms and conditions of special benefit to the States of Alaska and/or Hawaii. Service at 4 and 6 GHz frequencies can be provided to the contiguous States and Puerto Rico by means of the 15 more easterly orbital locations that are available. The foregoing requirement will not apply to applicants proposing to use only frequencies other than 4 and 6 GHz, or to the use of an orbital location west of those capable of viewing all 50 States for operations at 4 and 6 GHz (and other frequencies allocated for communications satellite use) to provide service to Alaska and/or Hawaii and to such of the contiguous States as can be served by that orbital location.[31]

2. WUI Petition for Clarification[32]

77. Finally, in the case of Western Union which proposes to provide, among other services, network program transmission service, message, Mailgram and other services to Hawaii and Alaska,[33] there is an unresolved question as to whether and to what extent Western Union is barred by Section 222 of the Communications Act from furnishing any such services between the contiguous States and Hawaii. This question is now the subject of active consideration by the Commission pursuant to a petition for reconsideration filed by Western Union against an action taken by the Chief, Common Carrier Bureau which rejected an application of Western Union for authority to lease satellite channels from Comsat in the Intelsat system in order to furnish Mailgram service between the U.S. Mainland and Hawaii. The Commission expects to resolve this question very shortly and will thereby determine the scope of permissible operations between these points for which Western Union may seek authorization.

78. Pending such determination, we will withold processing of Western Union's application for authority to construct an earth station in Hawaii. We stress, however, that our assessment of an application by Western Union or any other applicant for an earth station in either Hawaii or Alaska must take account of the limited market in those States for non-MTT services and the effects thereof on the economic viability of satellite service, particularly in view of the relatively limited markets and the requirements we are imposing with respect to the integration of rates and charges for MTT services into the MTT rate schedule applicable within the contiguous States.

III. Interconnection

79. Our "Second Report" enunciated the policy objective of

> * * * assuring that all carriers providing retail interstate satellite services (whether or not affiliated with Bell System companies) have access at nondiscriminatory terms and conditions to local loop and interexchange

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[30] In the case of Alaska, we do not exclude the possibility that intrastate MTT service may be provided on domestic satellite facilities not used for interstate MTT, upon a showing that the public interest would be best served by such an authorization. As stated in the Second Report, A.T. & T. will be required to afford access to its transponder capacity for the purpose of intra-Alaska service, if desired.

[31] See, Second Report, paragraph 42, 35 FCC 2d at 859; memorandum opinion and order, paragraph 152, 34 FCC 2d at 72–73; Public Notice issued on Nov. 9, 1972 (FCC 72–992).

[32] See paragraph 63 above.

[33] See, Second Report, paragraph 3 (35 FCC 2d at 845); memorandum opinion and order, paragraph 10 (34 FCC 2d at 14); see also, Western Union's amended application filed on July 25, 1972. In this connection, we do not construe section 222 of the Communications Act as precluding Western Union from owning or operating earth stations in the State of Hawaii for intrastate service.

facilities as necessary for the purpose of originating and terminating such interstate services to their customers (paragraph 34, 35 FCC 2d at 856).

In furtherance of this policy, we stated that we would require all terrestrial carriers seeking domestic satellite system authorizations to submit, for Commission approval, prior to action on their applications, a description of the kinds of interconnection arrangements they will make available to other satellite system and/or earth station licensees.

A. PLEADINGS OF THE PARTIES

80. In its petition for reconsideration of the "Second Report" A.T. & T. urges that the requirement in paragraph 34 (see also, paragraph 2 (f) above) is unnecessary and burdensome, and would unduly delay authorizations for domestic satellite system facilities. It sets forth its belief that a preferable course would be that followed by the Commission in "Specialized Common Carrier Services" (29 FCC 2d at 940), primarily wherein we indicated our reliance on the commitments of existing carriers to negotate interconnection arrangements with new carrier entrants on just, reasonable and nondiscriminatory terms. A.T. & T. further states that it sees no factual support in the record of this proceeding to justify the imposition of the condition adopted by the Commission in the "Second Report."

81. Other parties commenting in response to this portion of A.T. & T.'s petition (e.g., "General Electric Co." (GE) and "Fairchild Industries, Inc." Fairchild)) have taken positions contrary to that of A.T. & T. By letter dated November 22, 1972 "Western Union International" (WUI) also submitted an untimely pleading in support of the views of GE and Fairchild.[34]

B. DISCUSSION AND CONCLUSIONS

82. A.T. & T. has failed to demonstrate how or why the requirement for nondiscriminatory access to local loops and interexchange facilities controlled by A.T. & T. and its operating subsidiaries is either unnecessary or budensome. The entire thrust of our policy of encouraging multiple entities to provide service via domestic satellite facilities to meet current and emerging needs could be vitiated if such access were to be denied or unduly delayed. Furthermore, experience with respect to international communications, particularly insofar as the use of local loops and interexchange facilities are concerned for access between the offices of international carriers and earth stations which communicate with the Intelsat satellites, refutes A.T. & T.'s contentions. During the many years when the required facilities were supplied to the international carriers by A.T. & T. pursuant to Commmission order for nondiscriminatory access, we have not been made aware of any difficulties or burdens whatsoever that these requirements imposed on A.T. & T.

83. Accordingly, we perceive no reason to reconsider, at this time, the policies and conditions set forth in the "Second Report" concerning interconnection. We simply reiterate that it is our intent and requirement that the terrestrial carriers who are applicants for satellite and/or earth station authorization comply fully with these policies and conditions. In this connection we stress that we will not accept as compliance a token statement of good intentions to negotiate appropriate terms and conditions. We have already indicated, with clarity, the type of objectives we believe can guide the carriers in formualting a specific framework of standards within which they will make their facilities available to other Commission licensees.

84. The availability of timely and effective interconnection arrangements may well, in many cases, be vital to the meaningful implementation of authorizations issued in the public interest in furtherance of the Commission's policies herein. We therefore intend to examine thoroughly the showings made by existing carriers in their applications for satellite facilities pursuant to the above cited provisions of our "Second Report."[35] In the event that such showings fall short of satisfying us that interconnection will be offered in a timely manner by existing carriers to other licensees on reasonable and nondiscriminatory terms and conditions, we will withhold the issuance of authorizations to the existing carriers and will take whatever affirmative actions as may be required for the prompt and effective implementation of our interconnection policies.

IV. TERMS OF ACCESS BY PUBLIC BROADCASTING AND OTHER EDUCATIONAL INTERESTS

85. As indicated in paragraph 3 above, our "Second Report" stated the Commission's willingness to entertain specific proposals by carriers or users for the prescription of preferential rate classifications, but declined to initiate any requirement as to common carriers or to enunciate any general statement of policy at this time (paragraph 43, 35 FCC 2d at 859).

A. PLEADINGS OF THE PARTIES

86. In its petition for partial reconsideration of the "Second Report," the NAEB urges us to set forth more specific policy objectives now and to require, rather than invite, rate proposals from all carrier applicants for domestic satellite system facilities. The position of NAEB is supported by the "Corporation for Public Broadcasting" (CPB) and the "Public Broadcasting Service" (PBS). In their comments filed on October 30, 1972, CPB and PBS stated that they would have no objection to Commission approval of the proposed Comsat/MCIL joint venture if that corporation should adhere to the commitment in the pending MCIL application as to service to educational interests. However, in the event that Comsat/MCIL Corp. has different views, CPB and PBS request that the corporation be required to state their position and that CPB and PBS be afforded an opportunity to submit specific comments bearing on this matter.

B. DISCUSSION AND CONCLUSIONS

87. We have carefully considered the requests of NAEB, CPB, and PBS that we specify policy objectives, rather than simply invite rate proposals from all carrier applicants. However, we are of the opinion that there are ample safeguards and statutory guidelines and policies to promote, in a timely fashion, the interests of educational broadcasters and other educational users in preferential rates. We will, of course, welcome a showing by all applicants as to the terms and conditions upon which they will make their services available to public broadcasting and educational interests. We recognize, nevertheless, that it may well be premature to expect applicants, several years in advance of their operational date, to have sufficient cost and other information available to set forth their rate proposals with specificity. It was based on the same considerations that the Commission indicated in the "Second Report" that it is not in a position at this time to enunciate any general statement of policy beyond that indicated in the analysis and conclusions of the staff recommendation ("Memorandum Opinion and Order," paragraphs 153–162, 34 FCC 2d at 73–76) and our statement in paragraph 43 of the "Second Report" (35 FCC 2d at 859).

88. Concerning the request that the Comsat/MCIL joint venture be required to adhere to the commitments made by MCIL in its pending application, we do not feel that we would be justified in holding the new applicant to any greater obligation or standard than we have laid down for all other carrier applicants to follow in the matter of free or reduced rate service for educational interests.

V. THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

89. The Commission did not treat the question of the applicability of the National Environmental Policy Act of 1969 (NEPA)[36] to the policy objectives adopted in our "Second Report," although the Network Project was granted leave to participate in the oral argument held in this proceeding on May 1–2, 1972, and raised this question in its oral presentation. Since the issuance of the "Second Report" we have instituted a rule making proceeding (Docket No. 19555) looking toward the adoption of rules in this area which are designed to govern our action on applications for authorization for construction and operation of the various types of radio, cable and wire facilities, including communications satellites and earth stations that are subject to our jurisdiction. Although that proceeding is still pending before us, we are applying the proposed rules to all such applications.

[34] WUI's letter of Nov. 22 is hereby accepted for our consideration.

[35] See also, Public Notice issued on Nov. 9, 1972 (FCC 72-992).

[36] 42 U.S.C. sec. 4331 et seq.

A. PLEADINGS OF THE PARTIES

90. In its petition for reconsideration of the "Second Report," the "Network Project" asserts principally that the "Second Report" is in contravention of the NEPA in the following respects:

(a) In the "Second Report" the Commission did not employ a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts, as required by section 4332(2)(A) of the NEPA, which is applicable to this proceeding since the earth-transmitting and microwave relay stations to be employed in a domestic satellite system would emit microwave radiation which may have an adverse impact on man's environment;

(b) The Commission did not identify and develop methods and procedures, in consultation with the Council on Environmental Quality, in order to insure that presently unquantified environmental amenities and values, regarding the imposition of such microwave radiation, will be given appropriate consideration in the Commission's resolution of this proceeding along with the economic and technical considerations, as required by section 4332(B) of the NEPA;

(c) The Commission did not include a detailed statement discussing such matters as the environmental impact on, and possible alternatives to, the establishment of a domestic satellite system, as required by section 4332(2)(C) of the NEPA, which is applicable to this proceeding since, in light of such microwave radiation, a policy looking toward the potential establishment of multiple domestic satellite systems is a major Federal action significantly affecting the quality of the human environment.

(d) The Commission did not study, develop, or describe appropriate alternatives to the recommended courses of action made in the 1970 report and order in Docket No. 16495, its staff recommendation, or in the "Second Report" as required by section 4332(D) of the NEPA, which is applicable to this proceeding because the establishment of a policy looking toward the authorization of domestic satellite systems involves unresolved conflicts concerning alternative uses of available resources; and

(e) The Commission did not initiate and utilize ecological information in the planning and development of domestic satellite systems, as required by section 4332(2)(G) of the NEPA, which is applicable to this proceeding since the establishment of a policy looking toward authorization of such systems constitutes a resource-oriented project.

91. In support of the foregoing assertions, the Network Project relies on scientific literature expressing concern regarding the potential physiological and behavioral dangers posed to man by low intensity, nonionizing microwave radiation.[37] As legal authority for its position the Network Project cites: "Calvert Cliffs' Coordinating Committee v. A.E.C.," 449 F. 2d 1109, 1123–4 (C.A.D.C. 1971); "WMOZ, Inc. v. F.C.C.," 344 F. 2d 197 (C.A.D.C. 1965); Banzhaf v. F.C.C., 405 F. 2d 1082, 1096–7 (C.A.D.C. 1968), "cert. den. sub nom. Tobacco Institute v. F.C.C.," 396 U.S. 842 (1969); "National Helium Corp. v. Morton," 455 F. 2d 650, 654–5 (C.A. 10 1971); "Ely v. Velde," 451 F. 2d 1130, 1138 (C.A. 4 (1971)). For the Network Project's arguments in support in its position, see pages 14–27 of its petition for reconsideration of the "Second Report," the affidavit attached to the petition, and its subsequently filed errata. By way of relief, the Network Project requests the Commission to rescind the "Second Report" and to remand this proceeding to the staff, so that our staff can prepare a detailed draft environmental impact statement which could be subject to ongoing review and reconsideration through the agency review process.

92. In opposition to the Network Project's petition, "MCIL" asserts that it has raised a highly novel question with respect to the Commission's compliance with NEPA. MCIL argues that the Network Project's concern is premised largely on a study presented to OTP by ERMAC (see footnote 37 above), which recommended a $63 million research program with respect to the biological effects of nonionizing electromagnetic radiation; and that the Network Project is requesting us "to undertake the type of thorough study recommended in the ERMAC Report." MCIL points to statements made by a member of our staff at the oral argument on May 2, 1972 (see transcript, pp. 393–395) and asserts that the pleading of the Network Project (as well as its supporting affidavit) does not allege any actual harm, but rather states that there is no assurance that human beings would be reasonably safe if authorizations implementing the policy objectives of the "Second Report" were to be issued. MCIL also takes issue with the scientific literature cited by the Network Project (see footnote 37 above), and urges that any problem relating to terrestrial radio radiation is not limited to the authorization of domestic satellite facilities but rather concerns all radio authorizations granted by this Commission—particularly those for television broadcast stations. MCIL asserts that it would be irresponsible and contrary to the public interest to halt all radio licensing actions, "pending long research programs to fill in remote lacunae in our present state of scientific knowledge." It also argues that the legal authorities cited by the Network Project deal with "very real environmental problems, not mere conjections about unknown laws of nature."[38]

93. In reply to MCIL's opposition, the Network Project takes issue with the arguments briefly summarized above, and concludes its reply statement as follows (pp. 7–8):

> In conclusion, the number of research conclusions criticized by the single author cited by MCI-Lockheed underscores the substantiality of scientific opinion supportive of the position that low-level radiation bears the potential for significantly affecting the quality of the human environment. To the extent that definitive evidence as to the consequences of such radiation is lacking, the presence of "known" consequences or of "answers" to questions surrounding the effects of such radiation is not a prerequisite to the Commission's obligation to prepare an environmental impact statement, and the substance of the impact statement, required by section 102(2)(C) of NEPA, 42 U.S.C. sec. 4332(2)(C), can and should be tailored accordingly. Aside from the preparation of an environmental impact statement, the consideration, utilization, and study—on the record—of environmental factors and information remain as required elements of this proceeding, pursuant to sections 102 (A), (B), (D), and (G) of NEPA * * *.

B. DISCUSSION AND CONCLUSIONS

94. Upon consideration of the pleadings of the parties and the views of our staff, we have determined to require all applicants for earth stations and satellite facilities to make a satisfactory showing that their operations will comply with

[37] The Network Project cites, inter alia: Michaelson, "Human Exposure to Nonionizing Radian Energy—Potential Hazards and Safety Standards," 60 Proceedings of the IEEE, pages 389, 390 (Apr. 1972); Bowers and Frey, "Technology Assessment and Microwave Diodes," Scientific American, pages 13, 21 (Feb. 1972); a standard adopted by the Department of Labor pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. 657 (36 FR 10466, 10522–3 (1971)); A. H. Frey, "Human Auditory System Response to Modulated Electromagnetic Energy," 17 J. Appl. Physiol. pages 689–692 (1962); R. L. Carpenter, "Studies on the Effects of 2450 Mc Radiation on the Eye of the Rabbit," Proceedings of the Third Annual Tri-Service Conference Biological Hazards of Microwave Radiating Equipments (University of California, Berkeley), pages 279–290 (1959); A. F. Frey, "Biological Function as Influenced by Low-Power Modulated RF Energy," IEEE Transactions on Microwave Theory and Techniques, Vol. MTT–19 (Feb. 1971), pages 153–164; and (concerning direct and indirect effects on the central nervous system of man) Yu. A. Kholodov, "The Effect of an Electromagnetic Field on the Central Nervous System," 4 Priroda (U.S.S.R.), pages 104–105, Library of Congress, ATD P 65–68, FTD–TT 62–1107; Yu. A. Kholodov, "The Effect of Electromagnetic and Magnetic Fields on the Central Nervous System," NASA Technical Translation, TTF–465, Washington, D.C. 1967; and a Program for Control of Electromagnetic Pollution of the Environment: The Assessment of Biological Hazards of Nonionizing Electromagnetic Radiation, pages 2, 5, and 9 submitted to the Office of Telecommunications Policy (OTP) by the Electromagnetic Radiation Management Advisory Council (ERMAC).

[38] See pages 9–12 of MCIL's opposition.

governmentally prescribed standards for the protection of employees and the general public against excess levels of nonionizing radiation. In this regard we have reference to the standards promulgated by the Department of Labor pursuant to the Occupational Safety and Health Act of 1970, giving maximum levels of continuous exposure of employees. We shall require each applicant for earth station and satellite facilities to make a full showing of the measures he has taken to comply with these standards. The Occupational Safety and Health Act of 1970, governing levels of continuous exposure for employees covered by the Act, specifies a maximum of ten milliwatts per square centimeter of area (10 mw./cm.^{2}) averaged over any 6-minute period. These levels derive from Standard C95.1 of the American National Standards Institute (ANSI). Essentially these same levels have been adopted by the three military services.

95. We will expect applicants to conduct studies to predict radiation levels in and around earth stations and their associated terrestrial facilities. The results of such studies shall be submitted to the FCC as part of the appropriate application. Licensees will also be required to conduct surveys at intervals to be specified in our authorizations. Such surveys will be conducted in and around earth stations and their associated terrestrial facilities to determine levels of radiation. All licensees will also be required to identify areas having levels above 10 mw./cm.^{2} Such areas shall be prominently posted with appropriate warnings. As any additional evidence becomes available, which would raise further questions with respect to adverse effects of radiation and indicate a reasonable probability of damage to the quality of the environment, we will promptly take such action as is necessary to mitigate and obviate the dangers of which we are made aware. In this connection, applicants for satellite facilities will be subject to any other applicable requirements of the proposed environmental protection rules now being considered in Docket 19555, including any revisions of such rules as finally promulgated therein by the Commission. It is, of course, also our intention to comply fully with the requirements of NEPA in the handling of applications for authority to use the radio spectrum and to coordinate our efforts with those other branches of the Federal Government which are concerned with environmental matters.

VI. Miscellaneous

96. With respect to various other requests made in pleadings of parties to Docket No. 16495, our views are as follows: First, in light of our resolution of the policy issues in the Second Report, as modified herein, we are of the opinion that any remaining questions raised by the petition of the Network Project (p. 30), that have not previously been treated in this proceeding, should be appropriately considered in connection with the processing of the applications. Second, the pleading filed by WUI on September 22, 1972, and supported by Datran, which suggested a possible solution to certain of the policy questions determined in this proceeding, is hereby dismissed as moot. And, finally, the request for licensing policy filed by the RCA applicants on September 26, 1972, will be treated as a petition for rule making and placed on public notice in accordance with the Commission's usual procedures.

97. Finally, we have taken note that various United States entities have been exploring the possible use of the Canadian Telsat System until such time as domestically owned space segment facilities are available and operational. In fact, two applicants for domestic common carrier satellite authorizations have recently entered into agreements with Telsat of Canada for the lease of transponder capacity in the Telsat system, subject to obtaining this Commission's authorization. Implementation of these arrangements would, of course, require appropriate authorizations by this Commission since such arrangements involve the construction and operation of earth stations in the United States. We are now prepared to state definitively what our policies will be with respect to the use of the Telsat system for the purposes contemplated by either carriers or noncarriers. The use of the Telsat system for purely domestic communications purposes is not barred or inhibited by any international agreement to which the United States is signatory. However, each specific proposal involving the use of Telsat of Canada will be examined for its justification in terms of all applicable statutory requirements and the policies set forth herein at such time as we are presented with implementing applications for authorization.

VII. Order

98. In light of all of the foregoing: *It is hereby ordered*, Pursuant to sections 1, 2, 3, 4 (i) and (j), 201, 202, 203, 212, 214, 218, 219, 220, 301, 303, 307–309, 310 (b), 319, 396, 403, and 605 of the Communications Act of 1934, and sections 102, 201(c), and 303–304 of the Communications Satellite Act of 1962, as amended, that:

A. The requests made by the various parties to this proceeding in pleadings filed since the "Second Report" are granted to the extent reflected herein and are otherwise denied.

B. This proceeding is terminated.

(Secs. 1–4, 201–203, 212, 214, 218–220, 301, 303, 307–310, 319, 403, 605, 48 Stat., as amended, 1065–1066, 1070, 1074, 1075, 1077, 1078, 1081–1086, 1089, 1094, 1103; sec. 396, 81 Stat. 368, as amended, secs. 102–201, 303, 304, 76 Stat., 419, 421, 423, 424; 47 U.S.C. 151–154, 201–203, 212, 214, 218–220, 301, 303, 307–310, 319, 396, 403, 605, 701, 721, 733, 734)

Adopted: December 21, 1972.

Released: December 22, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[*]

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

[FR Doc.73-515 Filed 1-9-73;8:45 am]

[Docket No. 19598]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Certain Cities in Certain States; Correction

In the Matter of Amendment of § 73.202(b), *Table of assignments*, FM broadcast stations (Washington, Iowa, Centerville, Tenn.; Winnsboro, Tex.; Stanton, Ky.; Gordon, Ga.; Mercersburg, Pa.; Elkader, Iowa; and Kernville, Calif.). Docket No. 19598, RM–1926, RM–1969, RM–1972, RM–1988, RM–1993, RM–1996, RM–2009, RM–2010.

The first report and order (FCC 72–1134), (37 FR 28138) released December 18, 1972, in the above-captioned proceeding, disposed of all of the petitions for rule making except RM–2010. The proceeding is still open, and action remains to be taken with regard to RM–2010. Through inadvertence, paragraph 5 of the First Report and Order read, in its entirety, as follows: "5. *It is further ordered*, That this proceeding is terminated."

Accordingly, the first report and order is corrected by striking all of paragraph 5.

Released: January 2, 1973.

FEDERAL COMMUNICATIONS COMMISSION,

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

[FR Doc.73-516 Filed 1-9-73;8:45 am]

PART 76—CABLE TELEVISION SERVICE

Performance Tests; Extension of Time; Correction

In regard petitions for an extension of time for initial compliance with § 76.601 of the rules.

The memorandum opinion and order in the above entitled matter, FCC 72–1147, released December 18, 1972, and

[*] Chairman Burch concurring and issuing a statement, which is filed as part of the original document, in which Commissioners Reid and Wiley join; Commissioners Johnson and H. Rex Lee concurring in the result; Commissioner Hooks concurring in the result and joining in paragraph 3 of Chairman Burch's statement.

published in the FEDERAL REGISTER on December 22, 1972, 37 FR 28296, is corrected to indicate "Adopted: December 13, 1972".

Released: January 2, 1973.

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

[FR Doc.73-517 Filed 1-9-73;8:45 am]

[Docket No. 18944]

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

Technical Standards for Computation of Service Area for Public Coast III–B Stations; Correction

In the matter of amendment of Part 81 of the Commission's rules to provide technical standards for the computation of service area for public coast III–B Stations, Docket No. 18944.

In paragraph 27 of the report and order in the above-entitled matter released May 31, 1972, FCC 72–448 (37 FR 11328, June 2, 1972) we stated, essentially, that we considered it a responsibility of an applicant for a public coast class III–B station to submit a map showing the service area contour of the proposed station as a part of the application, and that the application should include supporting data used in determining the service area contour. In the appendix attached to that report and order, however, the words "with supporting data" were inadvertently omitted from the text of § 81.49 that requires applicants for stations of this class to include service area contour charts with applications. These words should be included in the rule section so that the rule will be consistent with our intention as explained in the report and order.

Accordingly, § 81.49 is amended to read as follows:

§ 81.49 Supplemental information for public coast stations.

Each application for a new public coast station operating on frequencies in the band 156–162 MHz shall include as supplementary information a chart, with supporting data, showing the service area contour computed in accordance with Subpart R of this part.

Released: January 2, 1973.

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

[FR Doc.73-518 Filed 1-9-73;8:45 am]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Receiving Apparatus and Assignment of Frequencies; Correction

Order. In the matter of correcting cross references in Part 83 of the Commission's rules and regulations.

1. The report and order in Docket 14375, FCC 62–722 released July 17, 1962, published at 27 FR 7096, redesignated § 8.240 as § 8.243, in Part 8 (now Part 83). This change was not reflected in § 8.112. Accordingly, the text of § 83.112 is corrected to substitute reference to § 83.243 in lieu of § 83.240.

2. Additionally, the report and order in Docket 18632, FCC 71–1044, released October 26, 1971, published at 36 FR 20949, amended § 83.351(a) by deleting subparagraphs (1) through (5). Section 83.359 is therefore corrected by cross-referencing § 83.351(a) in lieu of § 83.351(a)(5).

3. Authority for these changes is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and in § 0.231(d) of the Commission's rules and regulations. Since these changes are editorial to correct oversights in previous actions, the prior notice, procedure, and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553, do not apply.

4. In view of the foregoing, Part 83 is amended as set forth below, effective January 12, 1972.

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

Adopted: December 27, 1972.

Released: December 29, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JOHN M. TORBET,
Executive Director.

Part 83, Stations on Shipboard in Maritime Services.

1. Section 83.112 is amended to read as follows:

§ 83.112 General requirements for receiving apparatus.

The radio equipment of each ship station, or marine-utility station, using telegraphy or telephony, must be capable of permitting the reception of the class or classes of emission on the frequency or frequencies, normally received for the service carried on. The technical arrangement of the station apparatus shall be such that the necessary reception of emissions, including in particular that necessary for compliance with the provisions of §§ 83.181 and 83.243 can be readily effected prior to the transmission of any signals or communications by the ship station on the associated transmitting frequency.

2. The introductory statement of § 83.359 is amended to read as follows:

§ 83.359 Frequencies in the band 156–162 MHz available for assignment.

The frequencies listed in the following table are available for assignment to stations as indicated. Except as provided in § 83.351(b)(55), these frequencies are not authorized for communication with stations on board aircraft. The limitations applicable to the respective frequencies are set forth in § 83.351(a).

* * * * *

[FR Doc.73-519 Filed 1-9-73;8:45 am]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Frequencies Available

Order. In the matter of amendment of Part 83—to include the frequency 6451.9 kHz in § 83.351(a).

1. In the appendix to the third report and order in Docket No. 18271, released December 22, 1969, FCC 69–1369 (34 FR 20194), the Commission set forth, in § 83.354(a)(2),[3] frequencies to be used for communication with public correspondence stations when the mobile station and the coast station transmit alternately on the same radio channel.

2. The frequencies listed in column (4) of the table of § 83.354(a)(2)[3] are also set forth in the table following § 83.351(a), with the exception of the frequency 6451.9 kHz, which was inadvertently omitted.

3. This amendment is editorial in nature, and hence the prior notice, and effective date provisions of 5 U.S.C. 553 are not applicable. Authority for the promulgation of this amendment, is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules.

4. In view of the foregoing, § 83.351(a) is amended to include the frequency 6451.9 kHz, which was in advertently January 12, 1973.

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

Adopted: December 29, 1972.

Released: January 2, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JOHN M. TORBET,
Executive Director.

In § 83.351, paragraph (a) is amended to add the frequency 6451.9 kHz, to read as follows:

§ 83.351 Frequencies available.

(a) * * *

Carrier frequency (kHz)	See section—	Conditions of use
* * *	* * *	* * *
6147.5	83.354	3, 5, 15, 21.
6451.9	83.354	3, 5, 15, 21.
6455.0	83.354	3, 4, 15, 21.
* * *	* * *	* * *

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[FR Doc.73-520 Filed 1-9-73;8:45 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Ch. IX]

[Docket No. AO-377]

RYEGRASS SEED GROWN IN OREGON

Notice of Hearing on Proposed Marketing Agreement and Order

Notice is hereby given of a public hearing to be held in the Swept Wing Motel, Route 1 (Box 207), Santiam Highway, Albany, OR, beginning January 30, 1973, with respect to a proposed marketing agreement and order regulating the handling of ryegrass seed grown in Oregon. Each day's session of the hearing will commence at 10 a.m., local time, unless the presiding officer otherwise specifies during the course of the hearing. The hearing is called pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900).

The public hearing is for the purpose of: (a) Receiving evidence with respect to the economic and marketing conditions which relate to the proposed marketing agreement and order, hereinafter set forth, and to any appropriate modifications thereof;

(b) Determining whether the handling of ryegrass seed in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement or order regulating the handling of ryegrass seed in the area; and

(d) Determining whether provisions specified in the proposals or some other provisions appropriate to the terms of the Agricultural Marketing Agreement Act of 1937, as amended, will tend to effectuate the declared policy of the Act.

The proposed marketing agreement and order, the provisions of which are as follows, were submitted with a request for a hearing thereon by the Oregon Ryegrass Growers Association, Post Office Box 765, Albany, OR 97321, and have not received the approval of the Secretary of Agriculture (the sections identified with asterisks (***) apply only to the proposed marketing agreement and not to the proposed order):

DEFINITIONS

§ ...1 Acquire.

"Acquire" means to purchase ryegrass from, or otherwise handle ryegrass on behalf of the grower thereof.

§ ...2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ ...3 Ryegrass.

"Ryegrass" means seed of annual ryegrass (Lolium multiflorum) and perennial ryegrass (Lolium perenne) grown in the production area.

§ ...4 Committee.

"Committee" means the Ryegrass Administrative Committee established pursuant to this Part.

§ ...5 Crop year.

"Crop year" means the 12 months beginning July 1 of any year through June 30 of the following year inclusive, or such other period as the Committee, with the approval of the Secretary, may establish.

§ ...6 District.

"District" means the applicable one of the following defined subdivisions of the production area or as such subdivisions may be redefined pursuant to § —.20.

(a) District 1—Linn County, Oreg.

(b) District 2—Benton and Lane Counties, Oreg.

(c) District 3—All other counties in Oregon.

§ ...7 Grower.

"Grower" is synonymous with "producer" and means any person engaged in a proprietary capacity in the commercial production of ryegrass for market.

§ ...8 Handle.

"Handle" means to purchase ryegrass from the grower thereof, or to sell, consign, ship or transport (except as a common or contract carrier of ryegrass owned by another person) or acquire ryegrass, whether or not of own production, except that (a) the shipment or transportation within the production area of ryegrass by the grower thereof for cleaning or storage therein shall not be construed as "handling", and (b) the sale, shipment, or transportation of ryegrass by the grower thereof to a registered handler shall not be construed as handling by the grower.

§ ...9 Handler.

"Handler" and "registered handler" means any person who handles ryegrass: *Provided, however,* That with respect to the acquisition of a grower's ryegrass by a person other than a registered handler, such grower shall be the first handler of such ryegrass. "Registered handler" means any handler who has been registered as a handler with the Committee pursuant to rules and regulations issued by the Committee.

§ ...10 Part and subpart.

"Part" means the order regulating the handling of ryegrass grown in the production area, and all rules and regulations issued thereunder. The order regulating the handling of ryegrass grown in the production area shall be a "subpart" of such part.

§ ...11 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ ...12 Production area.

"Production area" means the State of Oregon.

§ ...13 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may be hereafter delegated to act in his stead.

§ ...14 Quantity.

"Quantity" means the weight of cleaned ryegrass in pounds.

§ ...15 through .19. Additional definitions as required.

RYEGRASS ADMINISTRATIVE COMMITTEE

§ ...20 Establishment and membership.

(a) There is hereby established a Ryegrass Administrative Committee consisting of nine members, each of whom shall have an alternate. The term "member" throughout this subpart, unless otherwise specified, shall refer to both the member and his alternate. Seven of the members shall be growers or officers or employees of growers, who are not also handlers. Of the grower members, four shall be producers of ryegrass in District 1, two in District 2, and one in District 3. Two of the members shall be handlers or officers or employees of handlers who shall be elected from the production area at large. A producer who is also a handler may serve as a handler member only.

(b) The Committee, with the approval of the Secretary, may redefine the Districts into which the production area is divided, and reapportion the representation of any District on the Committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in Ryegrass production within the Districts and the production area.

§ ...21 Eligibility.

Each grower member of the Committee shall be, at the time of his selection and during his term of office, a grower or an officer or employee of a grower in the District for which selected. Each handler member of the Committee shall

be, at the time of his selection and during his term of office, a handler or an officer or employee of a handler.

§ ___.22 Nominations.

(a) *General.* Separate nominations shall be made for each member position listed in § ___.20. Except as otherwise provided for obtaining initial nominations, nominations shall be certified by the Committee and submitted to the Secretary by June 1 of each crop year, together with information deemed by the Committee to be pertinent or requested by the Secretary. If nominations for any member are not submitted in the specified manner by such date, the Secretary may select the member for that position without nomination.

(b) *Grower members.* The Committee shall conduct nominations for grower members in each District through meetings or on the basis of ballots to be mailed by the Committee to all growers of record. Only growers eligible to serve on the Committee from the District in which the nominations are to be held shall be eligible to vote and each such grower shall have one vote for each grower member position to be filed. If a grower is also a handler, such grower may vote either as a grower or as a handler, but not both. No grower shall participate in the election of nominees in more than one District regardless of the number of Districts in which such person is a grower. A multidistrict grower may elect the district in which he votes.

(c) *Handler nominations.* The Committee shall conduct nominations for handler members through meetings or on the basis of ballots to be mailed by the Committee to all handlers who have registered with the Committee. Each handler shall have one vote for each handler member position to be filled.

(d) *Initial nominations.* For the purpose of obtaining the initial nominations, the Secretary shall perform the functions of the Committee as soon as practicable after the effective date of this part.

§ ___.23 Selection.

(a) *Selection.* Members shall be selected by the Secretary from nominees submitted by the Committee or from among other eligible persons on the basis of the representation provided for in §___.20.

(b) *Term of office.* The terms of office of the initial members of the Committee shall be established by the Secretary so that the term of office for two grower members and one handler member shall be the initial crop year, the term of office for two grower members and one handler member shall be the initial crop year plus the succeeding crop year, and the term of office for three grower members shall be the initial crop year plus the two succeeding crop years. Successor members of the Committee shall serve for terms of 3 crop years, except for shorter terms occasioned by the death, removal, resignation, or disqualification of any member, and subject to any such disqualification each member shall serve until his successor is selected and has qualified.

§ ___.24 Acceptance.

Each person selected by the Secretary as a member shall qualify by filing a written acceptance with the Secretary as soon as practicable after being notified of his selection.

§ ___.25 Vacancy.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, or in the event of the failure of any person selected as a member to qualify, a successor for the unexpired term or the term shall be nominated and selected in the manner provided in §§—.22 and —.23, so far as applicable, unless a selection is deemed unnecessary by the Secretary.

§ ___.26 Alternates.

(a) An alternate for a member of the Committee shall act in the place and stead of such member during his absence, and in the event of the member's removal, resignation, disqualification, or death until a successor for such member's unexpired term has been selected and has qualified.

(b) If both a member and his alternate are unable to attend a Committee meeting, the Committee may designate any other alternate from the same group (grower or handler) to serve in the member's place if such alternate is not serving in the place of another member.

§ ___.27 Procedure.

(a) Six members (including alternates acting as members) of the Committee shall constitute a quorum at an assembled meeting of the Committee and any action of the Committee at such meeting shall require the concurring vote of at least five members (including alternates acting as members). At any assembled meeting, all votes shall be cast in person.

(b) The Committee may provide for voting by mail, telephone, telegraph, or other means of communication upon due notice to all members and any proposition to be so voted upon first shall be explained accurately, fully, and identically. Any such vote other than by mail, telegraph, or other written means of communication shall be promptly confirmed by the member in writing or by telepgraph. Seven concurring votes shall be required for approval of a Committee action so voted upon.

(c) Members and alternate members of the Committee shall serve without compensation, but shall be allowed such reasonable expenses as approved by the Committee in attending to authorized Committee business.

§ ___.28 Powers.

The Committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ ___.29 Duties.

The Committee shall have among others the following duties:

(a) To select from among its members such officers and adopt such rules or bylaws for the conduct of its meetings as it deems necessary;

(b) To hire employees, appoint such subcommittees and advisory committees as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To keep minutes, books, and records which will reflect all of the acts and transactions of the Committee and which shall be subject to examination at any time by the Secretary;

(d) To submit to the Secretary as soon as practicable after the beginning of each crop year a budget for such period, including a report in explanation of the items appearing therein, and a recommendation as to the rate of assessment for such period;

(e) To prepare quarterly statements of the financial operations of the Committee and to make copies of each such statement available to growers and handlers for examination at the office of the Committee and to send two copies to the Secretary;

(f) To cause the books of the Committee to be audited by a competent accountant at least once each crop year and at such other times as the Committee may deem necessary or as the Secretary may request, to submit two copies of each such audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the office of the Committee by growers and handlers;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to Ryegrass;

(i) To submit to the Secretary such available information as he may request or the Committee may deem desirable and pertinent;

(j) To notify growers and handlers of all meetings of the Committee to consider recommendations for regulation; and of all regulatory actions taken affecting growers and handlers;

(k) To give the Secretary the same notice of meetings of the Committee and of meetings of its subcommittees as is given to the applicable membership; and

(l) To investigate compliance and to use means available to the Committee to prevent violations of the provisions of this part.

RESEARCH AND DEVELOPMENT

§ ___.30 Research and development.

The Committee, with the approval of the Secretary, may establish or provide

for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the marketing, distribution, and utilization or efficient production of ryegrass. The expense of such projects shall be paid from funds collected pursuant to §—.56.

MARKETING POLICY

§ ___.35 Marketing policy.

Prior to and as far in advance of each ensuing crop year as it finds feasible, but in any event not prior to the preceding September 1, the Committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for such crop year. Such marketing policy shall set forth the Committee's evaluation of the various factors of supply and demand that will affect the marketing of ryegrass (separately for annual and perennial ryegrass) during the crop year, including:

(a) Carryin: The estimated quantity of ryegrass in all hands (growers, handlers, brokers, and wholesalers) at the beginning (July 1) of the crop year;

(b) Production: The estimated ryegrass production during the crop year;

(c) Trade demand: The prospective domestic and export trade demand, taking into consideration prospective imports;

(d) Carryout: The quantity to be in all hands at the end of the crop year;

(e) Market prices for ryegrass; and

(f) Other relevant factors.

On the basis of its evaluation of these factors, the Committee shall recommend to the Secretary the total quantity of ryegrass (hereinafter referred to as the "Total Desirable Quantity") (separately for annual and perennial) that should be allotted for handling during the crop year. If, in the event of subsequent changes in the supply and demand factors, the Committee deems it advisable that the total desirable quantity be increased for such crop year, it shall prepare a new or revised marketing policy and submit a report thereon to the Secretary together with its recommendations as to an appropriate revision in the total desirable quantity for such crop year. The Committee shall announce each marketing policy (including new and revised policies) and notice and contents thereof shall be provided to growers and handlers by bulletins, newspapers, or other appropriate media.

VOLUME REGULATION

§ ___.36 Total desirable quantity.

Whenever the Secretary finds, on the basis of the Committee's recommendation or other available information, that establishing, limiting, or increasing the quantity of ryegrass (annual or perennial) available for handling during a crop year, would tend to effectuate the declared policy of the Act, he shall establish the total desirable quantity for such crop year, which all handlers may acquire in the crop year. The Committee shall equitably apportion such quantity among producers by establishing allocation bases and allotments as provided in §§ —.41 and —.42.

§ ___.41 Grower allocation bases.

(a) Upon request of the Committee, each producer desiring an allocation base for ryegrass (annual or perennial or both) shall register with the Committee and furnish to it on forms prescribed by the Committee, a report of the number of pounds of such ryegrass produced by him and sold by him, or on his behalf, during each of the crop years 1969 through 1972, broken down by annual and perennial ryegrass, and names of handlers to whom sales were made as may be required by the Committee and approved by the Secretary.

(b) For the crop year which begins in 1973 a separate allocation base shall be established by the Committee for each registered producer for each of the two kinds—annual and perennial—in accordance with: (1) The average crop year pounds of ryegrass, of the particular kinds produced and sold by him, or on his behalf, during the four crop years 1969 through 1972 if such production and sales covered such four crop years; (2) the average crop year pounds of ryegrass of a particular kind produced and sold by him, or on his behalf, during any three of the crop years 1969 through 1972 if such production and sales covered only three of such crop years; (3) the average crop year pounds of ryegrass of a particular kind produced and sold by him or on his behalf, during any two of the crop years 1969 through 1972 if such production and sales covered only two of such crop years; (4) the crop year pounds of ryegrass of a particular kind produced and sold by him, or on his behalf, during any one of the crop years 1969 through 1972 if such production and sales covered only one of such crop years.

(c) For each crop year subsequent to the crop year 1973, each allocation base shall be recomputed by the Committee to recognize trend in sales volume of individual operations. This shall be accomplished by recalculating for each crop year all allocation bases according to the applicable one of the following procedures: (1) The allocation bases computed on a four-crop year basis shall be adjusted by: (i) Adding the producer's preceding crop year's sales of ryegrass of the particular kind to his four-crop year's total sales of such ryegrass used in computing his existing allocation base; (ii) subtracting the smallest quantity of sales for a crop year recorded as the sales of such ryegrass during such four-crop years; (iii) recalculating a new four-crop year simple average which shall be the new allocation base. (2) Allocation bases computed on a less than four-crop year basis shall be adjusted by adding the producer's preceding crop year's sales of ryegrass of the particular kind to the total number of pounds used in computing his preceding allocation base and dividing by the number of years of sales of such ryegrass.

(d) The Committee may provide for adjustment of a grower's allocation base upon a showing that such grower's sales in the base period, as provided in §§ —.41 (b) and —.41(c), were not representative due to conditions such as: adverse weather, insects disease, and fire.

(e) A condition for the continuing validity of an allocation base is production and sale of ryegrass thereunder. If no bona fide effort is made, or has been made in reference to the original allocation base, to produce and sell ryegrass thereunder during any 3 consecutive crop years, such allocation base shall be declared invalid due to lack of use and canceled at the end of such third consecutive year of nonproduction and sale.

(f) The Committee shall, for the crop year 1974 and each subsequent year, recommend to the Secretary an adjustment in allocation bases which will reflect (1) increase in usage of ryegrass; (2) desires of new producers to gain entry, and producers with existing allocation bases to expand, as evidenced by application for allocation bases or increased allocation bases; and (3) any additional factors which bear on industry adjustments to new and changing conditions.

(g) (1) Notwithstanding the foregoing provisions of paragraph (f) of this section any increase in the quantity of ryegrass provided for by all allocation bases covered by this part shall be no more than 5 percent of the total allocation bases encompassed by this part during the previous crop year.

(2) Any person may apply, under rules and procedures to be established by the Committee with the approval of the Secretary, either for a new allocation base or for an increase in an existing allocation base. Such applications may be submitted each crop year, but must be filed with the Committee not later than January 1 of a crop year in order to be considered for an award for a new allocation base or the adjustment of an existing allocation base to take effect the following crop year.

(h) The Committee recommendations, with justifications, supporting data, and a listing and summary of all applications for new or adjusted allocation bases, shall be submitted to the Secretary no later than March 1 of each crop year.

(i) Not more than 60 days after receipt of the Committee recommendations, the Secretary shall either approve said recommendations or make whatever alterations therein that he deems necessary in the public interest. In the event no such recommendations or listing of applications are received, the Secretary may issue adjustments in allocation bases each crop year. The decision of the Secretary shall be final; and he shall communicate his decision and the reasons therefor to the Committee in writing.

(2) Within 30 days after receipt of the Secretary's decision, the Committee shall notify each applicant of the Secretary's decision and of their allocation bases for the following crop year.

(j) The Committee shall, with the approval of the Secretary, establish rules, guides, bases, or standards to be used in determining allocation base awards or adjustments that are to be recommended

to the Secretary taking into account, among other things, the minimum economic enterprise requirements for ryegrass production.

(j) Each allocation base shall be for ryegrass of a particular kind (annual or perennial).

(k) Growers' allocation bases may be transferred to other growers as authorized by regulations recommended by the Committee and approved by the Secretary.

(l) The Committee shall check and determine the accuracy of the information submitted pursuant to this section and is authorized to make a thorough investigation of any application. Whenever the Committee finds an error, omission, or inaccuracy in any such application, it shall correct the same and shall give the grower who submitted the application a reasonable opportunity to discuss with the Committee the factors considered in making the correction. In the event the error, omission, or inaccuracy requires correction of an allocation base, the applicable allotment computed for the grower pursuant to § __.42 shall be on the basis of the corrected allocation base. All allocation base applications, allocation bases assigned, and adjustments therein, shall be subject to review by the Secretary.

§ __.42 Grower allotments.

(a) Prior to the beginning of each crop year but no later than March 15, the Committee shall apportion to each grower who has an allocation base for ryegrass of a particular kind an allotment of ryegrass of such kind which handlers may acquire from each grower during the crop year. Each such allotment shall be computed by dividing the total desirable quantity of ryegrass of such kind established pursuant to § __.36 by the sum of the allocation bases of ryegrass of such kind for all producers and multiplying such grower's allocation base by the resulting percentage. The result shall be the grower's allotment of ryegrass of such kind. Except as otherwise provided, no handler may acquire any quantity of ryegrass of a particular kind (including ryegrass of such kind of own production) which would result in all handlers having acquired a greater quantity of such ryegrass with respect to such grower than the applicable allotment computed for such grower. Each allotment shall be expressed in pounds of cleaned ryegrass.

(b) The Committee with the approval of the Secretary may establish by regulation such means of certification or identification with respect to allotments of producers as may be required to effectuate the purposes of any regulation issued under this part.

(c) Growers allotments shall be nontransferable except in conjunction with the transfer of an allocation base.

§ __.43 Ryegrass harvested prior to effective date of this part.

Any person in the possession of ryegrass harvested prior to the effective date of this part or such date as the Committee may determine, but not more than 90 days following the effective date of this part, shall be entitled, upon application to the Committee to have such ryegrass so designated, and upon so doing, the ryegrass may be certified for handling without regard to any allotment: *Provided*, That the amount certified for handling under this paragraph in any one crop year may be limited by the Committee to not less than 25 percent of the total amount originally so designated.

§ __.44 Foundation and registered ryegrass seed.

The handling of foundation and registered ryegrass seed shall be subject to this part.

INSPECTION AND IDENTIFICATION

§ __.46 Quality regulation.

Subject to §§ —.40 and —.41 all ryegrass seed shall meet regulations of Federal and State seed acts prior to sale. The Committee with the approval of the Secretary, may establish requirements which will prohibit the handling of seed containing viable quack grass, wild garlic, wild onion seed, or any other undesirable seed. The Committee shall notify growers at least 2 crop years in advance before any quality regulation requiring change in production practices shall become effective. No ryegrass shall be handled unless it meets the quality standards established under this part. The Committee shall have authority to regulate the size of a lot certificated by one certificate in order to control quality.

§ __.47 Identification.

All ryegrass purchased from growers by all handlers must be identified as eligible seed under rules prescribed by the Committee. Adequate records shall be maintained by each designated handler of all transactions involving ryegrass seed.

EXPENSES AND ASSESSMENTS

§ __.55 Expenses.

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions hereof. The funds to cover such expenses shall be paid to the Committee by handlers in the manner prescribed in § —.56.

§ __.56 Assessments.

(a) As his pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Committee during a crop year, each handler shall pay to the Committee, upon demand, assessments on all ryegrass he handles as the first handler thereof, during such period. The payment of assessments for the maintenance and functioning of the Committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the uniform rate of assessment to be paid by each handler during a crop year in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund not to exceed 1 crop year's expenses: *Provided*, That such rate of assessment, including any increase thereof, shall not exceed 5 cents per 100 pounds of cleaned ryegrass handled. At any time during or after the crop year, the Secretary, upon recommendation of the Committee, may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all ryegrass handled during the applicable crop year. In order to provide funds for the administration of the provisions of this part during the first part of a crop year before sufficient operating income is available from assessments, the Committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

§ __.57 Accounting.

(a) If, at the end of a crop year, the assessments collected are in excess of expenses incurred, the Committee with the approval of the Secretary, may carry over such excess into subsequent crop years as a reserve: *Provided*, That funds already in the reserve do not exceed approximately 1 crop year's expenses. Such reserve funds may be used: (1) To cover any expenses authorized by this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom assessments were collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical such funds shall be returned pro rata to the handlers from whom such funds were collected.

(b) All funds received by the Committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Committee and its members to account for all receipts and disbursements.

REPORTS AND RECORDS

§ __.60 Reports.

(a) *Inventory*. Each handler shall file with the Committee a certified report, showing such information as the Committee may specify with respect to any ryegrass held by him on such dates as the Committee may designate.

(b) *Receipts*. Each handler shall, upon request of the Committee, file with

the Committee a certified report showing for each lot of ryegrass received or handled, the identifying marks, variety, weight, place of production, and the grower's name and address on such date(s) as the Committee may designate.

(c) *Other reports.* Upon the request of the Committee, with the approval of the Secretary, each handler shall furnish to the Committee such other information as may be necessary to enable it to exercise its powers and perform the duties under this part.

§ __.61 Records.

Each handler shall maintain such records pertaining to all ryegrass acquired from, or handled on behalf of all producers as will substantiate the required reports and such others as may be prescribed by the Committee. All such records shall be maintained for not less than 3 years after the termination of the crop year to which such records relate.

§ __.62 Verification of reports and records.

For the purpose of assuring compliance with record keeping requirements and verifying reports filed by handlers, the Secretary and the Committee, through its duly authorized employees, shall have access to any premises where applicable records are maintained, where ryegrass is received or held, and at any time during reasonable hours, shall be permitted to inspect such handler premises, and any and all records of such handlers with respect to matters within the purview of this part.

§ __.63 Confidential information.

All reports and records furnished or submitted by growers and handlers to or obtained by the employees of the Committee, which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operation of the particular grower or handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall at all times be kept in the custody and under control of one or more employees of the Committee who shall disclose such information to no person other than the Secretary.

MISCELLANEOUS PROVISIONS

§ __.70 Compliance.

Except as provided in this subpart;

(a) No handler may handle ryegrass, the handling of which has been prohibited under the provisions of this subpart, and no handler shall handle ryegrass except in conformity with the provisions of this subpart.

(b) No handler may purchase from or otherwise handle on behalf of a grower any amount of ryegrass that, together with all other marketings of such grower during the crop year, would exceed the apportioned allotment of such grower.

§ __.71 Right of the Secretary.

The members of the Committee (including successors, and alternates), and any agent or employee appointed or employed by Committee, shall be subject on just cause to removal or suspension at any time by the Secretary. Each and every order, regulation, decision, determination or other act of said Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval the disapproved action of the said Committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ __.72 Effective time.

The provisions of this subpart shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in § —.73.

§ __.73 Termination or suspension.

(a) The Secretary may terminate or suspend the operation of any or all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) The Secretary shall terminate the provisions of this part at the end of any crop year whenever he finds that such termination is favored by a majority of producers who, during the preceding crop year, have been engaged in the production for market of ryegrass seed within the production area: *Provided*, That such majority has, during such period held allotments for more than 50 percent of the volume of all allotments of such ryegrass in the production area; but such termination shall be effective only if announced at least 30 days prior to the end of the then crop year.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ __.74 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the members of the Committee then functioning shall continue as joint trustees, for the purpose of liquidating their affairs and of all the funds and property then in the possession of or under their control, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Committee and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Committee or the joint trustees pursuant to this subpart.

§ __.75 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued pursuant to this subpart or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ __.76 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ __.77 Agents.

The Secretary may, by designation in writing, name any person including any officer or employee of the Government, or name any agency in the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ __.78 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ __.79 Personal liability.

No member or alternate of the Committee nor any employee or agent thereof, may be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent except for acts of dishonesty.

§ __.80 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstances, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ __.81 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.***

§ ___.82 Additional parties.

After the effective date hereof, any handler who has not previously executed this agreement may become a party hereto if a counterpart hereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.***

§ ___.83 Order with marketing agreement.

Each signatory handler favors and approves the issuance of an order by the Secretary regulating the handling of ryegrass in the same manner as is provided for in this agreement; and each signatory handler hereby requests the Secretary to issue, pursuant to the Act such an order.***

Copies of this notice may be procured from the Hearing Clerk, Room 112, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250; or James W. Coddington, Grain Divison, USDA, AMS, 6525 Belcrest Road, Hyattsville, MD 20782.

Signed at Washington, D.C. on January 5, 1973.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.73-514 Filed 1-9-73;8:45 am]

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

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

MILK IN SOUTHERN ILLINOIS AND CERTAIN OTHER MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and to Orders

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

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Bridgeton, Mo., on October 18, 1972, pursuant to notice thereof issued on October 3, 1972 (37 FR 21171).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on December 1, 1972 (37 FR 25940), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

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

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

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

FINDINGS AND CONCLUSIONS

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

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

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

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

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

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

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

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

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

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

Currently, proponents represent more than three-fourths of the producers on each of the St. Louis-Ozarks, Greater

***Applicable only to the proposed marketing agreement.

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

Kansas City and Nebraska-Western Iowa markets. In the Southern Illinois market, more than 80 percent of producers on the market are members of the several proponent cooperatives, and in Central Illinois about two-thirds.

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

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

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

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

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

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

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

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

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

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

The Agency under the terms prescribed herein is responsible for administration of the terms and provisions of the program within the scope of its authority. Subject to the approval of the Secretary, it also is empowered to enter into contracts and agreements with persons or organizations as deemed necessary to carry out such program. In addition, the Agency may recommend to the Secretary amendments to the terms of the program and make such rules and regulations as are necessary to carry out its stated objectives.

The powers, duties, and functions specifically assigned to the Agency under the terms herein adopted are of a nature and scope to provide participating[2] producers on the market full and necessary authority through their representatives on the Agency to develop and administer advertising and promotion programs designed to accomplish the purposes of Public Law 91-670.

The Act states that the Agency "* * * may designate, employ, and allocate funds to persons and organizations engaged in such programs which meet the standards and qualifications specified in the order." The guidelines concerning this matter are set forth in the amendments to the respective orders. Under the terms of such amendments the Agency will develop and submit to the Secretary for approval, programs and projects that may provide for: (a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising and promotion of milk and milk products on a nonbrand basis; (b) the utilization of the services of other organizations to carry out Agency programs and projects, if the Agency finds that such activities will benefit producers supplying the market; and (c) the establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers supplying the market.

Producers held that certain major considerations should be guidelines in the constituency of such an Agency:

(1) There should be adequate representation of producers in the market both for the membership of various cooperatives and for nonmembers; and

(2) The Agency should be a workable unit, not so large as to encumber its effective operation or impose excessive administrative costs on the program.

The procedures adopted herein authorize cooperative associations in each market to select Agency members to represent their participating producer members. It is provided, likewise, that Agency representatives for participating nonmembers will be elected in a referendum conducted by the market administrator among individual participating producers. In the case of any small cooperative association not having the minimum number of participating members to qualify for a representative, participating producer members of such cooperative will be included with participating nonmembers in such referendum.

It is provided also that cooperative associations may choose to combine their participating memberships for purposes of selecting Agency members. Such combined participating membership then will be treated as a single group in determining the number of Agency representatives to be selected by the cooperative associations.

Since cooperative members constitute most of the producers in each of these markets, it follows that Agency members will be principally persons selected by the cooperatives. Such Agency members (selected by cooperatives individually or in combination) may be producers or individuals not engaged in milk production, for example, employees of the cooperative.

In the case of a cooperative that does not have sufficient participating membership to select an Agency representative, and has not elected to combine with another cooperative(s) to achieve representation, its participating members may vote in a referendum together with participating nonmembers in the selection of Agency members to represent such group. The persons selected as Agency members through the referendum procedure should be producers who actively support the program.

The makeup of producer groups in each market, in terms of cooperative members and nonmember producers, varies distinctly from market to market particularly as to the relative size and number of cooperatives involved. It should be anticipated, also, that relevant grouping of producers in any one market may change considerably from year to year. In determining Agency membership it is concluded that allotment of one Agency member for a specified percentage of participating producers in each market (such as 5 percent or 10 percent) will tend to result in proper producer and cooperative representation in the varying circumstances. For each of the markets, except Central Illinois, the adopted provisions allot one Agency member for each full 5 percent of total participating producers on the market. In Central Illinois there would be one Agency member for each 10 percent of participating producers in the market.

This method differs from proponents' plan for allotting Agency membership. Proponents would allow to each cooperative one Agency member for the first 1 percent that its participating producer members represent of total participating

[2] Participating producers are those who have not requested refunds. Further, the program adopted herein for each order provides that for the purposes of the Agency's initial formation, all producers under such order will be considered as participating producers.

producers on the market, and one additional Agency member for each additional 15 percent it represents of the market's participating producers.

A difficulty in the application of such a dual percentage may arise in a market where a number of cooperatives each represent a small percentage of producers and are individually awarded Agency representation. As a group these small cooperatives may achieve a majority membership on the Agency although their producer membership is a minority in the market.

While it cannot be determined from the record that this situation will occur, the data for one market suggest that the potential definitely exists. In the Southern Illinois market, proponents testified there are nine cooperatives with membership ranging from as little as 1.5 percent up to about 25 percent of the producers on the market. This situation at least approaches the condition under which a minority of producers might select the majority of members on the Agency.

The allotment of one Agency member for each 5 percent (10 percent in Central Illinois) of participating producers will avoid the difficulty illustrated above. Further, with additional adjustments as explained herein, it will provide Agency representation consistent with proponents' guidelines and reasonable representation of all producers on each market.

The different percentage to be used in Central Illinois is advisable in the interest of conserving administrative expense where there is a substantially smaller number of producers than in the other markets. Producer numbers in each market in August 1972 were: St. Louis-Ozarks, 3,285; Southern Illinois, 2,173; Greater Kansas City, 2,207; Nebraska-Western Iowa, 1,797; and Central Illinois, 777. (Official notice is taken of the August 1972 issue of "Summary of Federal Milk Market Statistics", as compiled and published by the Dairy Division, AMS, USDA.)

An additional consideration in some of these markets, however, is that a single cooperative constitutes a large majority of the producers on the market. Selection of Agency members merely according to the proportion of participating producers represented by such cooperatives in the respective markets could result in a larger Agency than necessary for the purposes of: (1) Adequately representing participating producers; and (2) efficient operation. This would be true in the St. Louis-Ozarks, Greater Kansas City and Nebraska-Western Iowa markets where a single cooperative represents three-fourths or more of the producers on each such market.

If a single cooperative represents a substantial majority of participating producers, Agency representation for such cooperative should be limited to a number necessary to retain a voting majority on the Agency but in no event less than five. Considering the market structure of the five orders as here discussed, a minimum of five members for a majority cooperative's representation will allow the breadth of geographical representation among members in each market that proponents suggested.

As indicated previously, cooperative associations may elect to combine their participating membership with those of other cooperatives. If the combined group in total has a majority of participating producers on the market, the number of representatives that may be selected by such group also shall be limited to the minimum necessary to constitute a majority of the Agency representatives, but in no event less than five.

The participating producer members of any cooperative association(s) having less than the required specified minimum percentage, that elects not to combine as discussed above, and nonmember participating producers, will be authorized (as a group) one Agency representative for each full 5 percent (10 percent in Central Illinois market) that such producers constitute of the total number of participating producers under the respective orders. If, however, such group of producers in total constitutes less than the minimum percentage specified for obtaining at least one Agency member, but not less than 1 percent, the group, nevertheless, will be authorized to elect one Agency representative.

On the basis of proponents' statements of cooperative representation on each market, the procedures herein adopted could result in a maximum of 10 Agency members under the Central Illinois order and 11 each, respectively, under St. Louis-Ozarks, Greater Kansas City and Nebraska-Western Iowa. Under the Southern Illinois order a somewhat greater Agency membership could result because of the greater number of cooperatives on this market than in the other markets.

Under the program herein adopted, the market administrator will conduct a referendum annually to determine representation on the Agency of nonmember participating producers and cooperatives not having sufficient membership to select a representative.

Within 30 days after the effective date of the amended order and annually thereafter, the market administrator shall give notice to all such producers (member and nonmember) of their opportunity to nominate Agency members from among their groups and shall specify the number of representatives that such nonmember and member producers together are authorized.

Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and then shall conduct a referendum in which each individual participating producer (member or nonmember) shall have one vote.

Since cooperative associations may freely elect to combine or not combine for purposes of selecting agency representation, it is provided in the case of a cooperative with less than the indicated minimum percentage that does not combine, that the balloting of its participating producer members shall be on an individual basis, the same as nonmembers. This procedure will tend to promote equity between member and nonmember producers in the selection of representation. Election of Agency membership will be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes of participating producers.

Each person selected for the Agency shall qualify by filing with the market administrator a written acceptance of his willingness and intention to serve in such capacity. It is anticipated that any eligible nominee included on the list that the market administrator is required to circulate to participating nonmember producers and certain participating member producers in the conduct of the referendum, as discussed elsewhere in these findings, would advise the market administrator promptly if he were not willing to be a nominee. Notwithstanding, it is possible that a person elected to membership or so designated by a cooperative may not be able or may not wish to accept the position. This requirement, therefore, is necessary in order that the market administrator will know whether or not the position has been filled. Such acceptance should be filed promptly after notification in order that the formation of the Agency can be prompt.

The term of office of each member of the Agency as herein adopted is 1 year or until a replacement is designated by the cooperative association or is elected.

It is possible that an elected representative may leave the market or otherwise be unable to complete his term of office. It is desirable, therefore, that some procedure be provided for filling the vacancy. It is concluded appropriate in such circumstance that the market administrator appoint as his replacement the then currently participating producer who received the next highest number of eligible votes in the referendum.

Actions to be taken by the Agency are of such importance that a majority of the representatives should be required to be present at any meeting to constitute a quorum and any action taken by the Agency should require a majority of concurring votes of those present and voting. The provisions herein adopted so provide except that the Agency may adopt rules that a decision on any action require a greater proportion than a simple majority of members present.

The Agency's duties set forth in the respective orders are generally necessary for the discharge of its responsibilities. It is intended that activities undertaken by the Agency shall be confined to those reasonably necessary to carry out its responsibilities as prescribed by the program. At the same time it should be recognized that these specified duties are not necessarily all inclusive, and it may develop that there are other duties the Agency may need to perform.

The Congress clearly contemplated that producer activities under Public Law 91–670 would be under direct surveillance of the Secretary. It was specifically provided that "all funds collected under this subparagraph (I) shall be separately accounted for and shall be used only for the purposes for which they are collected." It is essential, therefore, that the Agency prepare and submit to the Secretary for his approval budgets showing projected amounts of available funds and how such funds are to be disbursed. Also, in order to make the audit necessary to establish that Agency funds are used only for authorized purposes, the market administrator or other representative of the Secretary must have access to all of the Agency's records and access to, and the right to examine, any directly pertinent books, documents, papers, and records of any organization performing advertising and promotion activities for such Agency.

Proponents proposed that budgets be prepared and submitted for approval on a quarterly basis. The Agency must be in a position to develop firm plans and make commitments covering a sufficient forward period to insure a continuing viable program. A calendar quarter is concluded to be the minimum practical period for achieving this end and it is provided therefore that a budget shall be submitted to the Secretary for his approval prior to each quarterly period.

All of the possible promotion and other authorized activities that the Agency may wish to pursue cannot be anticipated at this time. Therefore, the authority for the Agency to establish programs and projects is purposely left broad and flexible to facilitate the timely development of such programs suitable to prevailing circumstances in the market.

Any promotion program or project the Agency may consider must comport with the terms and conditions of the order and be evaluated in terms of cost, the statutory objectives to be accomplished, the time required to complete the program or project, and other such factors, in order to arrive at a sound decision as to whether the program or project is justified.

The required budget submissions will permit the Secretary to evaluate projected programs in terms of the declared policy of the Act and also will serve as policy guidelines for Agency members in the conduct of their operations for each ensuing quarterly period. This will be particularly helpful in the transition of Agency membership as the terms of office of individual members expire.

The Agency appropriately must follow prudent operating procedures in the furtherance of the best interests of producers. It is required, therefore, that it shall keep minutes of its meetings and such other books and records as will clearly reflect all its transactions, and on request shall submit such books and records to the Secretary for his examination. It also shall provide for the bonding of all persons handling Agency funds with surety thereon satisfactory to the Secretary.

The amending orders prescribe no specific requirements of the Agency to publish an account of funds collected and the use made thereof or to make releases of information concerning the operation of the program to producers and other interested parties. Since the activities of the Agency are under the direct supervision of the Secretary, it is not necessary to prescribe such requirements to insure the integrity of the program. However, since the degree of producer participation in the program, and thus its relative success, will depend in large part upon the interest and confidence it generates among producers, the Agency undoubtedly will keep producers on the market fully informed of its milk promotion plans, projects, and activities. In view of these considerations, it is not necessary to prescribe specific informational releases to producers and other parties.

It is possible that the Agency may find it desirable to enlist the aid of individuals with special talents who might be helpful in program and promotion planning by virtue of their particular knowledge, skills, or expertise, on matters directly involved with advertising and promotion programs. Provision is made, therefore, whereby the Agency, at its pleasure, may establish an advisory committee(s) of persons other than Agency members. Such a committee(s) may include, but would not be necessarily limited to persons drawn from universities, land grant colleges, or extension services, public officials, and others, in the dairy industry. Such committee(s) could make recommendations and participate in the deliberations of the Agency but would have no voting rights.

It would not be expected that the market administrator or his staff or other officials of the U.S. Department of Agriculture would serve on such a committee(s) since the activities of the Agency are under the surveillance of the Department.

The Agency should be authorized to incur reasonable expense in its administration of the program, including the employment and the fixing of compensation of any person necessary to the exercise of its powers and performance of its duties. For example, the Agency may find it necessary to retain the services of an attorney from time to time to assist in the preparation of contracts, or to employ a stenographer, or other individual(s) to handle its recordkeeping and bookkeeping functions. Other Agency costs could be expected to involve miscellaneous office costs usually associated with a business office.

It is, of course, appropriate and necessary, that Agency representatives be reimbursed for reasonable expenses incurred in attending meetings and while on other Agency business. This could involve expenses for travel in private car, and expenses incurred for public transportation, meals, and lodging. It would be unreasonable to require members of the Agency to bear such expenses incurred in the interest of all producers on the market.

It was proposed, and it is here adopted, that the amount of money utilized by the Agency for its expenses in administering the program should not exceed 5 percent of the funds received by the Agency from the market administator. This establishes a reasonable limitation on Agency costs and assurance to producers that the funds collected under the program will be expended prudently on advertising and promotion activities.

The Agency, of course, is handling funds otherwise payable to producers. The Agency members therefore should have assurance that they will not be personally liable for the impact of their official acts except for willful misconduct, gross negligence, or any acts that are criminal in nature. To assure that the Agency funds are used only for the purpose contemplated by the Congress, it is provided that such funds shall not be used for political activities, or for influencing governmental policy or acts.

Although a specified assessment automatically will be withheld for the program with respect to milk deliveries of all producers, the authorizing statute, nevertheless, provides that producers not wishing to participate in the program shall have the right to refund of the deductions on their milk. The provision of the act is that "notwithstanding any other provisions of this Act, as amended, any producer against whose marketings any assessment is withheld or collected under the authority of this subparagraph, and who is not in favor of supporting the advertising and promotion programs, as provided for herein, shall have the right to demand and receive a refund of such assessment pursuant to the terms and conditions specified in the order."

The proposals made by producer groups for these markets would implement refunds by a method similar to those provided in other orders where programs of this type have been established. Specifically, a producer desiring a refund on the assessments made against his marketings would submit to the market administrator his signed request, in the manner prescribed by the market administrator, within the first 15 days of the month (December, March, June, or September) preceding the calendar quarter for which refund is requested.

Refunding on a quarterly basis as proposed is reasonable in that it insures refunds on a timely basis, without undue administrative costs, and therefore conforms to the intent of the Congress.

It was suggested by proponents that patron numbers, social security numbers, or similar information will in most cases provide the necessary identification of the producer requesting the refund. While it is intended that the refund procedure not be cumbersome or in any way impede producers who wish to obtain refunds, it is necessary to require records relevant to the refund. It is not possible to anticipate what information might be necessary in all particular cases to identify an applicant for refund, for instance where several dairy farmers

having similar names occur on producer payrolls.

In any event, the provisions provided herein will permit the market administrator to develop appropriate procedures to this end. These procedures should include reasonable safeguards to clearly establish that any refund request originates with, and is the action of, the individual producer. It would be inappropriate, for example, for any cooperative or individual not in harmony with the program to file refund requests in the names of individual producers without their full knowledge or understanding of the nature of the action.

To insure that producers have an awareness of the program and of their rights thereunder, it is provided that the market administrator shall forward to each producer a copy of the amended order promptly when the program is effectuated, and thereafter to new producers.

All refunds paid should be made by the market administrator directly to the producer requesting the refund. This is a primary consideration in assuring that the payment of the money to the producer will be expedited and that the producer does, in fact, receive the money to which he is entitled. The market administrator is in possession of the information on which to determine the validity of the request, and the identity of the producer, or is in a position to obtain the necessary information for these purposes. Further, inasmuch as all the money involved in the program is in the first instance collected by the market administrator, there is no reason for any other method of payment of refunds than directly from the market administrator to the individual producer.

Proponents recognized that certain elements of flexibility are necessary in the procedure when a dairy farmer is not on the market during the specified notification period in which request for refunds are to be made. It was proposed that a dairy farmer coming on the market after such specified period and before the beginning of the next regular period for requesting refunds be permitted to request refund for the calendar quarter.

It was pointed out, however, that a dairy farmer coming on the market may have been a producer on another market where a similar program applies and where he had requested refund for the calendar quarter or had opportunity to make such request. Proponents suggested that, ideally, one request by a producer should serve for all markets in which his milk is delivered and subject to program assessments.

The program should operate in such a manner that an application properly submitted by a dairy farmer for refund for a calendar quarter under one order will be valid with respect to refund of program assessments on his milk under a second order. As a corollary, there is no need to provide a new producer opportunity to request refund if he already has had such opportunity in another market. To do so would result in unnecessary duplication of the refund procedure and added expense. A second opportunity for such producers to request a refund would also be inequitable compared to the application of the order to producers who are afforded the opportunity only in the specified 15-day period.

In the case of a new producer who has not been under another order where a similar program exists, and who enters the market after the regular refund notification period applicable to a calendar quarter, or comes on the market during such calendar quarter, application for refund may be made with respect to assessments against such producer's milk during such calendar quarter.

Proponents requested at the hearing that in the event deductions at the start of the program are initiated other than at the beginning of a calendar quarter, a period for requesting refunds be specified in the month prior to the first month in which deductions are made. As proposed in the hearing notice, however, in such circumstances a producer would be allowed to make application for refund for the current calendar quarter up to the beginning date of the next regular period for requesting refunds for the ensuing quarter.

The proposed special refund request period is not considered necessary. The particular circumstance described by proponent would occur only at the beginning of the program. It is not expected under the circumstances in these markets that the proposal would make a significant difference in the funds available.

Proponents recognized that the milk of some producers may be subject to deductions under a State program requiring a mandatory checkoff for a similar advertising and promotion program. Proponents held that a double assessment was not intended and that refund should be made under the Federal order of an amount equal to such State assessment but not in excess of 5 cents per hundredweight. This procedure is provided for in the statute and should be adopted.

A part of the function of the market administrator in relation to handling of applications for refunds is the ascertainment of the amount of funds to be available to the Agency during the ensuing calendar quarter for use in the program. Under the procedure specifying that application for refunds should be made in the first 15 days of the month preceding the quarter, the market administrator will have in hand information from which to estimate the total of assessments on milk during the ensuing quarter that will be available for disbursement to the Agency. Such estimate of available funds will be based, of course, only on existing information at the beginning of the calendar quarter. Changes in producer numbers as well as other occurrences during the quarter will affect somewhat the amount of money available.

Since this is a voluntary program there should be no provision for disclosure by the market administrator regarding the status of any producer under the program. It will be incumbent upon the participants, through their Agency, to conduct programs in a manner and of a nature to set the climate for maximum participation by producers.

It is possible that at some later date producers could request termination of the program, or that the order provisions could be terminated by the Secretary on a finding that they no longer tend to effectuate the declared policy of the Act. In the event that the provisions of the advertising and promotion program are terminated in their entirety, any remaining uncommitted funds applicable thereto should revert to producers since such moneys are derived solely from funds otherwise due producers. In each of these orders market-wide pools exist and such uncommitted funds appropriately should be deposited in the producer-settlement fund for distribution to producers.

Expenses incurred by the market administrator in the administration of the advertising and promotion program should be charged against the advertising and promotion funds. Neither the marketing service fund nor the administrative fund should be charged with costs directly related to the administration of the advertising and promotion program. The program is producer originated and should be self-sustaining. The expenses attendant to its administration appropriately should be borne by participating producers.

The statutory authority supports this position and makes it clear that this is intended to be strictly a producer program. In part the law states that "Establishing or providing for the establishment of * * * program * * * to be financed by producers in a manner and at a rate specified in the order, on all producer milk under the order. * * * All funds collected under this subparagraph shall be separately accounted for and shall be used only for the purpose for which they are collected."

To implement the advertising and promotion program under each order, it is necessary that certain provisions of the current orders be modified.

The provisions for computing the weighted average (or uniform) prices must be modified by inserting a new paragraph prescribing the deduction of 5 cents per hundredweight of producer milk from the aggregate value included in the computation. It is through this procedure that the advertising and promotion funds are reserved. This, of course, has the result of reducing the weighted average (or uniform) prices by 5 cents.

The advertising and promotion moneys so reserved will be held in the producer-settlement fund as a separate account for disposition by the market administrator in accordance with the terms and conditions prescribed under the advertising and promotion program order provisions.

In the Greater Kansas City order where a base and excess payment plan applies, it also is necessary to modify the provisions prescribing the computation of the uniform prices for base and excess milk so that the cost of the advertising and promotion program will be divided pro rata between base and excess milk rather than be placed on base milk alone. Official notice is taken of a decision with respect to the Nebraska-Western Iowa order (37 F.R. 23438) in which a Class I base plan is proposed. Appropriate provisions for computation of uniform prices are contained herein in the event such base plan is adopted.

It is necessary also that appropriate corollary changes be made in the provisions prescribing the obligations of a handler operating a partially regulated distributing plant and the obligations of any handler with respect to other source milk allocated to Class I (on which the pool obligation is the difference between the Class I and the weighted average price) so that such handler's pool obligations will not be increased by 5 cents because of the change in the weighted average price.

It is recognized that, unless otherwise provided for, an audit adjustment involving any handler's balance of payment to or from the producer-settlement fund could also require adjustments in the moneys to be turned over to the program or refunded to producers, as the case may be. However, such adjustment normally would not involve sufficient volumes of milk to significantly affect the moneys available to the program. For this reason and because of the substantial administrative costs that would be involved in reflecting audit adjustment in adjusted payments to the program, it is intended that such audit adjustments shall not result in adjustments of funds available to the program.

Other order modifications not specifically discussed herein are necessary and incidental to insure the proper functioning of the order to accommodate the advertising and promotion program as here established.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a marketing agreement[1] regulating the handling of milk, and an order amending the orders regulating the handling of milk in the aforesaid specified marketing areas which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement,[1] be published in the Federal Register. The regulatory provisions of the marketing agreements are identical with those contained in the respective orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval of the Advertising and Promotion Program and Determination of Representative Period

November 1972 is hereby determined to be the representative period for the purpose of ascertaining whether the proposed order provisions, constituting the advertising and promotion program in each order regulating the handling of milk in the aforesaid specified marketing areas are separately approved or favored by producers, as defined under the terms of the respective order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the respective marketing area.

Signed at Washington, D.C., on January 5, 1973.

Richard E. Lyng,
Assistant Secretary.

Order[2] amending the orders, regulating the handling of milk in certain specified marketing areas.

Findings and Determinations

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

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid specified marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

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

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

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

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of

[1] Marketing agreement filed as part of the original document.

[2] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending each of the specified orders contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on December 1, 1972, and published in the FEDERAL REGISTER on December 6, 1972 (37 FR 25940) shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

With respect to the Nebraska-Western Iowa Order No. 65, the amending order includes certain provisions (amendment numbers 6 and 7 relative to §§ 1065.71a and 1065.80a, respectively) that were set forth in the recommended decision to apply if a proposed Class I base plan was adopted for such order. By an order of the Assistant Secretary issued December 15, 1972, and published in the December 21, 1972, issue of the FEDERAL REGISTER, a Class I Base Plan was adopted for the Nebraska-Western Iowa Order 65 to become effective February 1, 1973.

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. Section 1032.60 is revised as follows:

§ 1032.60 Producer-handlers.

Sections 1032.40 through 1032.54, 1032.61 through 1032.90 and 1032.110 through 1032.122 shall not apply to a producer-handler.

2. In § 1032.62, paragraph (b)(5) is revised as follows:

§ 1032.62 Obligations of handler operating a partially regulated distributing plant.

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location plus five cents, or the Class II price, whichever is higher; and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

3. In § 1032.71, a new paragraph (c–1) is added to read as follows:

§ 1032.71 Computation of the uniform price.

* * * * *

(c–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

* * * * *

4. In § 1032.84, paragraph (b)(2) is revised to read as follows:

§ 1032.84 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) The value at the weighted average price(s) applicable at the location of the plant(s) from which received plus 5 cents (not to be less than the value at the Class II price) with respect to other source milk for which a value is computed pursuant to § 1032.70(f).

5. Immediately following § 1032.89, a new centerhead and new §§ 1032.110 through 1032.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

§ 1032.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1032.121 (b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1032.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1032.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to § 1032.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1032.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1032.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

§ 1032.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1032.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1032.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market

administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1032.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1032.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1032.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1032.110 and 1032.117.

§ 1032.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select, from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1032.110 and 1032.117;

(c) Keep minutes, books, and records, and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1032.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1032.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1032.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1032.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1032.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1032.71 (c–1): *Provided:* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1032.71(c–1).

§ 1032.121 Duties of the market administrator.

Except as specified in § 1032.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1032.113(c);

(b) Set aside the amounts subtracted under § 1032.71(c–1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1032.71(c–1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1032.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's

milk pooled for which deductions were made pursuant to § 1032.71(c–1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1032.110 through 1032.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1032.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1032.83.

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. Section 1050.60 is revised as follows:

§ 1050.60 Producer-handlers.

Sections 1050.40 through 1050.54, 1050.61 through 1050.90, and 1050.110 through 1050.122 shall not apply to a producer-handler.

2. In § 1050.62, paragraph (b)(5) is revised as follows:

§ 1050.62 Obligations of handler operating a partially regulated distributing plant.

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant (not to be less than the Class II price), subtract its value at the weighted average price applicable at such location plus 5 cents, or the Class II price, whichever is higher; and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant (not to be less than the Class II price) less the value of such skim milk at the Class II price.

3. In § 1050.71, a new paragraph (c–1) is added to read as follows:

§ 1050.71 Computation of the uniform price.

* * * * *

(c–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

4. In § 1050.84, paragraph (b)(2) is revised to read as follows:

§ 1050.84 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) The value at the weighted average price(s) applicable at the location of the plant(s) from which received plus 5 cents (not to be less than the value at the Class II price) with respect to other source milk for which a value is computed pursuant to § 1050.70(f).

5. Immediately following § 1050.89, a new centerhead and new §§ 1050.110 through 1050.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

§ 1050.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1050.121 (b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1050.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations as provided for under § 1050.113(b), is authorized one agency representative for each full 10 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 10 percent of the total participating producers that have elected not to combine pursuant to § 1050.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1050.113(c), one Agency representative for each full 10 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 10 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1050.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

§ 1050.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1050.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 10 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1050.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 10 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1050.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1050.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1050.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1050.110 and 1050.117.

§ 1050.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1050.110 and 1050.117;

(c) Keep minutes, books, and records, and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1050.117 Advertising, Research, Education and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1050.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1050.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1050.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1050.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1050.71(c–1). *Provided:* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1050.71(c–1).

§ 1050.121 Duties of the market administrator.

Except as specified in § 1050.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1050.113(c);

(b) Set aside the amounts subtracted under § 1050.71(c–1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1050.71(c–1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1050.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1050.71(c–1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1050.110 through 1050.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1050.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1050.83.

PART 1062—MILK IN THE ST. LOUIS-OZARKS MARKETING AREA

1. In § 1062.60, paragraph (a) is revised as follows:

§ 1062.60 Exemptions.

(a) *Producer-handler.* Sections 1062.40 through 1062.46, 1062.50 through 1062.54, 1062.61, 1062.62, 1062.70 through 1062.72, 1062.80 through 1062.89 and 1062.110 through 1062.122 shall not apply to a producer-handler; and

* * * * *

2. In § 1062.62, paragraph (b)(5) is revised as follows:

§ 1062.62 Obligations of handlers operating a partially regulated distributing plant.

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location plus 5 cents (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

3. In § 1062.71, a new paragraph (c–1) is added as follows:

§ 1062.71 Computation of uniform prices.

* * * * *

(c–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents.

§ 1062.84 [Amended]

4. In § 1062.84, *Payments to the producer-settlement fund,* paragraph (b)(2) is revised by inserting the words "plus 5 cents" following the initial words "The value at the weighted average price(s) applicable at the location of the plant(s) from which received * * *"

5. Immediately following § 1062.88, a new centerhead and new §§ 1062.110 through 1062.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

§ 1062.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1062.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1062.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1062.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to § 1062.113(b), and participating producers who are not members of cooperatives are authorized to select from such group of participating producers, in total, pursuant to § 1062.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1062.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

§ 1062.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1062.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1062.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1062.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1062.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1062.110;

(b) Make rules and regulations to effecutate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1062.110 and 1062.117.

§ 1062.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1062.110 and 1062.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1062.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1062.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1062.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1062.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1062.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1062.71 (c–1): *Provided:* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1062.71(c–1).

§ 1062.121 Duties of the market administrator.

Except as specified in § 1062.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1062.113(c);

(b) Set aside the amounts subtracted under § 1062.71(c–1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1062.71(c–1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1062.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1062.71 (c–1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1062.110 through 1062.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1062.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1062.83.

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. Section 1064.60 is revised as follows:

§ 1064.60 Exempt handlers.

Sections 1064.40 through 1064.46, 1064.50 through 1064.53, 1064.61, 1064.70, 1064.71, 1064.80 through 1064.88, and

1064.110 through 1064.122, shall not apply to a handler pursuant to § 1064.7(f), a producer-handler, or to a handler operating a plant from which less than an average of 600 pounds of Class I milk per day is distributed on routes in the marketing area.

2. In § 1064.61, paragraph (b)(5) is revised as follows:

§ 1064.61 Obligations of handler operating a partially regulated distributing plant.

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location plus 5 cents (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

3. In § 1064.71, a new paragraph (c–1) is added to read as follows:

§ 1064.71 Computation of uniform price.

* * * * *

(c–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

4. In § 1064.72 revise paragraphs (a) and (b) to read as follows:

§ 1064.72 Computation of uniform prices for base and excess milk.

* * * * *

(a) Subtract from the amount resulting from the computations made pursuant to paragraphs (a) through (d) of § 1064.71 an amount computed by multiplying the weighted average price plus 5 cents times the hundredweight of milk specified in § 1064.71(e)(2);

(b) Determine the value of excess milk by multiplying the hundredweight of producer milk determined to be excess milk in series beginning with Class III by the respective class prices minus 5 cents for milk of 3.5 percent butterfat content, and adding together the resulting amounts;

* * * * *

§ 1064.80 [Amended]

5. In § 1064.80, *Time and method of payment*, the phrase in paragraph (a) "at not less than the applicable uniform price(s) pursuant to § 1064.71 or § 1064.82" is changed to read "at not less than the applicable uniform price(s) pursuant to § 1064.71 or § 1064.72."

6. In § 1064.84, revise paragraph (a)(2)(ii) to read as follows:

§ 1064.84 Payments to the producer-settlement fund.

(a) * * *

(2) * * *

(ii) The value at the weighted average price(s) applicable at the location of the plant(s) from which received plus 5 cents (not to be less than the Class III price) with respect to other source milk for which a value is computed pursuant to § 1064.70(e).

7. Immediately following § 1064.88 a new centerhead and new §§ 1064.110 through 1064.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

§ 1064.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1064.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1064.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1064.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to § 1064.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1064.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1064.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives but not less than five.

§ 1064.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1064.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1064.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1064.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1064.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1064.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1064.110 and 1064.117.

§ 1064.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1064.110 and 1064.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1064.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1064.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1064.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1064.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1064.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1064.71(c–1): *Provided*, That such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1064.71(c–1).

§ 1064.121 Duties of the market administrator.

Except as specified in § 1064.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1064.113(c);

(b) Set aside the amounts subtracted under § 1064.71(c–1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1064.71(c–1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1064.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1064.71(c–1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1064.110 through 1064.122).

(d) Make necessary audit to establish that all Agency funds are used only for authorized purposes.

§ 1064.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1064.83.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.60 is revised as follows:

§ 1065.60 Producer-handler.

Sections 1065.40 through 1065.46, 1065.50 through 1065.53, 1065.70 through 1065.73, 1065.80 through 1065.87, and 1065.110 through 1065.122 shall not apply to a producer-handler.

2. In § 1065.62, paragraph (b)(5) is revised as follows:

§ 1065.62 Obligations of handler operating a partially regulated distributing plant.

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location plus 5 cents (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

3. In § 1065.71, a new paragraph (d–1) is added as follows:

§ 1065.71 Computation of uniform prices.

* * * * *

(d–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

4. Section 1065.71a is revised to read as follows:

§ 1065.71a Computation of uniform prices for base milk and excess milk.

For each month in which a base plan is effective the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk of 3.5-percent butterfat content received from producers as follows:

(a) From the net amount computed pursuant to § 1065.71 (a) through (e) subtract the amounts specified in subparagraphs (1) through (5) of this paragraph:

(1) The amount computed by multiplying the hundredweight of milk specified in § 1065.71(f)(2) by the weighted average price plus 5 cents for all milk;

(2) The amount obtained by multiplying by the Class III price, less 5 cents, the total hundredweight of milk delivered by all producers who have no Class I base;

(3) The amount computed by multiplying the hundredweight of excess milk by the Class III price, less 5 cents, for 3.5-percent butterfat milk provided that the quantity of milk to which the Class III price, less 5 cents, is applied pursuant to this subparagraph plus the quantity pursuant to subparagraph (2) of this paragraph shall not exceed the quantity of producer milk in Class III;

(4) An amount computed by multiplying any remaining hundredweight of excess milk by the Class II price, less 5 cents, for 3.5-percent butterfat milk to the extent that producer milk in Class II is available for such assignment; and

(5) An amount computed by multiplying any remaining hundredweight of excess milk by the Class I price, less 5 cents, for 3.5-percent butterfat milk;

(b) Divide the net amount obtained in paragraph (a) of this section by the total hundredweight of base milk and subtract not less than 4 cents but less than 5 cents. This result shall be known as the uniform base price per hundredweight of milk of 3.5-percent butterfat content; and

(c) Divide the amount obtained in paragraphs (a) (3), (4) and (5) of this section by the hundredweight of excess milk, and subtract any fractional part of 1 cent. This result shall be known as the uniform excess price per hundredweight of milk of 3.5-percent butterfat content.

§ 1065.80a [Amended]

5. In § 1065.80a, *Time and method of payment to producers and to cooperative associations*, paragraph (a) is revised by inserting the words "less 5 cents" (preceded and followed by commas), immediately following the words "at not less than the Class III price".

6. In § 1065.82, paragraph (b)(2) is revised as follows:

§ 1065.82 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) The value at the weighted average price(s) applicable at the location of the plant(s) from which received plus 5 cents (not to be less than the value at the Class III price) with respect to other source milk for which a value is computed pursuant to § 1065.70(e).

7. A new centerhead and new §§ 1065.110 through 1065.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

§ 1065.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1065.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1065.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1065.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to § 1065.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1065.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1065.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

§ 1065.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1065.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to

the Agency under the rules of § 1065.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1065.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1065.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1065.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1065.110 and 1065.117.

§ 1065.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1065.110 and 1065.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1065.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1065.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1065.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1065.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1065.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1065.71(d–1). *Provided:* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refunds with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1065.71(d–1).

§ 1065.121 Duties of the market administrator.

Except as specified in § 1065.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1065.113(c);

(b) Set aside the amounts subtracted under § 1065.71(d–1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1065.71(d–1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1065.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1065.71(d–1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1065.110 through 1065.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1065.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1065.81.

[FR Doc.73–513 Filed 1–9–73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 19]

CREAMED COTTAGE CHEESE

Definitions and Standards of Identity; Termination of Proposed Rule Making

In the matter of amending the definition and standard of identity for creamed cottage cheese (21 CFR 19.530) to permit the use of the mold inhibitors sorbic acid, sodium sorbate, and potassium sorbate, or mixtures thereof as optional ingredients:

A notice of proposed rule making in the above-identified matter was published in the FEDERAL REGISTER of September 22, 1971 (36 FR 18800), based on a petition filed by the Milk Industry Foundation, 910 17th Street NW., Washington, DC 20006. Subsequently, an order was published (37 FR 12934, June 30, 1972) which amended § 19.530 by changing the name "creamed cottage cheese" to "cottage cheese," and by providing for use in the creaming mixture of any "safe and suitable" ingredient as defined in 21 CFR 19.499. This would include the subject ingredients. In view of the June 30, 1972, publication, the Milk Industry Foundation has requested withdrawal of its petition, and as provided for in 21 CFR 10.2, notice is given that the rule making procedure in this matter is terminated. The withdrawal of this petition is without prejudice to a future filing.

In response to the above notice of proposed rule making in this matter, a total of 75 written comments were received; 13 comments favored the proposal and 62 comments expressed opposition. The Commissioner wishes to acknowledge these comments and to state his conclusions with respect to those expressing opposition to the proposal in summary as follows:

1. The majority of the adverse comments, mostly from individuals, expressed opposition to the adding of sorbic acid or other chemicals to food.

A review of the legislative intent of the Food Additives Amendment indicates that the use of safe and suitable additives to enable the housewife to safely keep food longer is specifically expressed as a primary purpose of the law. This matter was elaborated upon in the order amending § 19.530 published in the FEDERAL REGISTER on June 17, 1972 (37 FR 12065).

2. Other respondents asserted that preservatives are not needed in creamed cottage cheese produced under good manufacturing practices, since the present product is dated and will keep up to 2 to 3 weeks under refrigeration.

Several research studies have shown that even under conditions of good manufacturing practice, low levels of microflora are present in creamed cottage cheese and that sorbic acid and/or sorbates are effective in suppressing the growth of such microflora. In the manufacture and packaging of creamed cottage cheese, the creaming mixture is added to the curd either in the vat or by utilizing various blenders. Some bacteria capable of producing economic spoilage will gain admittance into the product prior to or during packaging even where the strictest of good manufacturing practices are observed. Creamed cottage cheese is also very susceptible to inoculation with microorganisms from exposure to a variety of utensils used to mix and serve the product. Moreover, many home refrigerators are not maintained at a temperature that is sufficiently low to protect the product adequately, particularly when such microorganisms are present. Cottage cheese is normally spoiled by the growth of Gram-negative bacteria rather than yeasts and molds. When these bacteria have grown sufficiently to produce off-flavors or odors or discoloration, the product is no longer considered fit for consumption, regardless of whether or not sorbic acid and/or sorbates were initially added. While sorbic acid and/or sorbates do help to extend the salable life of foods, they by no means can completely restrict microbial growth, especially with high initial levels of contamination. The use of sorbic acid and/or sorbates as proposed will only delay the respective growth rates of these microorganisms and cannot be used to upgrade a product of poor quality. Chemical off-flavors and physical degradation such as drying, wheying off, etc., that occur in overage cottage cheese would not be impeded by the use of sorbic acid and/or sorbates.

3. Comments were received that certain ingredients (sometimes referred to as "chemicals") in food are detrimental to health, since some individuals should avoid them and other individuals should adhere to restricted diets.

The label declaration of safe and suitable ingredients, as required by the order of June 30, 1972, referred to above, would enable the consumer to learn if a food contains an ingredient which should be avoided and thus provide the consumer a basis for choice.

4. Several commented that use of preservatives in cottage cheese would not improve the nutritional quality of the food and would be more beneficial to the manufacturer than to the consumer.

The optional use of sorbic acid and/or sorbates, while not improving the nutritional quality of the food, will enable the consumer to utilize creamed cottage cheese in a condition comparable to that of the product when manufactured and with no reason for an increase in price. Also, given the opportunity to utilize the additives, producers of cottage cheese would be able to compete in more distant markets; thus competition would likely be intensified, rather than lessened as some respondents asserted, leading to a wider variety of brands from which the consumer may select.

5. One respondent, a manufacturer and major supplier of sorbic acid and potassium sorbate favored the proposal but suggested that a level higher than that of 0.10 percent proposed by the petitioner be permitted.

Data submitted by the petitioner show that a use level of more than 0.10 percent potassium sorbate may impart a detectable off-flavor to creamed cottage cheese and is not warranted.

This termination of proposed rule making is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–1056, as amended, 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Effective date. This termination is effective on January 10, 1973.

Dated: January 2, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-482 Filed 1-9-73;8:45 am]

[21 CFR Parts 135c, 141a, 146a]

PROCAINE PENICILLIN AND STREPTOMYCIN SULFATE IN COMBINATION, PENICILLIN-STREPTOMYCIN POWDER VETERINARY, AND PENICILLIN-DIHYDROSTREPTOMYCIN POWDER VETERINARY

Proposed Revocation of Certification for Use in Animal Drinking Water

In the FEDERAL REGISTER of July 22, 1970 (35 FR 11706, DESI 0063NV), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Whitmoyer A-V 25, NADA (new animal drug application) No. 65-295; marketed by Whitmoyer Laboratories, Inc., 19 North Railroad Street, Myerstown, PA 17067. The announcement invited the holder of said new animal drug application and any other interested person to submit pertinent data on the drug's effectiveness.

Available information fails to provide substantial evidence that this drug will have the effect it purports to have when administered in accordance with the conditions of use prescribed, recommended, or suggested in its labeling. Accordingly, the Commissioner concludes that neither this nor any similar product should be permitted in the drinking water of animals. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343-351; 21 U.S.C. 357, 360b) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that Parts 135c, 141a, and 146a be amended by revoking §§ 135c.45 *Procaine penicillin and streptomycin sulfate in combination;* 141a.71 *Penicillin-streptomycin powder veterinary; penicillin dihydrostreptomycin powder veterinary;* and 146a.93 *Penicillin-streptomycin powder veterinary; penicillin-dihydrosteptomycin powder veterinary.*

Any person who would be adversely affected by the removal of any such drugs from the market may file, by February 9, 1973, objections to this proposal stating reasonable grounds and requesting a hearing on such objections. A statement of reasonable grounds for hearing must identify the claimed errors in the NAS/NRC evaluation and identifying any adequate and well-controlled investigation on the basis of which it could reasonably be concluded that these drugs would have the effectiveness claimed and would be safe for their intended use. Objections and requests for a hearing should be filed (preferably in quintuplicate) with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852. Objections and requests for a hearing which are received in response to this order may be seen in the above office during business hours, Monday through Friday.

(Secs. 507 512, 59 Stat. 463 as amended, 82 Stat. 343-351; 21 U.S.C. 357, 360b)

Dated: January 2, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-485 Filed 1-9-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[41 CFR Part 15-16]

PROCUREMENT FORMS

Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect-Engineer Contracts)

Notice is hereby given that the Environmental Protection Agency proposes an amendment to 41 CFR Chapter 15, § 15-16.553 to add general provisions to be used in cost reimbursement contracts with educational and other nonprofit institutions to read as set forth below.

Interested parties may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Environmental Protection Agency, Contracts Management Division, Washington, D.C. 20460. All communications received within thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER will be considered prior to adoption of the final regulation. A copy of each communication will be placed on file for public inspection in the Contracts Management Division, Room 415B, Waterside Mall, Washington, D.C. 20460.

Dated: January 5, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator.

Subpart 15-16.5—Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect-Engineer Contracts)

§ 15-16.553-4 General provisions for use in cost reimbursement contracts with educational and other nonprofit institutions.

GENERAL PROVISIONS

The following listed clauses (1-39), previously published in the FEDERAL REGISTER, dated September 20, 1972, will be included:

1. Definitions.
2. Disputes.
3. Changes.
4. Printing.
5. Stop work order.
6. Inspection.
7. Subcontracts.
8. Competition in subcontracting.
9. Overtime.
10. Foreign travel.
11. Services of consultants.
12. Insurance.
13. Litigation and claims.
14. Notice to the Government of delays.
15. Limitation on withholding of payments.
16. Interest.
17. Payment of interest of contractor's claims.
18. Audit and records.
19. Examination of records by Comptroller General.
20. Price reduction for defective cost or pricing data.
21. Subcontractor cost and pricing data.
22. Pricing of adjustments.
23. Assignment of claims.
24. Utilization of small business concerns.
25. Utilization of labor surplus area concerns.
26. Utilization of minority business enterprises.
27. Equal opportunity.
28. Listing of employment openings.
29. Walsh-Healey Public Contracts Act.
30. Contract Work Hours and Safety Standards Act—overtime compensation.
31. Convict labor.
32. Buy American Act.
33. Officials not to benefit.
34. Covenant against contingent fees.
35. Gratuities.
36. Authorization and consent.
37. Rights in data.
38. Data requirements.
39. Notice and assistance regarding patent and copyright infringement.

In addition to the above, the following clauses will be included for use in cost reimbursement contracts with educational and other nonprofit institutions:

40. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the notice of termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments the Contractor agrees to (1) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he

may require, which approval or ratification shall be final for all purposes of this clause, and (2) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a notice of termination, but in no event later than 1 year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such 1-year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the contract cost principles and procedures in Subpart 1–15.3 of the Federal procurement regulations (41 CFR 1–15.3) in effect on the date of this contract, except that if the Contractor is not an educational institution any costs claimed, agreed to, or determined pursuant to paragraphs (c) or (e) hereof shall be in accordance with Subpart 1–15.2 of the Federal procurement regulations (41 CFR 1–15.2) in effect on the date of this contract.

(e) Subject to the provisions of paragraph (c) above, and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under his clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel: *Provided, however,* That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand: *Provided,* That if such excess is not so paid upon demand, interest thereon shall be payable by the Contractor to the Government at the rate of 6 percent per annum, beginning 30 days from the date of such demand.

(g) The Contractor agrees to transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(1) Completed or partially completed plans, drawings, and information; and

(2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

41. GOVERNMENT PROPERTY

(a) *Government-furnished property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer shall upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision effected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-Furnished Property.* (1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, and/or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance on this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(The following paragraph shall be substituted for (c) above when the contract is with an educational institution.)

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor with the prior approval of the Contracting Officer shall be vested in the Contractor without further obligation to the Government except as provided below, unless it is determined by the Contracting Officer that such vesting is not in furtherance of the objectives of the Government or unless there is not proper authority to vest title in the Contractor. Such title shall be vested in the Contractor upon acquisition of the property or as soon as feasible thereafter provided that:

(i) The Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such property.

(ii) At any time prior to twelve (12) months after completion or termination of the contract, the Contracting Officer reserves the right to require the Contractor to transfer title to property costing $1,000 or more per unit to the Government or to a third party named by the Contracting Officer.

(iii) The Contractor shall, at the end of the calendar year, and within 30 days after completion of the contract, furnish the Contracting Officer a list of all property where title is vested in the Contractor. If no such property has vested, the report shall so state.

All Government furnished property, together with all property title to which vests in the Government under this clause, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government Property." Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personality by reasons of affixation to any realty.

(d) *Property Administration.* The Contractor agrees to maintain and administer a property control system in accordance with EPA publication "Guide for Control of Government Property by Contractors," in effect as of the date of this contract, supplied by the Government. While the Contractor is responsible for the Government Property (Government furnished and Contractor acquired), the Government will maintain the official accountability records.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Maintenance of Government Property.* The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection and disposition of Government property.

(g) *Risk of Loss.* (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(C) A separate and complete major industrial operation in connection with the performance of this contract;

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—

(A) To maintain and administer, in accordance with sound industrial practice, the program for utilization, maintenance, repair, protection, and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof; or

(B) To establish, maintain, and administer, in accordance with (d) above, a system for control of Government property;

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

(2) If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. The Contractor shall obtain the approval of the Contracting Officer prior to transferring any Government Officer prior to subcontractor. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(4) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action, as the Contracting Officer directs.

(5) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(h) *Access.* The Contractor agrees to make available to the Contracting Officer, at all reasonable times, at the office of the Contractor, all its property records under this contract, and the Government shall at all reasonable times have access to the premises where any of the Government property is located.

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government property: *Provided, however,* That the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) *Restoration of Contractor's premises and abandonment.* Unless otherwise provided herein, the Government:

(i) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) Has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j) (i) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

42. PRINCIPAL INVESTIGATORS

Where principal investigators have been identified in this contract, it has been determined that such named investigators are necessary for the successful performance of this contract; and the Contractor agrees to assign such persons to the performance of the work under this contract, and shall not reassign or remove any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned investigators is unavailable for assignment for work under the contract, the Contractor shall immediately notify the Contracting Officer to that effect and shall, subject to the approval of the Contracting Officer without formal modification to the contract, replace such investigators with investigators of substantially equal ability and qualifications.

43. ALLOWABLE COST AND PAYMENT

(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(1) Subpart 1–15.3 of the Federal Procurement Regulations as in effect on the date of this contract except that if the Contractor is not an educational institution the allowable costs shall be determined by Subpart 1–15.2 of FPR; and

(2) The terms of this contract.

(b) Once each month (or more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. After payment of an amount equal to eighty percent (80%) of the total estimated cost of performance of this contract set forth in the schedule, further payment on account of allowable cost shall be withheld until a reserve of either one percent (1%) of such total estimated cost or ten thousand dollars ($10,000), whichever is less, shall have been put aside.

(d) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) A "completion invoice" or "completion voucher" shall be submitted upon the physical completion of all performance provisions and when all costs applicable to the contract have been incurred.

The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion. Upon the completion of the final audit and the receipt of a "final invoice" or "final voucher," the Government shall promptly pay to the Contractor any balance of allowable costs, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) property allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor:

(B) Claims, together with reasonable expense incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided*, That such claims are not known to the Contractor on the date of execution of the release: *And provided further*, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

44. LIMITATION OF COST

(a) It is estimated that the total cost to the Government, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If, at any time, the Contractor has reason to believe that the cost which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost to the Government for the performance of his contract will be greater or substantially less than the then estimated cost hereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination Clause) or otherwise to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

(d) In the event this contract is terminated or the estimated cost not increased the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

45. NEGOTIATED OVERHEAD RATES POSTDETERMINED

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than six (6) months after the close of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Subpart 1–15.3 of the Federal Procurement Regulations (41 CFR 1–15.3), as in effect on the date of this contract. (Other than educational institutions shall be governed by Subpart 1–15.2 and 41 CFR 1–15.3).

(d) The results of each negotiation shall be set forth in a written overhead rate agreement, executed by both parties. Such agreement is automatically incorporated in this contract upon execution and shall specify: (1) The agreed final rates; (2) the bases to which the rates apply; (3) the periods for which the rate apply; and (4) the items treated as direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the contract, or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party, be revised by mutual agreement, and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision of negotiated provisional rates specified in the contract shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(g) Nothing in this clause shall preclude the Contracting Officer from negotiating final overhead rates applicable to this contract, for any period, for the purpose of contract closeout: *Provided*, That (i) the negotiated amount of overhead costs applicable hereto does not exceed $200,000 for any one fiscal year; (ii) there is agreement between the Government and the Contractor that there will be no adjustment against other Government contracts for over or under recovery under this contract disclosed through a subsequent, regular final overhead rate negotiation or determination; and (iii) this contract is appropriately modified to reflect the finality of this negotiation and the fact that other contracts shall not be affected by any over or under recovery resulting therefrom.

(40 U.S.C. 486(c), sec. 205(c), 63 Stat. 377, as amended)

[FR Doc.73-538 Filed 1-9-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 61]

[Docket No. 19660; FCC 72-1192]

DOMESTIC HANDLING OF INTERNATIONAL RECORD TRAFFIC

Inquiry and Proposed Tariff Revisions; Order Specifying Hearing Date

In the matter of International Record Carriers' scope of operations in the Continental United States, including possible revisions to the formula prescribed under section 222 of the Communications Act. Docket No. 19660, RM–690.

1. On December 18, 1972 we issued a notice of inquiry and proposed rule making (37 FR 28303; December 22, 1972) herein in which, among other things, we ordered oral argument on the question whether authorization under section 222 of the Communications Act is a prerequisite to the tariff revisions filed by ITT World Communications Inc., Western Union International, Inc., and RCA Global Communications, Inc.,[1] to absorb the charges associated with direct access between hinterland users and international carriers, e.g., the domestic telex, TWX, and WATS networks for the pickup and delivery of international message telegrams.

2. In the notice of inquiry we left open the date on which the oral argument would be heard, and we are now specifying such date. Moreover, Western Union Telegraph Co., a party respondent, on December 19, 1972, requested that the time specified for the filing of briefs preparatory to oral argument be extended to 30 days, rather than 20 days, and shows good cause for such extension.

3. The time allotments set forth below reflect the fact that the Western Union Telegraph Co. has raised the question whether prior authority is required for the tariff filings at issue herein, and, further, reflects the fact that ITT World Communications Inc. was the original record carrier proposing such tariff.

Accordingly, it is ordered, That oral argument on the above matter shall be heard before the Commission en banc at Washington, D.C. on February 13, 1973 at 9:30 a.m.

It is further ordered, That times allotted for the parties to the oral argument shall be as follows:

Western Union Telegraph Company, 50 minutes; ITT World Communications Inc., 30 minutes; Western Union International, Inc., 15 minutes; RCA Global Communications, Inc., 15 minutes; and TRT Telecommunications Corp., 15 minutes.

Provided, however, that should the parties agree among themselves to a different allocation of time, or should the international carriers agree among themselves on a different allocation of the time allotted to them as a group, the Commission should be so notified 1 week in advance of the date set herein for oral argument;

Provided, further, that the Western Union Telegraph Co. may reserve for rebuttal a portion of the time allocated to it; and

It is further ordered, That the time for filing briefs in this matter is extended until January 17, 1973.

Adopted: December 20, 1972.

Released: December 29, 1972.

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

[FR Doc.73-522 Filed 1-9-73;8:45 am]

[1] Since the release of our notice of inquiry and proposed rule making, TRT Telecommunications Corp., on December 19, 1972, filed revisions to its Tariff F.C.C. No. 60 (specifically, 156th revised page 1, 33d revised page 9, 23d revised page 9A, and original page 9B) to provide free direct access as proposed by the other record carriers herein.

[47 CFR Part 73]

[Docket No. 19628]

FM BROADCAST STATIONS IN UNION SPRINGS AND TALLASSEE, ALA.

Proposed Table of Assignments; Order Extending Time for Filing Reply Comments

In the matter of amendment of § 73.202(b), *Table of assignments*, FM Broadcast Stations (Union Springs and Tallassee, Ala.), Docket No. 19628, RM–1902, RM–2040.

1. The notice of proposed rule making in the above-entitled proceeding was adopted on November 8, 1972, and published in the FEDERAL REGISTER on November 16, 1972 (37 FR 24369). The dates for filing comments and reply comments are presently designated as December 22, 1972, and January 2, 1973, respectively.

2. On January 2, 1973, Union Springs Broadcasting Co., by its attorney filed a request for extension of time in which to submit reply comments to and including January 15, 1973. Counsel states that the comments and counterproposal of All Channel TV Service, Inc. were received on December 26, 1972, and due to the holidays and delay of the mails resulting therefrom, it has not been possible to communicate with principals of Union Springs Broadcasting or its consulting engineer. Counsel further states that, while it appears the Union Springs proposal will possibly not be affected, additional time is needed for consideration.

3. It appears that the additional time is warranted and would serve the public interest. *Accordingly, it is ordered*, That the time for filing reply comments in Docket No. 19628 is extended to and including January 15, 1973.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended and § 0.281(d)(8) of the Commission's rules.

Adopted: January 3, 1973.

Released: January 4, 1973.

[SEAL] HAROLD L. KASSENS,
Acting Chief, Broadcast Bureau.

[FR Doc.73-521 Filed 1-9-73;8:45 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

OFFICIAL RULINGS AND PROCEDURES

Notice of Publication

Effective January 1, 1973, the Bureau of Alcohol, Tobacco and Firearms will use the Alcohol, Tobacco and Firearms Bulletin as the authoritative instrument of the Director for announcing official rulings and procedures of the Bureau and for publishing other items of general interest. The use of the Internal Revenue Bulletin for announcing such matters, notice of which was published in the FEDERAL REGISTER for July 29, 1972, will be concurrently discontinued.

All regulations, rulings, and procedures, in effect prior to July 1, 1972, issued by the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service, will continue in effect until superseded or revised under the authority of Treasury Department Order No. 221, dated June 6, 1972, published in the FEDERAL REGISTER for June 10, 1972. All rulings and procedures issued by the Bureau of Alcohol, Tobacco and Firearms since July 1, 1972, which have been published in the Internal Revenue Bulletin, remain in effect; however, solely for the purposes of continuity, they will be republished in early issues of the Alcohol, Tobacco and Firearms Bulletin.

[SEAL] REX D. DAVIS,
Director.

[FR Doc.73-497 Filed 1-9-73;8:45 am]

DEPARTMENT OF STATE

[Public Notice 375]

CERTAIN FOREIGN PASSPORTS

Notice of Validity

Under the provisions of section 212(a)(26) of the Immigration and Nationality Act, a nonimmigrant alien who makes application for a visa or for admission into the United States is required to be in possession of a passport which is valid for a minimum period of 6 months from the date of expiration of the initial period of his admission into the United States or his contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period. By reason of the foregoing requirement, certain foreign governments have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of 6 months beyond the expiration date specified in the passport. These agreements have the effect of extending the validity period of the foreign passport an additional 6 months notwithstanding the expiration date indicated in the passport. Notice is hereby given that the following foreign governments have concluded such an agreement with the Government of the United States:

Australia.
Austria (Reisepass only).
Bahamas (See United Kingdom).
Bangladesh (Travel permit and passport).
Belgium.
Bolivia.
Brazil.
Canada.
Chile.
Colombia.
Cuba.
Cyprus.
Dominican Republic.
Ecuador.
Egypt (Arab Republic of).
Ethiopia.
Finland.
France.
Germany (Reisepass and Kinderausweis).
Greece.
Guatemala.
Guinea.
Guyana.
Honduras.
Iceland.
India.
Iran.
Ireland.
Israel.
Italy.
Ivory Coast.
Jamaica.
Khmer Republic (Cambodia).
Korea.
Laos.
Lebanon.
Liechtenstein.
Luxembourg.
Malagasy Republic.
Mauritius.
Mexico.
Monaco.
Netherlands (The).
Nicaragua (Diplomatic and Official passports only).
Nigeria.
Norway.
Pakistan.
Panama.
Peru.
Philippines.
Portugal.
Spain.
Sri Lanka (Ceylon).
Sudan.
Sweden.
Switzerland.
Syrian Arab Republic.
Thailand.
Togo.
Tunisia.
United Kingdom of Great Britain and Northern Ireland (including Jersey and Guernsey and its dependencies and the Bahamas).
Uruguay.
Venezuela.
Viet-Nam.
Yugoslavia.

Public notice 238 of November 17, 1964 issued at 29 FR 16097 and amendments thereto are hereby superseded.

[SEAL] BARBARA M. WATSON,
Administrator, Bureau of Security and Consular Affairs, Department of State.

[FR Doc.73-508 Filed 1-9-73;8:45 am]

[Public Notice 376]

CERTAIN NONIMMIGRANT VISAS

Notice of Validity

Notice is hereby given that consular officers are authorized to issue, in their discretion, nonimmigrant visas under section 101(a)(15)(B) of the Immigration and Nationality Act (temporary visitors for business or pleasure) valid for an indefinite period of time to otherwise eligible nationals of the following countries, inclusive of British subjects resident in the Bahamas and Netherlands nationals resident in Surinam, which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class. This order will be amended from time to time to include other countries which accord similar privileges to U.S. citizens.

Austria.
Bahamas.
Barbados.
Belgium.
Botswana.
British Honduras.
Central African Republic.
Chile.
Cyprus.
Denmark.
Fiji.
Finland.
France.
Germany.
Greece.
Iceland.
Ireland.
Israel.
Italy.
Jamaica.
Liechtenstein.
Lesotho.
Luxembourg.
Malawi.
Maldives, Republic of.
Malta.
Monaco.
Morocco.
Netherlands.
Netherlands Antilles.
New Zealand.
Norway.
Paraguay.
Portugal.
Saint Pierre and Miquelon.
San Marino.
Singapore.
Spain.
Surinam.
Sweden.
Switzerland.
Trinidad and Tobago.
Tunisia.
Turkey.
United Kingdom.
Uruguay.

Public notice 312 of August 27, 1969, issued at 34 FR 13705 and amendments thereto are hereby superseded.

[SEAL] BARBARA M. WATSON,
Administrator, Bureau of Security and Consular Affairs, Department of State.

[FR Doc.73-509 Filed 1-9-73;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD, COMMITTEE ON THE DISPOSAL OF HERBICIDE ORANGE

Notice of Meeting

JANUARY 5, 1973.

The USAF Scientific Advisory Board, Committee on the Disposal of Herbicide Orange will hold a closed meeting on February 8, 1973, at the Pentagon, Washington, D.C. 20330.

The committee will receive briefings and analysis on various methods considered in the disposal of Herbicide Orange.

Any person desiring information about the committee may telephone (202—697-4648) or write the Assistant Executive Secretary, USAF Scientific Advisory Board, Headquarters, U.S. Air Force, Washington, D.C. 20330.

JOHN W. FAHRNEY,
Colonel, USAF, Chief, Legislative Division, Office of the Judge Advocate General.

[FR Doc.73-492 Filed 1-9-73;8:45 am]

USAF SCIENTIFIC ADVISORY BOARD, GUIDANCE AND CONTROL PANEL

Notice of Meeting

JANUARY 5, 1973.

The USAF Scientific Advisory Board, Guidance and Control Panel will hold a closed meeting on January 15–16, 1973, at Holloman Air Force Base, N. Mex.

The agenda will include topics pertinent to the ongoing review of all-weather terminal guidance system.

Any person desiring information about the panel may telephone (202—697–4648) or write the Assistant Executive Secretary, USAF Scientific Advisory Board, Headquarters U.S. Air Force, Washington, D.C. 20330.

JOHN W. FAHRNEY,
Colonel, USAF, Chief, Legislative Division, Office of the Judge Advocate General.

[FR Doc.73–493 Filed 1–9–73;8:45 am]

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

[Docket No. 73–2]

HEXAGON LABORATORIES, INC.

Notice of Hearing

Notice is hereby given that on November 24, 1972, the Bureau of Narcotics and Dangerous Drugs, Department of Justice, issued to Hexagon Laboratories, Inc., an order to show cause as to why the Bureau of Narcotics and Dangerous Drugs should not deny the application for registration under the Controlled Substances Act of 1970, of the respondent, executed on October 25, 1972, pursuant to section 303 of the Controlled Substances Act (21 U.S.C. 823).

Thirty days having elapsed since said order was received by Hexagon Laboratories, Inc., and written request for a hearing having been filed with the Director of the Bureau of Narcotics and Dangerous Drugs, notice is hereby given that a hearing in this matter will be held commencing at 10 a.m. on January 18, 1973, in room 812 of the Bureau of Narcotics and Dangerous Drugs, 1405 I Street NW., Washington, DC 20537.

Dated: January 4, 1973.

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

[FR Doc.73–537 Filed 1–9–73;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

SEMIDI NATIONAL WILDLIFE REFUGE

Wilderness Proposal: Cancellation of Public Hearing

Notice of the public hearing for the Semidi National Wildlife Refuge wilderness proposal published on page 26743 of the December 15, 1972, issue of the FEDERAL REGISTER as Document 72–21597 is hereby cancelled.

SPENCER H. SMITH,
Director, Bureau of Sport Fisheries and Wildlife.

JANUARY 5, 1973.

[FR Doc.73–500 Filed 1–9–73;8:45 am]

SEMIDI NATIONAL WILDLIFE REFUGE

Notice of Public Hearing Regarding Wilderness Proposal

Notice is hereby given in accordance with provisions of the Wilderness Act of September 3, 1964 (Public Law 85–577; 78 Stat. 890–896; 16 U.S.C. 1131–1136), that a public hearing will be held beginning at 7 p.m. on February 20, 1973, at Loussac Library, Anchorage, Third Judicial District, Alaska, on a proposal leading to a recommendation to be made to the President of the United States by the Secretary of the Interior regarding the desirability of including all or part of the Semidi National Wildlife Refuge within the National Wilderness Preservation System. The wilderness proposal consists of approximately 256,000 acres of lands and waters located in the Gulf of Alaska.

A study summary containing a map and information about the Semidi Wilderness proposal may be obtained from the Refuge Manager, Aleutian Islands National Wildlife Refuge, Cold Bay, Alaska 99571; or from the Area Director, Bureau of Sport Fisheries and Wildlife, 813 D Street, Anchorage, AK 99501.

Individuals or organizations may express their oral or written views by appearing at this hearing, or they may submit written comments for inclusion in the official record of the hearing to the area director at the above address by March 22, 1973.

SPENCER H. SMITH,
Director, Bureau of Sport Fisheries and Wildlife.

JANUARY 5, 1973.

[FR Doc.73–499 Filed 1–9–73;8:45 am]

Office of the Secretary

NATIONAL ADVISORY BOARD ON WILD FREE-ROAMING HORSES AND BURROS

Administrative Procedures

On page 11276 of the FEDERAL REGISTER of June 6, 1972, there was published a notice and text of proposed administrative procedures (charter) for the National Advisory Board on Wild Free-Roaming Horses and Burros.

Interested persons were given 45 days within which to submit written comments, suggestions, or objections. Upon consideration of these comments and suggestions, certain changes have been incorporated. Additionally, language has been added to reflect the requirements of newly enacted Public Law 92–463, the Federal Advisory Committee Act.

The changes required by Public Law 92–463 are as follows:

1. The wording of IIIA5, *Compensation*, has been amended to clarify the provisions for payment of travel expenses.

2. A sentence has been added to IIIC, *Meetings*, to give the estimated number of meetings per year, annual operating costs, and man-years required.

3. A new clause reading: "* * * who is authorized to adjourn any meeting whenever he considers adjournment to be in the public interest." has been added to IIIC3, *Official participation*.

4. Part IIIC4, *Executive session*, has been eliminated, and part IIIC5 renumbered IIIC4.

5. Part IIIE, *Public participation*, has been renumbered IIIC5, reworded to insure that all meetings will be open to the public, and to provide for the making of presentations and the filing of statements.

6. The portion of IIIE, *Public participation*, concerning advance public notice of meetings has been separated and expanded under part IIIC6, *Advance public notice*.

7. A part IIIC7, *Support services*, has been added to spell out responsibility for such services.

8. Part IIIF, *Record of proceedings*, has been renumbered IIIE, and the word "official" dropped from subpart (c). Subpart (d) has been changed to read, "a description of matters discussed and conclusions reached;". Subpart (f) has been amended to provide for certification of the accuracy of records by the Board chairman. Additionally, a sentence has been added to indicate where copies of Board records may be inspected and copied.

9. Part IIIG, *Rules and procedures*, has been renumbered IIIF, and the words "* * * is solely advisory and * * *" added between "Board" and "shall" of the first sentence. A sentence has been added to prescribe responsibility for actions to be taken with respect to any report or recommendation of the Board.

10. A part IIIH, *Termination*, has been added.

The following changes were made in response to comments:

1. The second sentence of II *Authority* has been eliminated. Although the sentence was an accurate statement of the law, its repetition in the charter could be interpreted as a limitation on the broad scope of the Board's advisory functions.

2. IIID *Chairmanship* has been revised to make clear that the chairman and vice chairman would be selected from among the membership of the Board. The word "principal" has been deleted from the first sentence of the second paragraph.

3. IIIE *Public participation* has been revised to show that their duly authorized representatives, as well as the two Secretaries, can call emergency meetings.

4. IIIH *Advice and recommendations*, renumbered IIIG, has been amended by changing "dissents from majority views" to "minority views" in the second sentence.

It was concluded that no further change was necessary to reflect the fact that State university staff members are qualified to serve on the Board, and that the Secretaries will seek a proper balance of interests on the Board. The suggestion that "land use" be added to the list of qualified disciplines was not adopted because the law itself specifies the qualifications. Similarly, there were recommendations to appoint officials of State government. The Act specifically prohibits such appointments.

The procedures are hereby adopted as revised and as set forth below. They shall become effective January 1, 1973.

I. *Purpose.* This document provides for the operation and describes the purpose, composition, and functions of the National Advisory Board on Wild Free-Roaming Horses and Burros.

II. *Authority.* The Act of December 15, 1971 (16 U.S.C. 1131–1340) requires the protection and management of wild free-roaming horses and burros on the public lands. Section 7 authorizes and directs the Secretary of the Interior and the Secretary of Agriculture to appoint a joint advisory board to advise them on any matter relating to the protection and management of wild free-roaming horses and burros, and specifies the qualifications required for membership on the advisory board.

III. *National Advisory Board on Wild Free-Roaming Horses and Burros.* A. *Membership.* The Board shall consist of nine members, none of whom shall be an employee of the Federal Government or State governments.

1. *Qualifications.* Each member must have specialized knowledge in one or more of the following fields: The protection of horses and burros, the management of wildlife, animal husbandry, and natural resource management. At least one of each of the above disciplines shall be represented on the Board at all times.

2. *Selection.* All members shall be selected on the basis of experience and established competence in their respective fields of specialized knowledge.

3. *Appointments.* All members will be jointly appointed by the Secretary of the Interior and the Secretary of Agriculture.

4. *Term.* The term of appointment will be 1 year. If a member does not serve his full term, the Secretary of the Interior and the Secretary of Agriculture may appoint a successor for the remainder of the unexpired term. Members may be reappointed for additional 1-year terms not to exceed 10 years of total service.

5. *Compensation.* Members shall serve without compensation, except for reimbursement of travel expenses, including per diem, in connection with their duties as members.

B. *Functions.* The Board shall advise, consult with, and make recommendations to the Secretary of the Interior and the Secretary of Agriculture, or their duly authorized representatives, on any matter relating to wild free-roaming horses and burros.

C. *Meeting.* The Board shall meet at times and places to be determined by the Secretary of the Interior or the Secretary of Agriculture, or both, or their duly authorized representatives. It is estimated that there will be four meetings per year at an annual cost of $30,000 and one man year of support.

1. *Call to meet.* The Secretary of the Interior and/or the Secretary of Agriculture, or their respective designees, will issue a formal call for each Board meeting.

2. *Agenda.* The Secretary of the Interior and/or the Secretary of Agriculture, or their respective designees will, in consultation with the chairman, formulate and approve the agenda for each meeting in advance.

3. *Official participation.* All meetings will be conducted in the presence of a duly authorized full-time salaried official or employee of the Department of the Interior or the Department of Agriculture, who is authorized to adjourn any meeting whenever he considers adjournment to be in the public interest.

4. *Quorum.* A majority of Board members holding office shall constitute a quorum which shall be required for the conduct of Board business.

5. *Public participation.* All meetings of the Board will be open to public observation. Any interested person may attend meetings, make a presentation upon request to the chairman, or file a statement with the Board. However, the authorized Department of Agriculture or Department of the Interior representative may establish reasonable limits as to the numbers of persons who may attend and the nature of their participation to the extent that available accommodations and time require limitation.

6. *Advance public notice.* To provide interested parties in opportunity to attend and participate, advance public notice of the date, place, and general subject matter of scheduled meetings will be given through publication in the FEDERAL REGISTER and appropriate local news media.

7. *Support services.* The Secretary of the Interior or his delegate shall be responsible for providing support services for the Board, including advance public notice of meetings.

D. *Chairmanship.* The Secretary of the Interior and the Secretary of Agriculture will designate one of the members as chairman and another as vice chairman for the first year. Thereafter, members will annually elect the chairman and vice chairman among their own members.

The chairman will be the liaison between the Secretary of the Interior and the Secretary of Agriculture or their duly authorized representatives in working with the Departments in formulating agendas and otherwise arranging for the orderly conduct of business. He will preside at meetings and appoint members of working groups of the Board. The vice chairman will act for the chairman in his absence.

E. *Record or proceedings.* A written record shall be made of all proceedings of Board and working group meetings. A verbatim transcript may be made but is not required. As a minimum, each record of proceedings shall include: (a) the agenda; (b) the date(s) and place(s) of the meeting; (c) the names and addresses of all in attendance and the capacity in which they participated; (d) a description of matters discussed and conclusions reached; (e) the recommendations made and reasons therefor; together with concurring or minority views and, at the request of any individual member, individual views; and, (f) copies of all reports received, issued, or approved by the Board. The Board chairman shall certify to the accuracy of the record of proceedings of each meeting. Such records, together with appendices, working papers, drafts, studies, and other documents, made available to or prepared or used by the Board, will be available for public inspection and copying in the Office of the Director of the Bureau of Land Management, Washington, D.C. Additionally, copies of the record of proceedings for each meeting shall be available for viewing at the libraries of the Department of the Interior and Department of Agriculture and the Library of Congress, Washington, D.C.

F. *Rules and procedures.* The Board is solely advisory and shall function in accordance with applicable Federal committee management requirements, and any supplementary and complementary guidelines which the Secretary of the Interior and the Secretary of Agriculture, or their respective authorized representatives, may jointly prescribe. Determinations of actions to be taken and policy to be expressed with respect to any report or recommendation of the Board shall be made only by the Secretary of the Interior, Secretary of Agriculture, or their authorized representatives.

G. *Advice and recommendations.* All advice and recommendations of the Board shall be made with the approval of a majority of the members present. Advice and recommendations of individual members, including minority views, may be made by the individuals involved. Each report of advice and recommendations shall be addressed only to the Secretary of the Interior or the Secretary of Agriculture, or both, or to their respective authorized representatives, and shall address only matters covered in the record of the Board's proceedings.

H. *Termination.* The term of the Board is indefinite.

HARRISON LOESCH,
Assistant Secretary of the Interior.
T. K. COWDEN,
Assistant Secretary of Agriculture.

JANUARY 2, 1973.

[FR Doc.73-502 Filed 1-9-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

NATIONAL ADVISORY BOARD ON WILD FREE-ROAMING HORSES AND BURROS

Administrative Procedures

CROSS REFERENCE: For a document establishing final administrative procedures for the National Advisory Board on Wild Free-Roaming Horses and Burros, see FR Doc. 73-502, published under Department of the Interior, *supra*.

DEPARTMENT OF COMMERCE

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the GSA patent licensing regulations.

Copies of patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Va. 22151, at the prices cited. Requests for copies of patent applications must include the patent application number and the title. Inquiries and

requests for licensing information should be directed to the address cited on the first page of each copy of the patent application.

Paper copies of patents cannot be purchased from NTIS but are available from the Commissioner of Patents, Washington, D.C. 20231 at $0.50 each. Inquiries and requests for licensing information should be directed to the "Assignee" as indicated on the copy of the patent.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. ATOMIC ENERGY COMMISSION

Patents 3,638,160. Shock Pressure Transducer. Filed September 4, 1969. Patented January 25, 1972. Not available NTIS.

Patent 3,639,978. Method for Making Flexible Electrical Connections. Filed November 3, 1969. Patented February 8, 1972. Not available NTIS.

Patent 3,640,579. In Situ Pressure Leaching Method. Filed April 28, 1970. Patented February 8, 1972. Not available NTIS.

Patent 3,640,704. High-Temperature-Strength Precipitation-Hardenable, Austenitic, Iron-Base Alloys. Filed January 20, 1970. Patented February 8, 1972. Not available NTIS.

Patent 3,641,465. Compact High-Power Broadband Radiofrequency Load Termination. Filed September 15, 1970. Patented February 8, 1972. Not available NTIS.

Patent 3,644,221. Polycrystalline Graphite with Controlled Electrical Conductivity. Filed November 14, 1969. Patented February 22, 1972. Not available NTIS.

Patent 3,644,664. Nuclear Fuel Body and Process for Making Same. Filed November 14, 1969. Patented February 22, 1972. Not available NTIS.

Patent 3,644,777. Cathode-Ray Tube with Serpentine-Shaped Transmission Line Deflection Means. Filed June 2, 1970. Patented February 22, 1972. Not available NTIS.

U.S. DEPARTMENT OF THE INTERIOR

Patent 3,698,559. Reverse Osmosis Module Suitable for Food Processing. Filed March 1, 1971. Patented October 17, 1972. Not available NTIS.

Patent 3,697,390. Electrodes Position of Metallic Boride Coatings. Filed April 14, 1969. Patented October 10, 1972. Not available NTIS.

Patent 3,699,391. Reactor Fault Relay. Filed September 2, 1971. Patented October 17, 1972. Not available NTIS.

Patent 3,701,905. Static Stopper. Filed October 27, 1971. Patented October 31, 1972. Not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Patent Application 281,876. Ultrasonic Biomedical Measuring and Recording Apparatus. Filed August 18, 1972. PC $3.25/MF $0.95.

Patent Application 277,436. Insert Facing Tool. Filed August 2, 1972. PC $3/MF $0.95.

Patent Application 280,390. Method of Making Rolling Elements for Bearings. Filed August 14, 1972. PC $3/MF $0.95.

Patent Application 273,240. Ejectable Underwater Sound Source Recovery Assembly. Filed July 19, 1972. PC $3/MF $0.95.

Patent Application 288,856. High Power Laser Apparatus and System. Filed September 13, 1972. PC $3/MF $0.95.

Patent Application 119,282. Pump for Delivering Heated Fluids. Filed February 26, 1971. PC $3.25/MF $0.95.

Patent Application 289,033. Enhanced Diffusion Welding. Filed September 14, 1972. PC $3/MF $0.95.

TENNESSEE VALLEY AUTHORITY

Patent 3,697,247. Elimination of Magnesium Gels in Liquid and Suspension Fertilizers Derived from Wet Acid. Filed April 1, 1971. Patented October 10, 1972. Not available NTIS.

[FR Doc.73-400 Filed 1-9-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-570]

AMERICAN CYANAMID CO.

Polyotic Intramuscular 5 Gm.; Notice of Withdrawal of Approval of New Animal Drug Application

In the FEDERAL REGISTER of August 5, 1970 (35 FR 12493, DESI 0013NV), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group on Polyotic Intramuscular 5 Gm.; marketed by American Cyanamid Co., Post Office Box 400, Princeton, NJ 08540.

American Cyanamid Co. advised the Commissioner that the product is no longer marketed. They further requested withdrawal of the veterinary application for this product.

Based on the grounds set forth in said announcement and the firm's request, the Commissioner concludes that the above-named product should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120), approval of the new animal drug application for Polyotic Intramuscular 5 Gm. is hereby withdrawn effective on the date of publication of this document.

Dated: January 2, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-486 Filed 1-9-73;8:45 am]

SPECIAL PACKAGING REQUIREMENTS FOR ASPIRIN, METHYL SALICYLATE, AND CONTROLLED SUBSTANCES

Denial of Requests for Extension of Time for Compliance

The Commissioner of Food and Drugs has received requests from manufacturers for an extension of time to comply with the following three regulations establishing the requirement of special packaging under the Poison Prevention Packaging Act:

1. Aspirin products (37 FR 3427), effective as of August 14, 1972.

2. Liquid preparations containing methyl salicylate (37 FR 6184), effective as of September 21, 1972.

3. Controlled substances (37 FR 8433), effective as of October 24, 1972.

The reason given for the requested extension of time is that orders have been placed by manufacturers of these products for appropriate safety packaging but these orders cannot be filled by package or closure manufacturers at this time. The effective date for compliance with these three regulations has previously been extended to January 22, 1973, conditioned upon certain requirements, for retail pharmacists but not for manufacturers (37 FR 22987).

The Commissioner concludes that the reason given for these requests is inadequate, and all such requests are therefore denied.

The Commissioner recognizes that certain of the package or closure manufacturers may have misled some manufacturers and packers of these three types of products, and perhaps others, into believing that an adequate supply of safety closures would be available to meet their need within the effective date of regulations issued under the Poison Prevention Packaging Act. The Act provides no penalty against package or closure manufacturers under these circumstances. Because the Act requires only that special packaging shall be technically feasible, practicable, and appropriate, and does not excuse compliance because of the failure of package or closure manufacturers to provide a sufficient supply or to keep their promises with respect to production, there is no basis for extending the effective dates of the regulations issued under the Act.

The Commissioner has refrained from instituting regulatory action with respect to compliance with these regulations pending action on the requests for extension of time. The Act permits inventories of already produced products to be exhausted, and one noncomplying package marketed under the conditions proposed in the FEDERAL REGISTER of October 18, 1972 (37 FR 22001), but otherwise does not permit the packaging of new products after the effective date of the regulations except in full compliance with the requirements of those regulations. The Commissioner hereby gives notice that any production in violation of these regulations after the date of publication of this notice in the FEDERAL REGISTER (1-10-73) will be the subject of regulatory action. The Commissioner requests that any information relating to violation of these regulations immediately be brought to his attention by any interested person.

Dated: January 8, 1973.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.73-646 Filed 1-9-73;9:55 am]

AMERICAN REVOLUTION BICENTENNIAL COMMISSION

VARIOUS ADVISORY COMMITTEES AND PANELS

Notice of Meetings

Notice is hereby given, pursuant to Executive Order 11671, that the following American Revolution Bicentennial Commission Advisory Committee and Panel Meetings will be held the month of January 1973:

PHILATELIC PANEL

The Philatelic Advisory Panel will hold an open meeting (with the exception of the agenda item asterisked below) on Thursday, January 11, 1973, in the ARBC Conference Room, 736 Jackson Place NW., Washington, DC, from 10 a.m. to 4:30 p.m. The Panel membership consists of leaders in the philatelic field and representatives of organizations such as the American Philatelic Society, Society of Philatelic Americans, American Stamp Dealers Association, etc. The agenda items to be discussed are:

Future bicentennial commemorative stamps.*
ARBC stamp show awards.
ARBC participation in stamp shows.
Bicentennial stamp publications.

COINS AND MEDALS PANEL

The Coins and Medals Advisory Panel will hold an open meeting (with the exception of the agenda item asterisked below) on Friday, January 12, 1973, in the Board Room of the National Trust for Historic Preservation, 740 Jackson Place NW., Washington, DC. The panel is composed of experts in the numismatic arts. The agenda items to be discussed are:

Coinage and currency.*
Panel organization.
Commemorative medal series.
National medal and awards medal.
U.S. Treasury 3-inch medal.

HORIZONS '76 ADVISORY GROUP

The Horizons '76 Advisory Group will hold an open meeting (with the exception of the agenda item asterisked below) on January 16, 1973, from 9:30 a.m. to 4 p.m. in Room 2010 of the New Executive Office Building, 726 Jackson Place NW., Washington, DC.

The Advisory Group membership consists of leaders in the fields of transportation, communications, health, learning, leisure, the environment, community development, citizenship, and the economy.

The agenda will include discussion of:

Development of Horizons '76 National Action Guide.
Evaluation of bicentennial cities criteria.
Discussion of program proposals.
Budget consideration.*

Dated: January 5, 1973.

HUGH A. HALL,
Acting Director, American Revolution Bicentennial Commission.

[FR Doc.73-618 Filed 1-9-73;8:45 am]

COUNCIL OF ECONOMIC ADVISERS

ADVISORY COMMITTEE ON THE ECONOMIC ROLE OF WOMEN

Notice of Closed Meeting

JANUARY 6, 1973.

Pursuant to Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Advisory Committee on the Economic Role of Women will take place in Washington, D.C., on January 16, 1973.

The agenda for the meeting, which will be the Committee's first, includes the responsibilities of the Committee, a review of draft material for the 1973 Economic Report of the President, and planning the future work of the Committee.

Based on section b(5) of 5 U.S.C. 552, the meeting will not be open to public participation.

HERBERT STEIN,
Chairman.

[FR Doc.73-609 Filed 1-9-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-295, 50-304]

COMMONWEALTH EDISON CO.

Notice and Order for Prehearing Conference

In the matter of Commonwealth Edison Co. (Zion Station, Units 1 and 2).

Take notice that pursuant to the direction of the Board at its special prehearing conference on November 17, 1972, in Zion, Ill., and as set forth in its special prehearing conference order dated December 5, 1972, and in response to the motion of the applicant herein, to which motion no other party has filed objection, the Board hereby orders that a prehearing conference will be held in this proceeding on January 25, 1973, in Chicago, Ill. This prehearing conference will commence at 10:30 a.m. local time at the following address: Everett McKinley Dirksen Building, Court Room 2119, 21st Floor, 219 South Dearborn Street, Chicago, IL 60604.

At the subject conference, the parties, by their attorneys will:

1. Report on the status of discovery,

2. Propose a date for the termination of all discovery, in view of the agreed starting date for the evidentiary hearing (April 2, 1973),

3. Submit a stipulation of the parties listing:

(a) The contentions or issues to be resolved,

(b) The contentions or issues which need not be resolved,

(c) The contentions or issues on which the parties cannot agree that they are necessary to the disposition of this proceeding, and as to which the Board is requested to rule.

The parties should be prepared to either submit written memoranda or offer brief oral argument in support of their positions regarding item 3(c) above, so as to enable the Board to make a final resolution of the specific matters in controversy.

All members of the public are entitled to attend the prehearing conference, as well as the evidentiary hearing itself.

It is so ordered.

Issued at Washington, D.C., this 3d day of January 1973.

For the Atomic Safety and Licensing Board.

THOMAS W. REILLY,
Chairman.

[FR Doc.73-511 Filed 1-9-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

AD HOC TASK GROUP OF DIALER DEVICES ADVISORY SUBCOMMITTEE

Notice of Public Meeting

DECEMBER 27, 1972.

In accordance with Executive Order 11671, dated June 7, 1972, announcement is made of a public meeting of the Dialer Devices Advisory Subcommittee Ad Hoc Task Group of the FCC D&A Devices Advisory Committee to be held January 10 and 11, 1973, at 195 Broadway, Room 939-B, New York, NY, 9:30 a.m. until 5 p.m.

1. *Purpose.* The purpose of the Dialer Devices Subcommittee is to prepare recommended standards and procedures for submission to the FCC, in order to permit the interconnection of dialer devices to the public switched network without the need for carrier provided connecting arrangements. The purpose of the Ad Hoc Task Group is to prepare recommended procedures for review and approval by the Dialer Devices Subcommittee.

2. *Membership.* The Task Group is chaired by H. Marcheschi and is composed of the following: R. Mosely, A. Jackson, and R. Whitefleet.

3. *Activities.* This Ad Hoc Task Group will prepare a recommended draft of procedures and enforcement to the Dialer Devices Subcommittee.

4. *Agenda.* The agenda for the January 10 and 11, 1973, meeting will be as follows:

1. Review of document previously submitted related to enforcement and procedures.

2. Review and establishment of basic elements or procedures and enforcement document.

3. Review of A.T. & T. submission of September 29, 1972.

It is suggested that those desiring more specific information, contact the Domestic Rates Division on (202) 632-6457.

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

[FR Doc.73-527 Filed 1-9-73;8:45 am]

ANSWERING DEVICES SUBCOMMITTEE AD HOC EDITING GROUP

Notice of Public Meeting

DECEMBER 27, 1972.

In accordance with Executive Order 11671, dated June 7, 1972, announcement is made of a public meeting of the Answering Devices Advisory Subcommittee Ad Hoc Editing Group to be held January 8, 1973 at 90 Church Street, Room 604 in New York, NY, 10 a.m. until 4:30 p.m. Those attending the meeting should check at the guard's desk and call X 7321 for sign-in clearance.

1. *Purpose.* The purpose of the Answering Devices Subcommittee is to prepare recommended standards and procedures for submission to the FCC, in order to permit the interconnection of answering devices to the public switched network without the need for carrier provided connecting arrangements. The purpose of the Ad Hoc Group is to edit the technical standards being prepared by the Answering Devices Subcommittee.

2. *Membership.* The Editing Group is chaired by F. Warden and is composed of the following: J. Rosenbaum, L. Hohmann, and R. Rivenes.

3. *Activities.* This Ad Hoc Task Group will devote itself solely to the task of editing the technical standards in conformance with the Subcommittee directions.

4. *Agenda.* The agenda for the January 8, 1973 meeting will be as follows:

1. Review of technical standards draft.
2. Editing of technical standards.
3. Schedule of next meeting.

It is suggested that those desiring more specific information, contact the Domestic Rates Division on (202) 632-6457.

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

[FR Doc.73-525 Filed 1-9-73;8:45 am]

NONVOICE TASK GROUP MEETING

Notice of Public Meeting

DECEMBER 21, 1972.

In accordance with Executive Order 11671, dated June 7, 1972, announcement is made of a public meeting of the Nonvoice Task Group of the PBX Advisory Committee to be held January 10 and 11, 1973. The Task Group will meet at 590 Madison Avenue, New York, NY, Room A-2d, at 10 a.m.

1. *Purposes.* The purpose of the PBX Advisory Committee is to prepare recommended standards to permit the interconnection of customer provided and maintained PBX equipment to the public switched network. The purpose of this Task Group is to prepare recommendations to the PBX Advisory Committee regarding the most practicable means by which a noncertified device may be used with a combined voice/nonbarrier PBX.

2. *Membership.* The Task Group is chaired by J. Merkel and is composed of the following: P. Bennett, M. J. Birck, G. Jahn, A. Marthens, H. A. Montgomery, G. Orelli, J. L. Wheeler. Observers include P. D. Aoust, L. K. Armstrong, L. L. Butler, J. L. Caldwell, R. B. King, R. F. Norian, J. T. Walker and W. L. Weikl.

3. *Activities.* Members and observers review existing interface criteria in some detail with the aim of identifying any additional harms which might accrue from nonvoice (noncarbon transmitter) devices. Any new criteria or need for modifications to the existing documents are highlighted.

4. *Agenda.* The agenda for the January 10 and 11 meeting will be as follows:

a. Review of report from last meeting.
b. Review of homework assignments.
c. Continued review of test standards.
d. Homework assignments.

It is suggested that those desiring more specific information, contact the Domestic Rates Division on (202) 632-6457.

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

[FR Doc.73-526: Filed 1-9-73;8:45 am]

[Dockets Nos. 18906, 18907; FCC 72R-398]

SOUTHERN BROADCASTING CO. AND FURNITURE CITY TELEVISION COMPANY, INC.

Applications for Hearing; Memorandum Opinion and Order Enlarging Issues

In regard applications of Southern Broadcasting Co. (WGHP-TV), High Point, N.C., Docket No. 18906, File No. BRCT-574, for renewal of broadcast license; and Furniture City Television Co., Inc., High Point, N.C., Docket No. 18907, File No. BPCT-4302, for construction permit for new television broadcast station.

1. By order, FCC 70-706 (35 FR 11277) published July 14, 1970, the Commission designated the above-captioned mutually exclusive applications for hearing on a standard comparative issue. By memorandum opinion and order, 26 FCC 2d 998, 20 RR 2d 689, released November 7, 1970, the Review Board added a promise versus performance issue against Southern Broadcasting Co. (Southern), licensee of television Station WGHP-TV in High Point, N.C.[1] The Commission redesignated the applications for hearing by order, FCC 72-147, 37 FR 4304, released March 1, 1972. Now before the Review Board is a petition to enlarge issues, filed May 30, 1972, by Furniture City Television Co., Inc. (Furniture City), requesting programing and staffing misrepresentation issues, as well as log falsification and log violation issues, against Southern.[2]

I. *Timeliness.* 2. Furniture City argues that its petition is timely filed in accordance with § 1.229(b) of the Commission's rules and regulations, although it was not filed within 15 days after publication of the redesignation order in the FEDERAL REGISTER. The petition is still timely, Furniture City argues, because the photocopies of WGHP-TV's program logs, which provide the "raw data" for the requested issues, were not received until February 22, 1972, and 3 months have been required to analyze the 15,000 pages of logs to prepare this petition. The Broadcast Bureau contends that Furniture City has not adequately explained why it has taken 3 months from the date it received Southern's logs, February 22, 1972, until May 30, 1972, the date it filed its petition. Without further explanation, the Bureau argues, "the petition must be considered untimely and summarily dismissed." In reply, Furniture City asserts that 3 months was a reasonable time to analyze and compare Southern's 15,000 pages of program logs with its 16 volumes of exhibits. At the hearing held on March 3, 1971, Furniture City asserts, Southern "required 9 months to 1 year" to examine the 15,000 pages of its own logs in order to prepare its exhibits.

3. The Review Board believes petitioner has shown good cause for the late filing of its petition with respect to the requested programing misrepresentation, log falsification, and logging rule violation issues. It does not seem unreasonable that it would take Furniture City 3 months to develop the allegations in its petition, due to the many pages and amount of detail involved in both the exhibits and the program logs. We do not believe, however, that good cause has been shown for the late filing of the staffing misrepresentation issue. Southern's assertion that it allowed petitioner to see and copy its payroll records on November 2 and 3, 1971, is uncontested by Furniture City. Petitioner's explanation for the late filing is premised on the receipt of Southern's program logs on February 22, 1972, but petitioner does not specifically mention when it received Southern's payroll and disbursement records. Furthermore, on the merits, petitioner has not alleged sufficient facts to warrant the addition of an issue. The Edgefield-Saluda Radio Co., 5 FCC 2d 148, 8 RR 2d 611 (1969). See paragraph 8, infra.

II. *Misrepresentation of programing and staffing.* 4. In support of its requested issue concerning alleged misrepresentations in Southern's programing exhibits,[3] Furniture City asserts that portions of Southern's Exhibit 102, which is a

[1] The issue reads as follows:

To determine whether Southern Broadcasting Co. failed to carry out representations made in Docket No. 13072 as to programing, staffing, studios and equipment in operation of WGHP-TV, High Point, N.C., and, if so, the effect of such conduct on the requisite and comparative qualifications of Southern Broadcasting Co., to be a Commission licensee.

The issue encompasses not only the latest license period (1966-69), but also the 1963-66 license period.

[2] Also before the Review Board are the following related pleadings: (a) Opposition, filed June 9, 1972, by Southern; (b) Broadcast Bureau's opposition, filed June 9, 1972; and (c) reply, filed June 21, 1972, by Furniture City.

[3] The exhibits in question were prepared in response to the promise versus performance issue added by the Board in 1970. See paragraph 1, supra.

month-by-month breakdown of Southern's programing for 1965 indicating types of programing and their origination (network, recorded or local live),[4] do not correspond with Southern's actual recorded logs. That is, the exhibit totals for local live programing do not correspond with the totals for the same programing in the logs, Furniture City asserts. According to petitioner, total local live public service programing for 1965 contained in the logs is 1167:46 minutes, while Southern claims in its exhibit a total of 1544:34 minutes of local live public service programing. In order to show the manner in which Southern falsely represented the content of its program logs, Furniture City states that it studied the logs for the week of April 4–10, 1965. According to Furniture City, its analysis (a copy of which is attached to the petition) shows that, contrary to Southern's exhibit showing 32:07 minutes of live public service programs, the logs reveal that only 21:13 minutes were actually logged as public service programs. Furthermore, Furniture City maintains, Southern ignored the Commission's policy stated in "Television Program Forms," 5 FCC 2d 175, 8 RR 2d 1512 (1966), and included commercials in its total times. As a corollary to the misrepresentations of program times, Furniture City argues, the log-exhibit analysis reveals that Southern changed some of its program classifications—for example, "Science All Stars", logged as "entertainment", appears in the exhibit as "educational"; "Around Town", logged as "entertainment", appears in the exhibit as "discussion". Furniture City states that it found nineteen such discrepancies. To support its request for a staffing misrepresentation issue, petitioner relies on Southern's Exhibits 134 and 135 as well as WGHP–TV's payroll records and station disbursements ledger. Exhibit 134 was submitted by Southern in response to that aspect of the promise versus performance issue that inquiries into whether Southern had carried out the staffing proposals made in its initial application. The exhibit represents WGHP–TV's staff as of "March 15, 1965"; however, according to Furniture City, seven employees claimed to be employed on March 15 cannot be found in the payroll records or in the disbursement records. Furniture City argues that this discrepancy warrants addition of a staffing misrepresentation issue.

5. In opposition, Southern argues that the subject matter of both of Furniture City's requests is encompassed in the promise versus performance issue. In this regard, Southern alleges that at a prehearing conference held on October 27, 1971, it agreed to provide Furniture City with certain logs and payroll records. Thereafter, Southern continues, on November 2 and 3, 1971, Furniture City's counsel reviewed and copied program logs for programing periods including 1963, 1965, and 1966,[5] as well as payroll records for the same periods and for periods in 1964. Hearings began on December 9, 1971, and counsel for Furniture City cross-examined Philip Lombardo, present general manager of Station WGHP–TV, on the classification question. Southern acknowledges that some programs designated one way in the exhibit were designated differently in the logs;[6] however, in Southern's opinion, exploration of these inconsistencies is more properly left for cross-examination under the promise versus performance issue. Southern states that it cannot understand why Furniture City is raising the classification question at this time when exhibits were submitted 8 months ago, cross-examination was conducted 6 months ago, and Furniture City was given all of Southern's logs 3 months ago. Next, Southern argues that it included commercial times in the programing length calculations represented in the exhibits because in its original program proposals, Southern included commercial matter, which was at that time consistent with Commission policy.[7]

6. In its opposition, the Bureau notes that Southern explained in Exhibit 102, pp. 3–4, that some logs had programs that were occasionally coded incorrectly, and as a consequence thereof Furniture City's timing calculations, based on the actual logs, would differ from Southern's calculations in its exhibits which are "corrected" to the proper code. The Bureau asserts that the coding errors are presently under consideration at the hearing and that appropriate findings and conclusions can be drawn from this evidence under present issues; therefore, no new issue is warranted. As for the requested staffing misrepresentation issue, the Bureau states that it compared Southern's payroll record and disbursement ledger with Southern's Exhibit 134 and could find no discrepancy. The Bureau claims that it cannot be determined from Furniture City's showing who the seven unreported individuals are; therefore, no staffing misrepresentation issue is warranted.[8]

7. In reply, Furniture City insists that the requested issues cannot be dealt with by cross-examination under the present issues, and that cross-examination of Southern's sole witness through which the exhibits were offered into evidence only raised the suspicion that the exhibits did not accurately reflect the logs contents. In its voir dire cross-examination, Furniture City explains, it attempted to prevent the exhibits from being received into evidence. Furniture City argues that when the exhibits were accepted into evidence, any further cross-examination into their deceptive nature was mooted; therefore, the requested issues are necessary for a more thorough examination of the licensee's candor. Furniture City argues that the program reclassification admitted to by Southern is merely a "corollary" to the misrepresentation in time amounts in WGHP–TV's claimed public service programing. The issues requested, Furniture City asserts, are aimed at the discrepancies between Southern's exhibits and its logs, and not, as the Bureau seems to argue, at promise versus performance as such. With respect to the requested staffing misrepresentation issue, Furniture City again asserts that the Bureau has misunderstood its request by pointing out that the number of employees found in the payroll records and disbursements ledger exceed the numbers found in Southern's staffing exhibit. While it is true that the total number of persons contained in the payroll records and disbursements ledger exceeds the number in the exhibits, Furniture City argues, the seven employees are listed in the exhibits but cannot be found in the payroll records or disbursements ledger. Such carelessness, Furniture City finally argues, demonstrates Southern's lack of cooperation in this proceeding.

8. The Review Board is of the opinion that Furniture City has made sufficient allegations of fact concerning Southern's program exhibits to warrant further exploration at the hearing under a separate issue. It appears from Furniture City's allegations that Southern may have inflated its live local public interest programing figures in its exhibits. According to Furniture City's figures, Southern's logs for 1965 reveal 1167:56 minutes of local live public service programing, while Southern's exhibit reveals 1544:34 minutes. This disparity of 376:88 minutes raises a serious question of whether Southern misrepresented its live public service programing to put itself in a more favorable position for securing a renewal. While we have some reservations about how Furniture City arrived at these figures, we are still persuaded to add the issue because we do not find Southern's opposition pleading to be responsive and enlightening with respect to the specific allegations raised by Furniture City. We appreciate the coding errors, Southern's candor in explaining how they occurred, and how the corrections affect the exhibits. However, Southern, in its responsive pleading, did not explain how the coding errors specifically relate to the substantial time disparity between the logs and the exhibits. On the basis of the foregoing, it appears that Southern may have misrepresented the exhibit figures. *Cf.* Seaboard Broadcasting Corp., 26 FCC 2d

[4] Furniture City notes that Southern selected 1965 as the best representative year to present a breakdown of its programing into a detailed and comprehensive summary to meet the promise versus performance issue.

[5] Southern explains that its program logs for 1964 had been "disposed of".

[6] In its Exhibit 102, Southern stated that: "When an incorrect coding was given to a public service program, the content of the program was analyzed, and based on its contents, the proper coding was assigned."

[7] Southern notes that the Commission's policy, Television Program Forms, supra, excluding commercial matter in computing programing length, did not take effect until October, 1966, 1 month before the license period (1963–66) ended.

[8] The Bureau notes that Furniture City's Attachment C, which is Southern's payroll and disbursement records, shows 75 permanent employees and 40 free-lance employees as of March 15, 1965, whereas Southern's Exhibit 134 shows 74 full-time and 39 part-time employees as of March 15, 1965.

649, 20 RR 2d 786 (1970). Finally, in addition to its untimeliness, we believe there is no merit to Furniture City's request for a staffing misrepresentation issue. Furniture City premises its request on its alleged discovery that there were seven individuals listed in Southern's exhibits who did not appear in its payroll records and disbursement ledgers. Furniture City concedes, however, that more total employees are listed in the payroll records than in Southern's exhibit for March 15, 1965. Since the promise versus performance issue seeks an explanation as to why Southern retained only a staff of 79 at the time of its 1966 renewal and a staff of 73 at the time the present application was filed, when it proposed in its initial application a staff of 92 full-time employees, it would be to Southern's advantage to list as many employees as possible in its exhibits. We believe, therefore, that Furniture City has not shown any deliberate attempt by Southern to deceive the Commission to warrant addition of a staffing misrepresentation issue.

III. *Log falsification.* 9. Furniture City requests a log falsification issue against Southern on the ground that during the 1963–66 license period Southern "regularly and frequently misclassified entertainment programs as public service programs."[9] Relying on the logs and Southern's exhibits, Furniture City cites the following examples of false logging:

	Logged as entertainment	Logged as public service	Classification claimed in examples
Industry on Parade.	March–April–June—1 hr. 15 min.	October–November—45 min.	Talk.
ABC's Nightlife.	August–October—70 hrs. 15 min.	March–July—146 hrs. 53 min.	Discussion.
Accent.....	May—30 min..	March–April—2 hrs. 30 min.	Discussion, talk or news.
Around Town.	January–July—152 hrs. 15 min.	August–December—145 hrs. 08 min.	Discussion.
Harvesters.	July–October—14 hrs.	November–December—6 hrs. 30 min.	Religion.
Championship Bowling.	October—1 hr.	January–April and October–December—17 hrs.	Talk.
Major League Baseball.	May–July—42 hrs. 40 min.	April, August–October—33 hrs. 50 min.	Talk.

As a result of this "false" logging, Furniture City asserts, Southern increased its total 1965 public service broadcast time by 352 hours and 36 minutes or nearly 14 percent; consequently, "on paper," Southern appears to have an adequate amount of public service programing "which could be used to dispel any challenge which might arise to renewal of its license." Thus, Furniture City argues, Southern's logging practice violates Commission rules §§ 73.669–73.674, the Commission's television logging rules.

10. In opposition, Southern argues that the cases cited by Furniture City in support of its requested log falsification issue (see note 8, supra) are inapposite. In those cases, Southern notes, the broadcaster in question had deliberately altered or falsified its logs; for example, adding more public service announcements in the logs than were actually broadcast or failure to log the number and length of commercial spots, while, in this case, "certain program classifications were changed—not in the logs but exchange exhibits." Southern also contends that the public interest will be protected if the requested issue is denied because Furniture City's allegations are and will be the subject of cross-examination at the hearing. In its opposition, the Bureau argues that a false logging issue is not warranted because Furniture City has only shown that the logs used by Southern to prepare its exhibits contained errors. Southern, the Bureau notes, has admitted that inaccuracies exist in its logs. Also, the Bureau contends, Furniture City has submitted no affidavits from individuals having personal knowledge as required by Commission rule § 1.229(b).

11. In reply, Furniture City asserts that the heart of its requested log falsification issue centers on Southern's deliberate misclassification of its programing during 1963–66. Corrections were made for the months of June, July, and August, and a sheet dated October 27, 1965, with the corrections was attached to the logs, Furniture City asserts. Petitioner queries why Southern did not also make corrections for the rest of the months in that year.

12. The Board does not believe a log falsification issue is warranted. Simply put, Furniture City has not raised a substantial question as to whether Southern intentionally and deliberately falsified its logs. Compare The Prattville Broadcasting Co., supra, KOKA Broadcasting Co., Inc., supra, Folkways Broadcasting, Inc., 23 FCC 2d 987 21 RR 2d 163 (1972).[10] We note that Rule 73.670(a)(1)(i) requires the licensee of a television station to include within its logs "an entry identifying the program by name or title" and subsection (a)(1) (iii) and (iv) of § 73.670 requires the licensee to classify each program as to "type" and as to "source" respectively. In our opinion, however, the number of errors allegedly made by Southern in logging programs under § 73.670 are not so numerous as to suggest carelessness or inattentiveness to the Commission's logging rules which would warrant the addition of the issue. We have previously denied request for issues predicated on alleged rule violations where, as here, only one rule was violated, no pattern of violation was shown, and the licensee corrected the violation (see, e.g., Harvit Broadcasting Corp., 33 FCC 2d 743, 23 RR 2d 479 (1972); Regal Broadcasting Corp., 27 FCC 2d 694, 21 RR 2d 61 (1971)),[11] and in our view, this precedent is applicable here.

IV. *Logging rule violation.* 13. In support of its request for a logging rule violation issue, Furniture City asserts that Southern failed to delineate in its logs the beginning and ending times of its "weather news" and "sports news" programs throughout the months of March, June, October, November, and December of 1965, and the months of January through April, June, and July of 1966 for both the 7 p.m. and the 11 p.m. news programs in violation of § 73.670(a)(1)(ii).[12] Therefore, petitioner, argues, an issue concerning Southern's violation of the Commission's logging rules is warranted.[13] Both the Broadcast Bureau and Southern oppose the request, noting the pertinent part of the Commission's logging Rule § 73.670(a)(1)(ii) provides that: "The program units which the licensee wishes to count separately shall then be entered underneath the entry for a longer program, with the beginning and ending time of each such unit. * * *" Southern asserts that it chose not to count weather and sports separately.

[9] Furniture City cites the following cases in support of its requested issue: Continental Broadcasting, Inc., 15 FCC 2d 120, 14 RR 2d 813, reconsideration denied 17 FCC 2d 485, 16 RR 2d 30 (1969), affirmed 142 U.S. App. D.C. 70, 439 F.2d 580, 20 RR 2d 2126 (1971), cert. denied 403 U.S. 905; KOKA Broadcasting Co., Inc., FCC 71–232, 21 RR 2d 981 (1971); The Prattville Broadcasting Co., 4 FCC 2d 555, 8 RR 2d 120 (1966).

[10] In Prattville and Folkways, there was evidence in the form of affidavits and witness' testimony which strongly suggested that the licensee intentionally and deliberately falsified the airing of certain programs which were never shown or indicating a lesser time for commercial spots than they actually ran. Furniture City has not presented any allegation of fact suggesting that Southern actually falsified in its logs the broadcast of a program which was not broadcast.

[11] Petitioner notes that Southern had attached correction sheets to its station's logs correcting certain classification of programs mis-coded. Sheets, dated Oct. 27, 1965, were attached to the logs showing corrections for the months of June, July, and August 1965. We believe the correction sheets indicate a realization by Southern of errors in its logs and a willingness to correct the errors. Granted, correction sheets do not appear for every month; however, since these sheets could have been lost or misplaced, the absence of additional corrections does not indicate anything other than that Southern attempted to correct errors in its logs.

[12] Section 73.670(a)(1)(ii) of the Commission's rules reads as follows: "(a) The following entries shall be made in the program log:
(1) * * *
(ii) An entry of the time each program begins and ends. If programs are broadcast during which separately identifiable program units of a different type or source are presented, and if the licensee wishes to count such units separately, the beginning and ending time for the longer program need be entered only once for the entire program. The program units which the licensee wishes to count separately shall then be entered underneath the entry for a longer program, with the beginning and ending time for each such unit, and with the entry indented or otherwise distinguished so as to make it clear that the program unit referred to was broadcast within the longer program."

[13] Furniture City attaches to its petition Southern's program log for Oct. 7, 1965, as an illustration of the failure to delineate the beginning and ending time of its weather news and sports news programs.

Clearly Rule § 73.670(a)(1)(ii) leaves to the broadcaster's discretion whether he will indicate shorter unit programing time under longer programs in his logs.[14] Therefore, the Board finds no basis for the addition of this requested issue.

14. *Accordingly, it is ordered,* That the petition to enlarge issues, filed May 30, 1972, by Furniture City Television Co., Inc., is granted to the extent indicated below, and is denied in all other respects; and

15. *It is further ordered,* That the issues in this proceeding are enlarged to include the following issue:

To determine whether Southern Broadcasting Co. (WGHP–TV) misrepresented to the Commission material matters with respect to its programing exhibits and, if so, whether such conduct reflects on the applicant's basic or comparative qualifications.

16. *It is further ordered,* That the burden of proceeding with the introduction of the evidence under the issue herein specified shall be on Furniture City Television Co., Inc., and the burden of proof shall be on Southern Broadcasting Co. (WGHP–TV).

Adopted: December 27, 1972.

Released: January 2, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[15]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.73-523 Filed 1-9-73;8:45 am]

[Docket No. 19664; FCC 72-1195]

UNITED BROADCASTING CO. OF FLORIDA, INC.

Order Designating Application for Hearing on Stated Issues and Notice of Apparent Liability

In regard application of United Broadcasting Co. of Florida, Inc., Docket No. 19664, File No. BR–4447, for renewal of license for station WFAB, Miami, Fla.

1. The Commission has before it for consideration: (a) The captioned application and (b) its inquiries into the operations of Station WFAB, Miami, Fla.

2. Information before the Commission raises serious questions as to whether the applicant possesses the qualifications to be or to remain licensee of the captioned station. In view of these questions, the Commission is unable to find that a grant of the renewal application would serve the public interest, convenience, and necessity, and must, therefore, designate the application for hearing.

3. *Accordingly, it is ordered,* That the application is designated for hearing pursuant to section 309(e) of the Communications Act of 1934, as amended, at a time and place specified in a subsequent order, upon the following issues:

(a) To determine whether, and, if so, the extent to which the applicant engaged in fraudulent billing practices in the operation of Station WFAB in violation of § 73.1205 of the Commission's rules;

(b) To determine whether, in the light of evidence adduced under the foregoing issue, the applicant possesses the requisite qualifications to remain a licensee; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether the grant of the captioned application would serve the public interest, convenience and necessity.

4. *It is further ordered,* That if it is determined that the hearing record does not warrant an order denying the captioned application for renewal of license for Station WFAB, it shall also be determined whether the applicant has willfully violated § 73.1205 of the Commission's rules,[1] and, if so, whether an order of forfeiture pursuant to section 503(b) of the Communications Act of 1934, as amended, in the amount of $10,000 or some lesser amount should be issued for violations which occurred within 1 year of the issuance of the bill of particulars in this matter.

5. *It is further ordered,* That this document constitutes a notice of apparent liability for forfeiture for violations of the Commission's rules set out in the preceding paragraph. The Commission had determined that, in every case designated for hearing involving revocation or denial of renewal of license for alleged violations which also come within the purview of section 503(b) of the Act, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine or standard one, we stress that inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

6. *It is further ordered,* That in the event United Television Co., Inc., and United Broadcasting Co., Inc., are determined to be the otherwise qualified and preferred applicants in Dockets Nos. 18559 and 18562, respectively, in regard their applications for renewal of licenses of WFAN–TV and WOOK, the grant of the applications shall be withheld pending the resolution of the issue in this matter. United Television Co. of New Hampshire, Inc., United Television Co. of Eastern Maryland, Inc., and KECC Television Corp. are parties to a renewal and revocation proceeding involving, respectively, Stations WMUR–TV, WMET–TV, and KECC–TV (Dockets Nos. 19336–8). If it should be determined that the public interest would be served by allowing these licensees or applicants to operate or continue to operate these facilities, then the granting of such authority shall be withheld pending resolution of the issue in the instant proceeding. Further, in the event Friendly Broadcasting Co. (Docket No. 19412) is determined to be qualified to continue to be the licensee of Stations WJMO and WLYT(FM), the grant of the applications for renewal of the licenses shall be withheld pending resolution of the issue in this matter. The resolution of the issues in this docketed proceeding shall be binding on any other licensee commonly owned or controlled with the captioned licensee and will be res judicata as to any such other licensee.

7. *It is further ordered,* That the Chief of the Broadcast Bureau is directed to serve upon the captioned applicant within thirty (30) days of the release of this order, a bill of particulars with respect to issue (a).

8. *It is further ordered,* That the Broadcast Bureau proceed with the initial presentation of the evidence with respect to issue (a), an applicant then proceed with its evidence and have the burden of establishing that it possesses the requisite qualifications to be and to remain licensee of Station WFAB and that a grant of its application would serve the public interest, convenience, and necessity.

9. *It is further ordered,* That to avail itself of the opportunity to be heard, the applicant, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

10. *It is further ordered,* That the applicant herein, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, shall give notice of the hearing within the time and in the manner prescribed in such rule and shall advise the Commission thereof as required by § 1.594(g) of the rules.

11. *It is further ordered,* That the Secretary of the Commission send a copy of this order by certified mail—return receipt requested to United Broadcasting Co. of Florida, Inc.

Adopted: December 20, 1972.

Release: January 2, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.73-524 Filed 1-9-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CI73-436]

SOUTHWESTERN ELECTRIC POWER CO. AND CODY C. BEASLEY

Notice of Application

JANUARY 2, 1973.

Take notice that on December 18, 1972, Southwestern Electric Power Co., Post

[14] We note that no provision of the television logging rules would require the licensee, once he has indicated shorter unit programming times under longer programs in his logs, to thereafter always so indicate his programing.

[15] Board member Berkemeyer would add a log falsification issue. Board member Kessler absent.

[1] See bill of particulars for specific dates and details of each alleged violation.

[1] Commissioner Hooks dissenting.

Office Box 1106, Shreveport, LA 71156, and Cody C. Beasley, 2056 East Texas Street, Bossier City, LA 71010, filed in Docket No. CI73-436 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Texas Eastern Transmission Corp. from the Elm Grove Field Area, Bossier Parish, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to sell approximately 180,000 Mcf of gas per month at 35 cents per Mcf at 15.025 p.s.i.a. for 6 months within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 19, 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). 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 the 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 applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-356 Filed 1-9-73;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 successor by merger to the American Bank of Three Rivers, N.A., Three Rivers, Mich. (Bank).

The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant presently 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 are as of December 31, 1971, unless otherwise indicated.) Upon acquisition of Bank ($5.8 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 has been closely associated with applicant through common ownership since 1968, operates both its main office and its sole branch office in Three Rivers in the St. Joseph County banking market (approximated by the boundaries of St. Joseph County) and, with approximately 5.4 percent of market deposits, is the sixth largest of nine banking organizations operating therein. Applicant's present subsidiary bank operates a branch office in the relevant market at Mendon, approximately 13 miles northeast of Bank's two offices in Three Rivers. Based on June 30, 1970 deposit data, applicant, by virtue of the deposits in the Mendon office held approximately 2.8 percent of commercial bank deposits in the market, thereby ranking as the eighth largest of the nine banking organizations in the market. Consummation of the proposed transaction would give applicant control of 8.2 percent of deposits in the market thus making applicant the fifth largest of eight banking organizations in a market in which approximately 70 percent of the total deposits are held by the three largest banking organizations.

Bank derives an insignificant portion of its deposits and loans from areas served by applicant's present or proposed banking subsidiaries. Similarly, those banks derive only an insignificant portion of their deposits and loans from the service area of Bank. It appears, therefore, that no significant competition between Bank and applicant's present or proposed subsidiary banks would be eliminated as a result of consummation of applicant's proposal.

In addition, Michigan branching law effectively prohibits applicant's subsidiary bank and Bank from branching into each other's service areas, except at locations which appear unattractive as sites for branch offices. For the same reason, it appears unlikely that Bank and applicant's proposed subsidiary banks could or would establish branch offices in competition with one another irrespective of Bank's longstanding affiliation with applicant. Further, Bank does not appear to be such a significant competitor that applicant should be expected to enter the St. Joseph market through a less significant acquisition or by de novo means, nor does Bank possess the resources to be considered a potential lead bank in a new bank holding company. The Board concludes therefore that it is unlikely that any significant competition would develop between any of applicant's present or proposed subsidiaries and Bank in the future. 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 regarded as consistent with approval of the application. Applicant does not intend to introduce any services at Bank not presently available in the community; however, considerations relating to the convenience and needs of the communities to be served are consistent with approval of the application. 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.[2] The transaction shall not be consummated (a) before January

[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. Also, by separate order issued today, the Board approved applicant's application to acquire shares of the American National Bank in Portage, Portage, Mich.

[2] Dissenting statement of Governor Robertson filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Chicago.

25, 1973, or (b) later than March 26, 1973, 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.73-480 Filed 1-9-73;8:45 am]

BANCOHIO CORP.

Order Approving Acquisition of Bank

BancOhio Corp., Columbus, Ohio, 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 (less directors' qualifying shares) of the voting shares of the Capital National Bank, Cleveland, Ohio (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the second largest banking organization in Ohio, is the 36th largest of 37 banking organizations in the Cleveland banking market (approximated by Cuyahoga, Geauga, Lake, and portions of Summit, Portage, Lorain, and Medina Counties) with one branch office of one of its subsidiary banks controlling less than 0.05 percent of deposits of commercial banks in that market. (All banking data are as of December 31, 1971, except market deposit data which are as of June 30, 1970.)

Bank ($101.4 million of deposits) is the tenth largest, based on market deposits, of 37 banking organizations in the Cleveland banking market and controls 1.2 percent of total deposits of commercial banks in that area. The nearest office of applicant's banking subsidiaries to Bank's offices is located approximately 10 miles from a branch of Bank. However, due to the number of branches of the larger Cleveland banks in the intervening area and since neither bank derives a significant amount of business from the service area of the other, it appears that no meaningful competition exists between any of applicant's subsidiary banks and Bank; and in view of the distances involved and the Ohio law restricting branch banking within county lines, significant competition between Bank and any of applicant's subsidiary banks is unlikely to develop.

Although applicant is considered one of the most likely potential entrants into the Cleveland banking market, Bank's market share is considered insubstantial and Bank's deposits have not demonstrated consistent growth recently, its growth rate, in any case, being less than that of smaller banks in the market. The proposed transaction therefore appears to represent a foothold acquisition by applicant. Moreover, acquisition of Bank by applicant should have a substantial beneficial effect on competition among commercial banks in the Cleveland market in which the four largest banking organizations account for approximately 76 percent of the deposits. The proposed acquisition should enable Bank to strengthen its role as a competitor in the market particularly for consumer business by permitting it to draw needed financial, technical, and management resource strength from applicant. The Board concludes that consummation of the proposed transaction will not have an adverse effect on competition in any relevant area and may, in fact, serve to stimulate competition among commercial banks in the Cleveland banking market.

The financial condition and managerial resources of applicant and its subsidiaries appear satisfactory and future prospects appear favorable. The managerial resources of Bank appear good, as do its financial condition and future prospects particularly in view of applicant's stated intention to inject $2 million in the equity capital account of Bank upon consummation of the proposed transaction.

The major banking needs of the residents of the Cleveland area appear to be adequately served at the present time by existing institutions. However, applicant's entry into the Cleveland area through acquisition of Bank should benefit individual consumers by enabling Bank to become a significant alternative source of such consumer banking services as mortgage and installment loans. Considerations relating to the convenience and needs of the residents of the Cleveland area are consistent with and lend some weight toward approval of the application. It is the Board's judgment that consummation of the proposed transaction is in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before February 1, 1973, or (b) later than April 2, 1973, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Cleveland pursuant to delegated authority.

By order of the Board of Governors,[1] effective January 2, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-471 Filed 1-9-73;8:45 am]

BANCOHIO CORP.

Order Approving Acquisition of Bank

BancOhio Corp., Columbus, Ohio, 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 successor by merger to the Peoples Savings Bank Co., Delta, Ohio (Bank). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the second largest banking organization and the largest multi-bank holding company in Ohio, controls 32 banks[2] with deposits totaling approximately $1.9 billion, representing 7.8 percent of the commercial banking deposits in the State. (All banking data are as of June 30, 1972, and reflect holding company formations and acquisitions approved by the Board through Sept. 25, 1972.)

Bank ($9.7 million in deposits), the fourth largest of eight banks in Fulton County (which approximates the relevant banking market), controls 11.4 percent of the county deposits. The largest bank in the county, the Farmers & Merchants State Bank, Archbold, Ohio, controls approximately 32 percent of all deposits in the county. Therefore, Applicant's acquisition of Bank would not result in Applicant's gaining a dominant share of Fulton County banking resources.

Applicant's closest subsidiary to Bank is located 20 miles away. There is no meaningful competition between any of Applicant's subsidiary banks and Bank, nor does it appear likely that such competition will develop in the future in the light of the facts presented, notably the distances separating Bank from Applicant's subsidiaries, the number of intervening banks and Ohio's restrictive branching law. Consummation of the proposal would not appear to have an adverse effect on any competing bank. Accordingly, the Board concludes that

[3] Voting for this action: Chairman Burns and Governors Mitchell, Sheehan and Bucher. Voting against this action: Governor Robertson. 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.

[2] Applicant has also submitted applications to acquire the Western Security Bank, Sandusky, Ohio (deposits of $44.5 million, or 0.19 percent of total State deposits) and the Capital National Bank, Cleveland, Ohio (deposits of $101.4 million, or 0.42 percent of total State deposits).

competitive considerations are consistent with approval.

The financial and managerial resources and future prospects of Bank, and of Applicant and its present subsidiaries, are regarded as satisfactory and, accordingly, considerations relating to the banking factors are consistent with approval. Applicant proposes to assist Bank in arranging loan participation which should enable Bank to undertake loans far in excess of its current lending limit, and to make the extensive expertise of its staff available to Bank. Considerations relating to the convenience and needs of the community to be served are consistent with approval. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before February 1, 1973, or (b) later than April 2, 1973, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Cleveland pursuant to delegated authority.

By order of the Board of Governors,[2] effective January 2, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-472 Filed 1-9-73;8:45 am]

BANCOHIO CORP.

Order Approving Acquisition of Bank

BancOhio Corp., Columbus, Ohio, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to the Western Security Bank, Sandusky, Ohio (Bank).

The bank into which Bank will be merged has no significance except as a means of acquiring the voting shares of Bank. Accordingly, the proposed acquisition of the successor organization is treated as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls 32 banks with aggregate deposits of approximately $1.9 billion. (All banking data are as of Dec. 31, 1971, and reflect bank holding company formations and acquisitions approved by the Board through Nov. 15, 1972.) Based on its percentage share of total commercial bank deposits in the market, Bank is the third largest of the 12 banking organizations in the Sandusky banking market (approximated by Erie County, the northern portion of Huron County, the eastern portion of Ottawa County and the northeast corner of Sandusky County) and holds 12.9 percent of total deposits held by the commercial banks located in that market. No banking subsidiary of Applicant is located in the market, and the closest banking subsidiary of Applicant is located some 37 miles southwest of Sandusky. There is no substantial existing competition between Applicant's present banking subsidiaries and Bank; and, for several reasons, including the distances involved, the presence of banking alternatives in the intervening areas, and Ohio's prohibition against branch banking beyond county lines, there is no substantial likelihood of future competition developing between those subsidiaries and Bank. On the basis of the record before it, the Board concludes that consummation of the proposed acquisition would not adversely affect competition in any relevant area.

Considerations relating to the financial and managerial resources and future prospects of Applicant and its subsidiaries and Bank are regarded as satisfactory. Applicant proposes to provide, through Bank, trust services—presently unavailable in Sandusky—and to aid Bank in starting international and leasing services. Convenience and needs considerations relating to the communities to be served are consistent with approval. 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 January 26, 1973, or (b) later than March 27, 1973, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Minneapolis 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.73-473 Filed 1-9-73;8:45 am]

DELTA BANK

Order Approving Application for Merger of Banks

The Delta Bank, Delta, Ohio, a proposed State member bank of the Federal Reserve System, has applied for the Board's approval pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) of the merger of that bank with the Peoples Savings Bank Co., Delta, Ohio, under the name of the Peoples Savings Bank Co.

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 the application in light of the factors set forth in the Act.

On the basis of the record, the application is approved for the reasons summarized in the Board's order of this date relating to the application of BancOhio Corp. to acquire the successor by merger to the Peoples Savings Bank Co.: *Provided*, That said merger shall not be consummated: (a) Before February 1, 1973, or (b) later than April 2, 1973, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Cleveland pursuant to delegated authority.

By order of the Board of Governors,[1] effective January 2, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-474 Filed 1-9-73;8:45 am]

HOUSTON NATIONAL CO.

"Grandfather Privileges"

There appeared in the FEDERAL REGISTER of October 19, 1972, a notice that the Board would be reviewing, pursuant to section 4(a)(2) of the Bank Holding Company Act (12 U.S.C. 1843), the nonbanking activities of Houston National Co., Houston, Tex., that the company engaged in on, and continuously since, June 30, 1968 (37 FR 22414). A footnote in that notice explained that Houston National Co. based its claim to "grandfather privileges" with respect to the listed activities on its alleged status as a "successor" corporation, and that the Board had not yet made a determination with respect to that claim.

The Board has recently considered the above-described claim and, on the basis of the evidence presented, has rejected it. The Board regards Houston National Co. as being neither a "successor" nor a "company covered in 1970" as those terms are defined in section 2 of the Act (12 U.S.C. 1841). No grandfather privileges under the proviso in section 4(a)(2) of the Act accrue to Houston National Co.

Board of Governors of the Federal Reserve System, January 2, 1973.

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

[FR Doc.73-475 Filed 1-9-73;8:45 am]

NATIONAL BANCSHARES CORP. OF TEXAS

Acquisition of Bank

National Bancshares Corp. of Texas, San Antonio, Tex., has applied for the

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Bucher.

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Bucher.

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Bucher.

Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to the First National Bank of Eagle Pass, Eagle Pass, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 30, 1973.

Board of Governors of the Federal Reserve System, January 3, 1973.

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

[FR Doc.73-479 Filed 1-9-73;8:45 am]

SANDUSKY SECURITY BANK

Order Approving Merger Under Bank Merger Act

The Sandusky Security Bank, Sandusky, Ohio (Applicant), a proposed State member bank of the Federal Reserve System, has applied pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) for the Board's prior approval to merge with the Western Security Bank, Sandusky, Ohio, under the charter of Applicant and the name of the Western Security Bank and to operate branches at the locations at which the Western Security Bank presently operates branch offices.

As required by the Act, notice of the proposed merger, in form approved by the Board, has been published and the Board has requested reports on competitive factors from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered all relevant material contained in the record in the light of the factors set forth in the Act.

On the basis of the record, the application is approved for the reasons summarized in the Board's order of this date relating to the application of BancOhio Corp., Columbus, Ohio, to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to the Western Security Bank, Sandusky, Ohio. The transaction shall not be consummated: (a) Before January 26, 1973, or (b) later than March 27, 1973, and (c) the Sandusky Security Bank, Sandusky, Ohio, shall be opened for business not later than June 27, 1973. Each of the periods described in (b) and (c) may be extended for good cause by the Board, or by the Federal Reserve Bank of Cleveland 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.73-476 Filed 1-9-73;8:45 am]

TENNESSEE HOMESTEAD CO.

Order Approving Acquisition of Bank Shares

Tennessee Homestead Co., Ogden, Utah (THC), 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 consolidate Budget Finance Co., Jonathan Edmund Browning Corp., and Frank M. Browning, Inc. (Subsidiaries) into THC and thereby to acquire direct ownership of additional shares of Bank of Utah and Bank of Ben Lomond, both of Ogden, Utah, which additional shares are presently indirectly held by THC through the Subsidiaries.

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant presently controls one bank (Bank of Utah, Ogden, Utah) with deposits of about $32 million.[2] This bank is controlled by THC through its direct ownership of approximately 16.8 percent of the voting stock of Bank of Utah and through the Subsidiaries, which together own an additional 36 percent of the shares of Bank of Utah. THC also directly holds 6.20 percent of the shares of Bank of Ben Lomond, Ogden, Utah, with deposits of approximately $7 million. The Subsidiaries together hold an additional 12.31 percent of the shares of that bank. The proposal by THC to merge Subsidiaries into itself is essentially a corporate reorganization and would have no effect on existing or future competition. The Board concludes that competitive considerations are consistent with approval of the applications.

The financial and managerial resources and future prospects of Applicant and its subsidiary bank are generally satisfactory and consistent with approval of the applications. Considerations relating to the convenience and needs of the communities to be served are also consistent with approval of the applications. The Board finds that the proposed applications are consistent with the public interest and should be approved.

On the basis of the record, the applications are approved for the reasons summarized above. The transactions shall not be consummated (a) before January 26, 1973, or (b) later than March 27, 1973, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of San Francisco pursuant to delegated authority.

By order of the Board of Governors,[3] effective December 27, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-477 Filed 1-9-73;8:45 am]

WELLS FARGO & CO.

Order Approving Acquisition of Grayco Land Escrow, Ltd.

Wells Fargo & Co., San Francisco, Calif., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y to acquire all of the voting shares of Grayco Land Escrow, Ltd., Pasadena, Calif. (Grayco), a company that engages in the activities of acting as a trustee under subdivision trust agreements and providing to real estate developers and lot purchasers a computerized accounting and collection system. Such activities have been determined by the Board to be closely related to the business of banking (12 CFR 225.4(a)(4) and (8)(ii)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (37 FR 18121). The time for filing comments and views has expired, and none has been timely received.

Applicant, a one-bank holding company, controls Wells Fargo Bank, National Association, San Francisco, Calif. (Bank), the third largest bank in California with domestic deposits of $5.4 billion as of December 31, 1971, representing 8.8 percent of total commercial bank deposits in the State. In Los Angeles County, where a substantial number of Grayco's customers are located, Bank holds but 0.9 percent of the county-wide commercial bank deposits. Applicant also has nonbanking subsidiaries engaged principally in management of a real estate investment trust and in providing equipment lease financing and data processing services.

Grayco is a small, family-owned business,[1] engaged in providing an account-

[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 December 31, 1971.

[3] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer and Sheehan. Absent and not voting: Governor Bucher.

[1] As of Dec. 31, 1971, Grayco had total assets of $1.4 million and a net worth of $172,000.

ing, collection, and fiduciary service for developers and purchasers of lots in real estate subdivisions (all in the State of California). Its data processing activities consist of furnishing reports to developers and lot purchasers containing detailed information on accounts receivable, commissions payable, and other financial data concerning real estate sales. In addition, Grayco is licensed under California law as an escrow company and serves as trustee in the sale of subdivided land under regulations of the California Real Estate Commissioner. In its fiduciary capacity, Grayco holds legal title to and executes sales contracts covering unimproved subdivision lots. Additionally, Grayco receives and disburses installment payments from contract vendees, ultimately conveying title upon fulfillment of all contract terms. Grayco does not search or insure real estate titles nor does it engage in property management, development or consulting. Its fiduciary activities are those performed or carried on by a trust company under California law.

The relevant product market in which Applicant and Grayco may compete with each other may be broadly defined as land escrow services, comprising the total package of fiduciary, collection, and data processing services provided both developers and purchasers of real property. As such services are necessarily restricted by State law, the Board concludes that the relevant geographic market in this case is the entire State of California. Neither Applicant nor any of its subsidiaries are currently engaged in providing land escrow services in California, although Bank does act as trustee, under a subdivision trust agreement, for one customer in the State of Illinois. Bank has both the financial resources and managerial capability to offer similar services in California.

Grayco is one of approximately 15 firms that offer land escrow services in California. In addition, there are a large number of firms, including data processors and title companies, that offer one of the services associated with the package of land escrow services. Moreover, there are an even greater number of other potential entrants with similar capabilities since the barriers to providing land escrow services are relatively low. The Board therefore concludes that consummation of the proposal herein would foreclose no existing competition and that the adverse effect upon potential competition would not be significant.

There is no evidence in the record indicating that consummation of the proposed transaction would result in any undue concentration of resources, unfair competition, unsound banking practices or other adverse effects on the public interest. It is anticipated that Grayco's affiliation with Applicant will provide it with the financial and managerial resources that will enable it to compete more effectively with other land escrow firms and to improve as well as broaden the services presently offered.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[2] effective January 2, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc. 73-478 Filed 1-9-73; 8:45 am]

NATIONAL ENDOWMENT FOR THE ARTS

ADVISORY COMMITTEES

Public Disclosure of Information and Activities

The National Endowment for the Arts utilizes advice and recommendations of advisory committees, including the National Council on the Arts, in carrying out many of its functions and activities.

The Federal Advisory Committee Act (Public Law 92-463) governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise and assist the Federal Government. Section 10 of the Act specifies that department and agency heads shall make adequate provisions for participation by the public in the activities of advisory committees, except to the extent a determination is made in writing by the department or agency head that committee activities are matters which fall within policies analogous to those recognized in the Freedom of Information Act, section 552(b) of title 5 of the United States Code, and the public interest requires such activities to be withheld from disclosure.

In administering the Freedom of Information Act, the Endowment's policy is to make fullest possible disclosure of records to the public, limited only by obligations of confidentiality and administrative necessity. Consistent with this policy, the Endowment will open to the public as many advisory committee meetings as possible.

Committees while engaged in the review, discussion, evaluation, and/or ranking of grant applications and contract proposals, or in evaluation of grantee and contractor performance, should not, however, be required to hold open meetings. The Endowment, grant applicants, and persons submitting contract proposals have long and customarily treated as confidential information submitted in support of grant applications and contract proposals. Information and data are furnished to the Endowment with assurance they will be treated on a confidential basis and not disclosed to the public. This information may include such matters as details relating to the type or design of work to be performed, adequacy of the applicant's facilities, competence of the applicant's or contractor's staff, proposed budget, and other material which would not otherwise be disclosed.

In addition, to operate most effectively, the grant and contract review and evaluation process requires that members of committees considering such matters be free to engage in full and frank discussion. If the process were not to continue on a confidential basis, grant applicants and potential contractors would not supply sufficiently detailed information so essential for complete and effective review.

Grant applications, contract proposals, and detailed records of deliberations of the committees reviewing them are presently exempt from mandatory disclosure under the Freedom of Information Act.

When an advisory committee considers, discusses, and formulates its advice, conclusions or report, effective functioning of a committee requires that its members have an opportunity to express their individual views and judgments to each other without the presence of the public in arriving at the views and judgments of the committee.

In the interest of meeting our obligations of confidentiality of matters submitted as part of grant applications and contract proposals and encouraging candid expression of opinion concerning the merits of grant applications and contract proposals and the evaluation of grantee and contractor performance, so vital to the review process, and in the interest of assuring committee members necessary opportunity to express their views and judgments to each other in the process of formulating advice to the chairman of the Endowment on matters of Endowment policy:

It is hereby determined in accordance with the provisions of section 10(d) of the Act:

(1) The confidentiality required for grant applications and contract proposals, and evaluations and for the free discussion thereof as outlined herein is analogous to the policies recognized in the Freedom of Information Act, section 552(b) of title 5 of the United States Code, and in particular, subsections 552(b) (4), (5), and (6);

(2) The public interest requires such matters not be disclosed so the Endowment may continue to receive information and advice necessary to appropriate decisions with respect to grant and contract matters; and

(3) The public interest also requires that there be closed to the public meetings or portions thereof held for the sole purpose of considering and formulating advice which the committee will

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Bucher.

give or any report it will render and involving exclusively the internal expression of views and judgments of the members, which if reduced to writing would be exempt as internal memoranda from mandatory disclosure under section 3(e)(5) of the Freedom of Information Act (5 USC 552(b)(5)).

Therefore, meetings or portions thereof, of all Endowment advisory committees, including the National Council on the Arts devoted to review, discussion, evaluation, and/or ranking of grant applications, contract proposals, or performance by grantees and contractors or the formulation of advice shall not be open to the public.

The Executive Secretary of each such committee shall prepare a summary of any meeting or portion thereof not open to the public within three (3) business days following the conclusion of the meeting of the National Council on the Arts next following such meeting. Such summaries shall be consistent with the considerations which justified the closing of the meeting.

All other advisory committee meetings shall be open to the public unless the chairman of the National Endowment for the Arts or his designee determines otherwise in accordance with Section 10 (d) of the Act.

The Advisory Committee Management Officer shall be responsible for publication in the FEDERAL REGISTER or as appropriate in local media, of a notice of all advisory committee meetings. Such notice shall be published in advance of the meeting and contain:

(1) Name of the committee and its purpose;

(2) Date, and time of the meeting, and, if the meeting is to be open to the public, its location and agenda; and

(3) A statement that the meeting is open to the public, or, if the meeting or any portion thereof is not to be open to the public, a statement to that effect.

The Advisory Committee Management Officer is designated as the person from whom rosters of committee members may be obtained and from whom minutes of meetings may be requested, if available.

Subject to the availability of space any interested persons may attend, as observers, meetings, or portions thereof, of advisory committees which are open to the public.

Members of the public attending a meeting will be permitted to participate in the committee's discussion at the discretion of the chairman of the committee, if the chairman is a full-time Federal employee; if the chairman is not a full-time Federal employee, then public participation, will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

NANCY HANKS,
Chairman,
National Endowment for the Arts.

DECEMBER 1972.

[FR Doc.73-507 Filed 1-9-73;8:45 am]

NATIONAL ENDOWMENT FOR THE HUMANITIES

ADVISORY COMMITTEES

Public Disclosure of Information and Activities

The National Endowment for the Humanities utilizes advice and recommendations of advisory committees, including the National Council on the Humanities, in carrying out many of its functions and activities.

The Federal Advisory Committee Act (Public Law 92-463) governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise and assist the Federal Government. Section 10 of the Act specifies that department and agency heads shall make adequate provisions for participation by the public in the activities of advisory committees, except to the extent a determination is made in writing by the department or agency head that committee activities are matters which fall within policies analogous to those recognized in the Freedom of Information Act, section 552(b) of title 5 of the United States Code, and the public interest requires such activities to be withheld from disclosure.

In administering the Freedom of Information Act, the Endowment's policy is to make fullest possible disclosure of records to the public, limited only by obligations of confidentiality and administrative necessity. Consistent with this policy, the Endowment will open to the public as many advisory committee meetings as possible.

Committees while engaged in the review, discussion, evaluation, and/or ranking of grant applications and contract proposals, or in evaluation of grantee and contractor performance, should not, however, be required to hold open meetings. The Endowment, grant applicants, and persons submitting contract proposals have long and customarily treated as confidential information submitted in support of grant applications and contract proposals. Information and data are furnished to the Endowment with assurance they will be treated on a confidential basis and not disclosed to the public. This information may include such matters as details relating to the type or design of work to be performed, adequacy of the applicant's facilities, competence of the applicant's or contractor's staff, proposed budget, and other material which would not otherwise be disclosed.

In addition, to operate most effectively, the grant and contract review and evaluation process requires that members of committees considering such matters be free to engage in full and frank discussion. If the process were not to continue on a confidential basis, grant applicants and potential contractors would not supply sufficiently detailed information so essential for complete and effective review.

Grant applications, contract proposals, and detailed records of deliberations of the committees reviewing them are presently exempt from mandatory disclosure under the Freedom of Information Act.

When an advisory committee considers, discusses, and formulates its advice, conclusions, or report, effective functioning of a committee requires that its members have an opportunity to express their individual views and judgments to each other without the presence of the public in arriving at the views and judgments of the committee.

In the interest of meeting our obligations of confidentiality of matters submitted as part of grant applications and contract proposals and encouraging candid expression of opinion concerning the merits of grant applications and contract proposals and the evaluation of grantee and contractor performance, so vital to the review process, and in the interest of assuring committee members necessary opportunity to express their views and judgments to each other in the process of formulating advice to the Chairman of the Endowment on matters of Endowment policy:

It is hereby determined in accordance with the provisions of section 10(d) of the Act:

(1) The confidentiality required for grant applications and contract proposals, and evaluations and for the free discussion thereof as outlined herein is analogous to the policies recognized in the Freedom of Information Act, section 552(b) of title 5 of the United States Code, and in particular, subsections 552 (b) (4), (5), and (6);

(2) The public interest requires such matters not be disclosed so the Endowment may continue to receive information and advice necessary to appropriate decisions with respect to grant and contract matters; and

(3) The public interest also requires that there be closed to the public meetings or portions thereof held for the sole purpose of considering and formulating advice which the committee will give or any report it will render and involving exclusively the internal expression of views and judgments of the members, which if reduced to writing would be exempt as internal memoranda from mandatory disclosure under section 3 (e)(5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)).

Therefore, meetings or portions thereof, of all Endowment advisory committees, including the National Council on the Humanities, devoted to review, discussion, evaluation, and/or ranking of grant applications, contract proposals, or performance by grantees and contractors or the formulation of advice shall not be open to the public.

The Executive Secretary of each such committee shall prepare a summary of any meeting or portion thereof not open to the public within three (3) business days following the conclusion of the meeting of the National Council on the Humanities next following such meeting. Such summaries shall be consistent

with the considerations which justified the closing of the meeting.

All other advisory committee meetings shall be open to the public unless the Chairman of the National Endowment for the Humanities or his designee determines otherwise in accordance with section 10(d) of the Act.

The Advisory Committee Management Officer shall be responsible for publication in the FEDERAL REGISTER or as appropriate in local media, of a notice of all advisory committee meetings. Such notice shall be published in advance of the meeting and contain:

(1) Name of the committee and its purpose;

(2) Date, and time of the meeting, and, if the meeting is to be open to the public, its location and agenda; and

(3) A statement that the meeting is open to the public, or, if the meeting or any portion thereof is not to be open to the public, a statement to that effect.

The Advisory Committee Management Officer is designated as the person from whom rosters of committee members may be obtained and from whom minutes of meetings may be requested, if available.

Subject to the availability of space any interested persons may attend, as observers, meetings, or portions thereof, of advisory committees which are open to the public.

Members of the public attending a meeting will be permitted to participate in the committee's discussion at the discretion of the Chairman of the committee, if the Chairman is a full-time Federal employee; if the Chairman is not a full-time Federal employee, then public participation will be permitted at the Chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

RONALD S. BERMAN,
Chairman, National Endowment for the Humanities.

DECEMBER 28, 1972.

[FR Doc.73-488 Filed 1-9-73;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

EXPANSION ARTS ADVISORY PANEL TO NATIONAL COUNCIL ON THE ARTS

Notice of Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a closed meeting of the Expansion Arts Advisory Panel to the National Council on the Arts will be held at 9:30 a.m. on January 22, 1973 and at 9:30 a.m. on January 23, 1973, in Washington, D.C.

This meeting is for the purpose of Council review, discussion, and evaluation of grant applications. It has been determined by the Chairman in accordance with section 10(d) of the Act, that the meeting involves matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b)).

Further information with reference to this meeting can be obtained from Mrs. L. Diamond, Secretary, National Council on the Arts 806 15th Street NW., Washington, DC 20506.

PAUL BERMAN,
Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.73-503 Filed 1-9-73;8:45 am]

INTERNATIONAL ADVISORY PANEL TO NATIONAL COUNCIL ON THE ARTS

Notice of Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463) notice is hereby given that a closed meeting of the International Advisory Panel to the National Council on the Arts will be held at 9:30 a.m. on January 17, 1973, and at 9:30 a.m. on January 18, 1973, in Washington, D.C.

This meeting is for the purpose of Council review, discussion, and evaluation of grant applications. It has been determined by the Chairman in accordance with section 10(d) of the Act, that the meeting involves matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b)).

Further information with reference to this meeting can be obtained from Mrs. L. Diamond, Secretary, National Council on the Arts, 806 15th Street NW., Washington, DC 20506.

PAUL BERMAN,
Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.73-504 Filed 1-9-73;8:45 am]

MUSIC ADVISORY PANEL TO NATIONAL COUNCIL ON THE ARTS

Notice of Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a closed meeting of the Music Advisory Panel to the National Council on the Arts will be held at 10:30 a.m. on January 13, 1973, in Washington, D.C.

This meeting is for the purpose of Council review, discussion, and evaluation of grant applications. It has been determined by the Chairman in accordance with section 10(d) of the Act, that the meeting involves matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b)).

Further information with reference to this meeting can be obtained from Mrs. L. Diamond, Secretary, National Council on the Arts, 806 15th Street NW., Washington, DC 20506.

PAUL BERMAN,
Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.73-505 Filed 1-9-73;8:45 am]

MUSEUM ADVISORY PANEL TO NATIONAL COUNCIL ON THE ARTS

Notice of Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a closed meeting of the Museum Advisory Panel to the National Council on the Arts will be held at 10:30 a.m. on January 11, 1973 and at 10:30 a.m. on January 12, 1973, in Washington, D.C.

This meeting is for the purpose of Council review, discussion, and evaluation of grant applications. It has been determined by the Chairman in accordance with Section 10(d) of the Act, that the meeting involves matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b)).

Further information with reference to this meeting can be obtained from Mrs. L. Diamond, Secretary, National Council on the Arts, 806 15th Street NW., Washington, DC 20506.

PAUL BERMAN,
Director of Administration, National Foundation on the Arts, and the Humanities.

[FR Doc.73-506 Filed 1-9-73;8:45 am]

POSTAL RATE COMMISSION

McGRAW-HILL FACILITIES, HIGHTSTOWN, N.J.

Notice of Presentation and Visit

JANUARY 10, 1973.

Notice is hereby given that on January 17, 1973, a presentation will be made by McGraw-Hill to employees of the Postal Rate Commission for the purpose of describing its operations relating to use of U.S. mail service. A visit will be made to McGraw-Hill facilities in Hightstown, N.J.

No particular matter at issue in contested proceedings before the Commission nor the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission will be discussed. A report of the presentation and visit will be on file in the Commission's docket room.

By direction of the Commission.

JOSEPH A. FISHER,
Secretary.

[FR Doc.73-678 Filed 1-9-73;10:40 am]

TARIFF COMMISSION

[TEA-W-165]

CHRYSLER CORP., DETROIT, MICH.

Workers' Petition for Determination of Eligibility To Apply for Adjustment Assistance; Notice of Hearing

The U.S. Tariff Commission has ordered a hearing in connection with the investigation instituted on December 18, 1972, under section 301(c)(2) of the

Trade Expansion Act of 1962 on a petition filed on behalf of the workers of the Los Angeles, Calif., assembly plant of Chrysler Corp., Detroit, Mich. The hearing will be held at 9:30 a.m. P.s.t. on January 25, 1973, in room 1345 of the U.S. Courthouse, 312 North Spring Street, Los Angeles, Calif. Requests for appearances at the hearing should be received by the Secretary of the Tariff Commission, in writing, at his offices in the Tariff Commission Building, Eighth and E Streets NW., Washington, DC 20436, not later than noon, Friday, January 19, 1973.

Issued: January 5, 1973.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-540 Filed 1-9-73;8:45 am]

[TEA-W-169]

DAINTY MAID FOOTWEAR, INC.

Workers' Petition for a Determination; Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of Dainty Maid Footwear, Inc., Gettysburg, Pa., the U.S. Tariff Commission, on January 5, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in items 700.43, 700.45, and 700.55 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed by January 22, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

Issued: January 5, 1973.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-542 Filed 1-9-73;8:45 am]

[22-30]

NONFAT DRY MILK

Notice of Investigation and Date of Hearing

At the request of the President (reproduced herein), the U.S. Tariff Commission, on the 4th day of January 1973, instituted an investigation under subsection (d) of section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624), to determine whether 25 million pounds of nonfat dry milk described in item 115.50 of the Tariff Schedules of the United States (TSUS) may be imported into the United States during the period beginning December 30, 1972, and ending February 15, 1973, in addition to the quota-quantity specified for such article under TSUS item 950.02, without rendering or tending to render ineffective, or materially interfering with, the price support program now conducted by the Department of Agriculture for milk, or reducing substantially the amount of products processed in the United States from domestic milk.

The text of the President's letter of December 30, 1972, to the Commission follows:

Pursuant to section 22 of the Agricultural Adjustment Act, as amended, I have been advised by the Secretary of Agriculture, and I agree with him that there is reason to believe that additional quantities of nonfat dried milk may be imported for a temporary period without rendering or tending to render ineffective, or materially interfering with, the price support program for milk now conducted by the Department of Agriculture, or reducing substantially the amount of products processed in the United States from domestic milk.

Specifically, reference is made to the following article presently subject to section 22 quantitative limitations under item 950.02 of the Tariff Schedules of the United States:

Dried milk, provided for in part 4 of schedule 1 of the Tariff Schedules of the United States Annotated (1972), described in item 115.50 (dried milk, other than buttermilk, containing not over 3 percent of butterfat).

The Secretary has also advised me, pursuant to section 22(b) of the Agricultural Adjustment Act, as amended, that a condition exists requiring emergency treatment with respect to nonfat dried milk and has therefore recommended that I take immediate action under section 22(b) to authorize the importation of 25 million pounds during a temporary period ending February 15, 1973. I have therefore this day issued a proclamation establishing a special temporary quota of 25 million pounds to be effective through February 15, 1973. This quota is in addition to the existing quota of 1,807,000 pounds per annum previously proclaimed under the section 22 authority.

The U.S. Tariff Commission is therefore directed to make an investigation under section 22 of the Agricultural Adjustment Act, as amended, to determine whether the above-described article may be imported in the amount and for the period specified above without rendering or tending to render ineffective, or materially interfering with, the price support program now conducted by the Department of Agriculture for milk, or reducing substantially the amount of products processed in the United States from domestic milk, and to report its findings and recommendations at the earliest practicable date.

Sincerely,

(Signed)
RICHARD NIXON.

Hearing. A public hearing in connection with this investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, D.C., beginning at 9:30 a.m. e.s.t., on January 15 and 16, 1973. All parties will be given opportunity to be present, to produce evidence, and to be heard at such hearing. Interested parties desiring to appear at the public hearing should notify the Secretary of the Tariff Commission, in writing, at its offices in Washington, D.C., at least by the close of business on January 11, 1973. The notification should indicate the name, address, telephone number, and organization of the person filing the request, and the name and organization of the witnesses who will testify.

Because of the limited time available, the Commission reserves the right to limit the time assigned to witnesses. Questioning of witnesses will be limited to members of the Commission and officials of the Department of Agriculture.

Written submissions. Interested parties may submit written statements of information and views, in lieu of their appearance at the public hearing, or they may supplement their oral testimony by written statements of any desired length. In order to be assured of consideration, all written statements should be submitted at the earliest practicable date, but not later than the close of business on January 19, 1973.

With respect to any of the aforementioned written submissions, interested parties should furnish a signed original and nineteen (19) true copies. Business data to be treated as business confidential shall be submitted on separate sheets, each clearly marked at the top "Business Confidential," as provided for in § 201.6 of the Commission's rules of practice and procedure.

Issued: January 5, 1973.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-541 Filed 1-9-73;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

WISE SHOE CO.

Investigation Regarding Certification of Eligibility of Workers To Apply for Adjustment Assistance

The Department of Labor has received a Tariff Commission report containing an

affirmative finding under section 301(c)(2) of the Trade Expansion Act of 1962, with respect to its investigation of a petition for determination of eligibility to apply for adjustment assistance filed on behalf of workers of Wise Shoe Co., Exeter, N.H. (TEA-W-161). In view of the report and the responsibilities delegated to the Secretary of Labor under section 8 of Executive Order 11075 (28 FR 473), the Acting Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.5 and this notice. The investigation relates to the determination of whether any of the group of workers covered by the Tariff Commission report should be certified as eligible to apply for adjustment assistance, provided for under Title III, Chapter 3, of the Trade Expansion Act of 1962, including the determination of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and the subdivision of the firm involved to be specified in any certification to be made, as more specifically provided in Subpart B of 29 CFR Part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigation to the Acting Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C. on or before January 20, 1973.

Signed at Washington, D.C. this 3d day of January 1973.

MARVIN M. FOOKS,
Acting Director, Office of Foreign Economic Policy.

[FR Doc.73-496 Filed 1-9-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 152]

ASSIGNMENT OF HEARINGS

JANUARY 5, 1973.

Cases assigned for hearing, postponement, cancellation, or oral arguments appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC-F-11604, McBride Transportation, Inc.—Purchase—C & E Trucking Corp. (Assignee Alfred A. Rosenberg), MC 80428 Sub 80, McBride Transportation, Inc., now being assigned February 12, 1973 (2 days), at New York City, N.Y., in a hearing room to be later designated.

MC-69635 Sub 4, The Fortune Corp., now assigned January 16, 1973, at Olympia, Wash., is postponed indefinitely.

FSA-Nos. 42558 and 42559, iron or steel, angles and bars, to points in Texas, now being assigned hearing February 20, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

No. 35720, American Petrofina Company of Texas et al. v. Williams Brothers Pipe Line Co., et al., now assigned continued hearing January 8, 1973, at Washington, D.C., postponed to January 10, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

I & S M-25977, Classification of Gelatin Capsules, now assigned January 9, 1973, at Washington, D.C., is cancelled. The tariffs are being cancelled.

MC-29120 Sub 139, All-American Transport, Inc., is continued to January 22, 1973, at the Hilton Inn, 10330 Natural Bridge Road, St. Louis, MO.

MC 12731 Subs 1 and 2, Teens N Tours, Inc., MC-C-7757, Inter-County Motor Coach, Inc. v. Schenck Tours, Inc. et al., now assigned February 12, 1973, at New York, N.Y., is postponed indefinitely.

I & S Nos. 8777 and 8787, freight all kinds, between Illinois and New Jersey, No. 35719, and No. 35719 Sub 1, TOFC Freight all kinds in trainloads, between Chicago and Kearny, No. 35719 Sub 2, freight all kinds in multiple trailer, between Chicago and New Jersey, No. 35719 Sub 3, freight all kinds, in multiple trailer, between Chicago and Massachusetts No. 35719 Sub 4, freight all kinds in multiple trailer, between Chicago, Maryland, and New Jersey, No. 35719 Sub 5, freight all kinds, in multiple trailer, from Port Reading to Chicago, No. 35719 Sub 6, freight all kinds, in multiple trailer, between Chicago and East, No. 35719 Sub 7, freight all kinds, in multiple trailer, between Illinois and Eastern points, and No. 35719 Sub 8, freight all kinds, in multiple trailer, between Chicago and Massachusetts, now being assigned hearing March 5, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 99208 Sub 10, Skyline Transportation, Inc., now assigned January 29, 1973, at Knoxville, Tenn., will be held in Room LL8, Cumberland Building, 301 Cumberland Avenue.

MC-F-11394, Glosson Motor Lines, Inc.—Control—State Motor Lines, Inc., MC 120280 Sub 2, State Motor Lines, Inc., now assigned February 5, 1973, at Raleigh, N.C., will be held in Room 505, Federal Building, 310 Newbern Avenue.

MC 97904 Sub 13, Knoxville-Maryville Motor Express, Inc., now assigned January 30, 1973, will be held in Room 661, U.S. Courthouse, Eighth and Broadway, Nashville, Tenn.

MC 123613 Sub 9, Claremont Motor Lines, Inc., now assigned January 22, 1973, at Charlotte, N.C., will be held in the public library, 310 North Tryon Street.

MC-115322 Sub 89, Redwing Refrigerated, Inc., now assigned January 18, 1973, at Washington, D.C., is postponed indefinitely.

MC-C-7840, The Millenburg Tours, Inc. v. Lillian Hofmeister, now assigned January 17, 1973, at Baltimore, Md., is postponed to February 21, 1973, at Baltimore, Md., in a hearing room to be later designated.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-533 Filed 1-9-73;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed by January 25, 1973. FSA No. 42596—*Processed Clay to Pryor, Okla.* Filed by M. B. Hart, Jr., Agent (No. A6331), for interested rail carriers. Rates on clay, processed, in carloads, as described in the application, from Toomsboro, Ga., and points subject thereto, in tariff referenced in the application, to Pryor, Okla. Grounds for relief: Rate relationship. Tariff: Supplement 25 to Southern Freight Association, Agent, tariff ICC S-973. Rates are published to become effective on February 8, 1973.

FSA No. 42597—*Joint Water-Rail Container Rates—Kawasaki Kisen Kaisha, Ltd.* Filed by Kawasaki Kisen Kaisha, Ltd., (No. 6), for itself and interested rail carriers. Rates on general commodities, between ports in Macao, Portuguese Colony, on the one hand, and rail stations on the U.S. Atlantic and Gulf Seaboard, on the other. Grounds for relief: Water competition.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-534 Filed 1-9-73;8:45 am]

[Notice 1]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JANUARY 5, 1973.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed devation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC-109780 (Deviation No. 43), CONTINENTAL TRAILWAYS, INC., 300 South Broadway Avenue, Wichita, KS 67201, filed December 22, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers*, in the same vehicle with passengers, over deviation routes as follows: (1) from Wichita, Kans., over Interstate Highway 35-W and access roads to Newton, Kans., (2) from Newton, Kans., over Interstate Highway 35-W and access roads to McPherson, Kans., (3) from McPherson, Kans., over Interstate Highway 35-W and access roads to Lindsborg, Kans., (4) from Lindsborg, Kans., over Interstate Highway 35-W and access roads to Salina, Kans., and (5) from Salina, Kans., over Interstate Highway 35-W and access roads to junction U.S. Highway 81, located approximately 2 miles east of Minneapolis, Kans., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: from Lincoln, Nebr., over U.S. Highway 6 to junction unnumbered highway near Dorchester, Nebr., thence over unnumbered highway to Dorchester, Nebr., thence return over unnumbered highway to junction U.S. Highway 6, thence over U.S. Highway 6 to junction U.S. Highway 81, thence over U.S. Highway 81 via Salina, McPherson, Newton, Wichita, and Wellington, Kans., to South Haven, Kans., and return over the same route.

By the Commission.

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

[FR Doc.73-530 Filed 1-9-73;8:45 am]

[Notice 1]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JANUARY 5, 1973.

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-69116 (Deviation No. 43), SPECTOR FREIGHT SYSTEM, INC., 205 West Wacker Drive, Chicago, IL 60606, filed December 27, 1972. Carrier's representative: Leonard R. Kofkin, 39 South La Salle Street, Chicago, IL 60603. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) from Memphis, Tenn., over Interstate Highway 40 to junction Interstate Highway 81, thence over Interstate Highway 81 (using U.S. Highways 11-W and 11-E where portions of Interstate Highway 81 is not completed) to junction Interstate Highway 70, thence over Interstate Highway 70 to junction Interstate Highway 70-N, thence over Interstate Highway 70-N to Baltimore, Md., and (2) from Memphis, Tenn., over Interstate Highway 40 to junction Interstate Highway 81, thence over Interstate Highway 81 (using U.S. Highways 11-W and 11-E where portions of Interstate Highway 81 is not completed) to junction Interstate Highway 66, thence over Interstate Highway 66 to junction Interstate Highway 95, thence over Interstate Highway 95 to Baltimore, Md., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: from Memphis, Tenn., over U.S. Highway 79 to Milan, Tenn., thence over U.S. Highway 45 to junction U.S. Highway 45-E, thence over U.S. Highway 45-E to Fulton, Ky., thence over U.S. Highway 45 to Vienna, Ill., thence over Illinois Highway 146 to West Vienna, Ill., thence over Illinois Highway 37 to Marion, Ill., thence over Illinois Highway 37 to Effingham, Ill., thence over U.S. Highway 40 to Indianapolis, Ind., thence over U.S. Highway 40 to junction U.S. Highway 22, thence over U.S. Highway 22 to Harrisburg, Pa., thence over U.S. Highway 111 to Baltimore, Md., and return over the same route.

By the Commission.

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

[FR Doc.73-531 Filed 1-9-73;8:45 am]

[Notice 1]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

JANUARY 5, 1973.

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.

MOTOR CARRIERS OF PROPERTY

NOTICE FOR FILING PETITION

No. MC 133106 (Sub-No. 3) (Notice of filing of petition to amend a permit), filed September 21, 1970, published in the FEDERAL REGISTER issue of November 19, 1970, and republished, in part, this issue.

Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street (Box 1358) Liberal, Kans. 67901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street (Post Office Box 80806), Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, medicines, toilet preparations, and disinfectants*, moving in vehicles equipped with mechanical temperature control devices, from Lilitz, Pa., to points in Washington, Oregon, California, Nevada, Utah, Idaho, Arizona, New Mexico, Colorado, Nebraska, Kansas, Oklahoma, Texas, Iowa, Missouri, and Rockford, Ill., under a continuing contract with Warner-Lambert Pharmaceutical Co. and its divisions and subsidiaries. NOTE: This amendment adds the commodity "disinfectants" to the applicant's previously issued authority, as described, in part, above.

APPLICATION 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)

[1] Except as otherwise specifically noted, each applicant (on applications filed after Mar. 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

MOTOR CARRIERS OF PROPERTY

No. MC–F–11756. Authority sought for purchase by P. CALLAHAN, INC., 5240 Comly Street, Philadelphia, PA 19135, of a portion of the operating rights of SOMCO FREIGHT LINES, INC., (Frank G. Masini, receiver), Paterson Plank Road, and Route 3, Rutherford, N.J. 07073, (MATCO TRANSPORTATION, INC., assignee), and for acquisition by JAMES M. CALLAHAN, also of Philadelphia, Pa. 19135, of control of such rights through the purchase. Applicants' attorneys: Terrence L. Bowers, 5240 Comly Street, Philadelphia PA 19135, and Arthur J. Piken, 1 Lefrak City Plaza, Flushing, N.Y. 11368. Operating rights sought ot be transferred: *General commodities*, excepting among others, classes A and B explosives, and commodities in bulk, as a *common carrier* over irregular routes, between Carlstadt, N.J., on the, one hand, and, on the other, points in Nassau and Suffolk Counties, N.Y., on and west of New York Highway 112, extending between Patchogue and Port Jefferson, Long Island, N.Y. Vendee is authorized to operate as a *common carrier* in Pennsylvania, New York, New Jersey, Maryland, Rhode Island, Massachusetts, New Hampshire, Connecticut, and Delaware, and as a *contract carrier* in Pennsylvania, Delaware, New Jersey, New York, Maryland, Virginia, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11757. Authority sought for purchase by TANKSLEY TRANSFER COMPANY, 901 Harrison St., Nashville, TN 37203, of the operating rights of IDEAL MOVING AND STORAGE COMPANY, INC., 404 James Robertson Parkway, Nashville, TN 37219, and for acquisition by ROY TANKSLEY, MILTON G. TANKSLEY, GORDON B. TANKSLEY, AND NOVELLA H. TANKSLEY, all of 901 Harrison Street, Nashville, TN 37203, of control of such rights through the purchase. Applicants' attorney: Charles Carter Baker, Jr., 1800 Third National Bank Building, Nashville, Tenn. 37219. Operating rights sought to be transferred: *Household goods* as defined by the Commission, as a *common carrier* over irregular routes, between points in Marshall County, Tenn., on the one hand, and, on the other, points in Alabama, Georgia, Kentucky, North Carolina, South Carolina, Indiana, Ohio, and Michigan, between Shelbyville, Tenn., and points within 65 miles of Shelbyville, on the one hand, and, on the other, points in Alabama, Georgia, Kentucky, North Carolina, Ohio, South Carolina, and Tennessee. Vendee is authorized to operate as a *common carrier* in Tennessee, Mississippi, Alabama, Ohio, Kentucky, North Carolina, South Carolina, Georgia, Arkansas, Florida, Louisiana, Missouri, and Virginia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11758. Authority sought for purchase by SUN INVESTMENT, INC., a noncarrier, 1835 West Main Street, Zanesville, OH, of the operating rights and property of DIECKBRADER EXPRESS, INC. (MARTIN A. GREENBERGER, operating trustee), 5391 Wooster Road, Cincinnati, OH 45226, and for acquisition by ORIN S. NEIMAN, 3893 Market Street NE., Warren, OH 44484, and ROBERT W. SPADE, Flint and Denman Streets, Cincinnati, Ohio 45214, of control of such rights and property through the purchase. Applicants' attorney: Paul F. Beery, 89 East Broad Street, Columbus, OH 43215. Operating rights sought to be transferred: Numerous *specified commodities*, as a *common carrier*, over regular and irregular routes, from, to, and between specified points in the States of Illinois, Missouri, Indiana, Kentucky, Ohio, Michigan, West Virginia, Iowa, Minnesota, Wisconsin, New York, New Jersey, Pennsylvania, Tennessee, Maryland, Connecticut, Delaware, Kansas, Louisiana, Massachusetts, North Dakota, Rhode Island, Texas, Colorado, Nebraska, South Dakota, North Carolina, Virginia, Arkansas, and the District of Columbia, with certain restrictions, as more specifically described in Docket No. MC–119531 and Sub-numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. Vendee holds no authority from this Commission. However it is affiliated with OHIO FAST FREIGHT, INC., 300 Liberty Road, Warren, OH 44482, which is authorized to operate as a *common carrier* in Ohio, West Virginia, Pennsylvania, New Jersey, Virginia, Maryland, Connecticut, Illinois, Indiana, Massachusetts, Michigan, New York, Delaware, Kentucky, Maine, New Hampshire, Tennessee, Vermont, Rhode Island, Alabama, Arizona, Arkansas, California, Colorado, Idaho, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming, and the District of Columbia, and SPADE CONTINENTAL EXPRESS, INC., Post Office Box 14424, Cincinnati, OH 45214, which is authorized to operate as a *common carrier* in Ohio and Kentucky. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11759. Authority sought for purchase by FRONTIER DISTRIBUTION LINE, INC., 1285 William Street, Buffalo, NY 14206, of the operating rights of MURRAY'S TRUCKING SERVICE, INC. (U.S. Treasury Department-Internal Revenue Service), 111 West Huron Street, Buffalo, NY 14202, and for acquisition by BERNARD A. CESAR, 1328 Delaware Avenue, Buffalo, NY 14209, of control of such rights through the purchase. Applicants' attorney: Robert D. Gunderman, Suite 1708, Statler Hilton, Buffalo, N.Y. 14202. Operating rights sought to be transferred: General commodities, excepting among others, classes A and B explosives, commodities in bulk, and household goods, as a *common carrier*, over irregular routes, from Buffalo, N.Y., to points in Cattaraugus, Chatauqua, Erie, Genesee, Niagara, Orleans, and Wyoming Counties, N.Y. Vendee is authorized to operate as a *common carrier* in New York and Pennsylvania. Application has been filed for temporary authority under section 210a(b), in Docket No. MC–FC–72439, and granted by order of the Commission dated June 30, and served July 13, 1972.

No. MC–F–11760. Authority sought for purchase by T. E. QUINN TRUCK LINES LTD., Box 401, Niagara Falls, Ontario, Canada, of a portion of the operating rights and property of BEANEY TRANSPORT, LIMITED, Post Office Box 392, Lansdale, PA 19446, and for acquisition by THOMAS E. QUINN, also of Niagara Falls, Ontario, Canada, of control of such rights and property through the purchase. Applicants' attorney: Maxwell A. Howell, 1511 K Street NW., Washington, DC 20005. Operating rights sought to be transferred: *Frozen foods*, as a common carrier over irregular route, from Brockport, N.Y., and points within 75 miles thereof, to New York, N.Y., Allentown, Bethlehem, and Philadelphia, Pa., and points in New Jersey, Massachusetts, Connecticut, and Rhode Island; *packinghouse products* as described in paragraphs A, B and C of the appendix in Ex Parte No. MC–38, *Modification of Motor Contract Carriers of Packing-House Products*, 46 M.C.C. 23, from ports of entry on the United States-Canada boundary line at Buffalo and Niagara Falls, N.Y., to New York, N.Y., and points within 50 miles thereof; *fresh fruits, fresh vegetables*, and *the commodities* described in paragraphs A, B, and C, in the appendix to the report in *Modification of Permits Packing-House Products*, 48 M.C.C. 628, between ports of entry on the United States-Canada boundary line at Alexandria Bay, Buffalo, and Niagara Falls, N.Y., on the one hand, and, on the other, points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and the District of Columbia, with restriction. Vendee holds no authority from this Commission. However, it is affiliated with KEY EXPRESS, INC., Post Office Box 401, Niagara Falls, ON Canada, which is authorized to operate as a *common carrier* in New York, New Jersey, Maryland, and Pennsylvania. Application has been filed for temporary authority under section 210a(b).

NOTICE

Fort Worth and Denver Railway Co. hereby gives notice that on November 1, 1972, it filed an application with the Interstate Commerce Commission at Washington, D.C., under section 5(2) of the Interstate Commerce Act for authority to purchase and operate a line of railroad from Stamford, Tex. to Rotan, Tex. This application has been assigned Finance Docket No. 27227. The line of railroad is now owned and operated by the Texas Central Railroad Co. and is approximately 43.55 miles in length, extending between Stamford and Rotan, Tex., in Jones and Fisher Counties, Tex. The line now connects with applicant, Fort Worth and Denver Railway's existing line of railroad at Stamford, Tex.

Texas Central Railroad Co. is a class II common carrier railroad and performs interstate, intrastate transportation. Fort Worth and Denver Railway Co. will perform interstate and intrastate transportation over the Stamford to Rotan Branch line commensurate with its common carrier obligation.

Applicant's attorneys are Richard M. Gleason, Attorney, Fort Worth and Denver Railway Co., 176 East Fifth Street, St. Paul, MN 55101, and T. E. Shell, General Counsel, Texas Central Railroad Co., Post Office Drawer 220, Dublin, TX 76446.

In the opinion of the applicant, the proposal 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. The proceeding will be handled without public hearings unless protests are received which contain information indicating a need for such hearings. Any protests submitted shall be filed with the Commission no later than 30 days from the date of first publication in the FEDERAL REGISTER.

By the Commission.

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

[FR Doc.73-532 Filed 1-9-73;8:45 am]

MOTOR CARRIER INTRASTATE APPLICATIONS

JANUARY 5, 1973.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by special rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Arkansas Docket No. M-7385, filed December 15, 1972. Applicant: ATLAS TRANSIT, INC., Post Office Box 707, Little Rock, AR 72203. Applicant's representative: James N. Clay III, 2700 Sterick Building, Memphis, TN 38103. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, over regular and/or irregular routes, between all points and places in Arkansas presently authorized to be served by Atlas Transit, Inc. by certificate of public convenience and necessity No. 651 over the shortest or most feasible highway routes, as alternate routes only. Both intrastate and interstate authority sought. HEARING: January 22, 1973, at the Arkansas Transportation Commission, Justice Building, Little Rock, Ark., at 10 a.m. Requests for procedural information should be addressed to the Arkansas Transportation Commission, Justice Building, Little Rock, Ark., 72201, and should not be directed to the Interstate Commerce Commission.

Kansas Docket No. 48,292M, filed November 30, 1972. Applicant: FRANCIS J. GORRELL, doing business as: TOPLIFF TRUCK LINE, 746 North Santa Fe, Salina, Kans. 67401. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading. *Extension of Route 4278:* From Glade, Kans., west over Highway K9 to Leonora, Kans., and return over the same route, with service authorized in either direction from, to and between Glade, Kans., and Leonora, Kans., and the intermediate points of Speed, Logan, Densmore, and Edmond and between said points and all points on the existing Route 4278. Also: From Jewell, Kans., over Highways K14-28 and K14 to Burr Oak, Kans., and return over the same route, with service authorized in either direction from, to and between Jewell, Kans., and Burr Oak, Kans., and the intermediate point of Mankato, Kans., and between said points and all points on the existing Route 4278.

Also: From Jewell, Kans., east over Highway K28 to Jamestown, Kans., thence west and south over county roads to Scottsville, Kans., and south over county road to its junction with Highway U.S. 24, with service authorized in either direction and between Jewell, Kans., and Scottsville, Kans., and the intermediate points of Randall and Jamestown and between said points and all points on existing Route 4278. Also: For operating convenience only—From Jamestown, Kans., east on Highway K28 to its junction with Highway U.S. 81, thence south on said highway U.S. 81 to its junction with Highway U.S. 24, with no transportation for compensation except as otherwise authorized. Both intrastate and interstate authority sought. Hearing: February 13, 1973, at the State Corporation Commission, Transportation Division, Fourth Floor, State Office Building, Topeka, Kans. Requests for procedural information including the time for filing of protests concerning this application should be addressed to the State Corporation Commission, Transportation Division, Fourth Floor, State Office Building, Topeka, Kans. 66612 and should *not* be directed to the Interstate Commerce Commission.

California Docket No. 53751, filed December 15, 1972. Applicant: C-LINE EXPRESS, 525 Silverado Trail, Napa, Calif. 94558. Applicant's representative: Marvin Handler, 405 Montgomery Street, Suite 1400, San Francisco, CA 94104. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, between points and places in the San Francisco territory described as follows: San Francisco territory includes all of the city of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Co. right-of-way at Arastradero Road; southeasterly along the Southern Pacific Co. right-of-way to Pollard Road, including industries served by the Southern Pacific Co. spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to West Parr Avenue; easterly along West Parr Avenue to Capri Drive; southerly along Capri Drive to East Parr Avenue; easterly along East Parr Avenue to the Southern Pacific Co. right-of-way; southerly along the Southern Pacific Co. right-of-way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the city of Richmond; southwesterly along the highway extending from the city of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the

shore line of the Pacific Ocean to point of beginning. Between points in San Francisco territory on the one hand, and, on the other, all points presently served by applicant as a highway common carrier as set forth in the decisions enumerated in paragraph III herein, specifically as follows:

(A) Between points in the San Francisco territory, on the one hand, and Calistoga, on the other hand. Service is authorized to all intermediate points on Interstate Highway 80 between San Francisco-Oakland and the junction of Interstate Highway 80 and State Highway No. 29 on said Highway No. 29 between its junction with Interstate Highway 80 and Calistoga. Service is also authorized to the off-route points of Benicia and Mont La Salle.

(B) Between all points and places specified in A above, on the one hand, and, on the other hand, (a) State Highway 121 between Napa and Moskowite's Corners, inclusive; (b) State Highway 128 between Moskowite's Corners and the junction of said highway with Knoxville Road, inclusive; (c) Knoxville Road between the junction of said road and State Highway 128 and Knoxville, inclusive; (d) Knoxville Road between Knoxville and Pope Valley junction, inclusive; (e) Pope Canyon Road between Pope Valley junction and Pope Valley, inclusive; (f) Unnumbered highways between Pope Valley and St. Helena, inclusive; (g) State Highway 128 between Moskowite's Corners and Rutherford, inclusive; (h) Steel Canyon Road between Moskowite's Corners and Steele Canyon Park, inclusive; (i) State Highway 128 between Moskowite's Corners and Monticello Dam, inclusive; (j) State Highway 128 between Monticello Dam and the junction of said highway with Pleasants Valley Road, inclusive; (k) Pleasants Valley Road between the junctions of said road with State Highway 128 and Interstate Highway 80, inclusive; (l) Interstate Highway 80 between Vallejo and the junction of said highway with Pleasants Valley Road, inclusive; (m) Suisun Valley Road between the junctions of said road with Interstate Highway 80 and Wooden Valley Road, inclusive, including the off-route point of Mankas Corner; and (n) Wooden Valley Road between the junctions of said road with Suisun Valley Road and State Highway 121, inclusive. Carrier may use the highways named in this order and any other public roadways necessary or convenient to perform the service authorized above.

(C) Between points in San Francisco territory, on the one hand, and, on the other hand, (a) Orinda, Lafayette, Walnut Creek, Danville and Concord, and points intermediate thereto on State Highway Nos. 24 and 21; (b) Port Chicago, Pittsburg, Antioch and points intermediate thereto on State Highway Nos. 24, 21, and 4 and on unnumbered State highways between Concord and Port Chicago and between Port Chicago and Pittsburg; (c) Martinez and Avon and all intermediate points and places on and along State Highway Nos. 24, 21, and 4 and unnumbered State highway between said points; (d) Oakley, Brentwood, and Byron and all intermediate points and places on and along State Highway No. 4 between Antioch and Byron; also via Marsh Creek Road but without serving points thereon between Clayton and Byron; (e) Bethel Island; (f) Clayton and all points intermediate to Concord and Clayton on and along Clayton Road and Marsh Creek Road, serving also the off-route point of Cowell; and (g) San Ramon and all intermediate points and places on and along State Highway No. 21 between Danville and San Ramon. Applicant shall not transport any shipments of: (1) Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10–C of Minimum Rate Tariff No. 4–A. (2) Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses, and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. (3) Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine. (4) Commodities requiring protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration. (5) Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles. (6) Commodities when transported in bulk in dump trucks or in hopper-type trucks. (7) Commodities when transported in motor vehicles equipped for mechanical mixing in transit. (8) Logs. (9) High explosives and (10) trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper. Both intrastate and interstate authority sought. HEARING: Date, time, and place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the California Public Utilities Commission, California State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102 and should not be directed to the Interstate Commerce Commission.

California Docket No. 53758, filed December 18, 1972. Applicant: MORRIS TRANSPORTATION, INC., 730 11th Avenue, Oakland, CA 94102. Applicant's representative: E. H. Griffiths, 1182 Market Street, Suite 207, San Francisco, CA 94102. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, except as hereinafter provided: Between all points and places in the San Francisco territory, which is described as follows: San Francisco territory includes all the city of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Co. right of way at Arastradero Road; southeasterly along the Southern Pacific Co. right of way to Pollard Road, including industries served by the Southern Pacific Co. spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to West Parr Avenue; easterly along West Parr Avenue to Capri Drive; southerly along Capri Drive to East Parr Avenue; easterly along East Parr Avenue to the Southern Pacific Co. right of way; southerly along the Southern Pacific Co. right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue, northerly along College Avenue to Dwight Way; easterly along Dwight Way to Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the city of Richmond; southwesterly along the highway extending from the city of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

Except that applicant shall not transport any shipments of: (1). Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of item No. 10–C of minimum

rate tariff No. 4–A. (2). Automobiles, trucks, and buses, viz: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobiles chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. (3). Livestock, viz: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags, or swine. (4). Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers, or a combination of such highway vehicles. (5). Commodities when transported in bulk in dump trucks or in hopper-type trucks. (6). Commodities when transported in motor vehicles equipped for mechanical mixing in transit. (7). Cement. (8). Logs. (9). Commodities of unusual or extraordinary value. (10). Fresh fruits and vegetables. Both intrastate and interstate authority sought. HEARING: Date, time, and place not shown. Requests for procedural information should be addressed to the California Public Utilities Commission, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

Alaska Docket No. 72–290–MF/O, filed October 10, 1972. Applicant: TRYGVE M. OLSEN AND JOHN & ETHEL ADCOX, a Partnership doing business as ILIAMNA BARGE AND TRUCKING CO., Iliamna, Alaska 99606. Applicant's representative: Theodore R. Dunn, 429 D Street, Anchorage, AK 99501. Certificate of public convenience and necessity sought to operate a powered barge service as follows: Transportation of *freight* between Iliamna and Naknek, Alaska. In addition the powered barge would be used to make deliveries of freight around the perimeter of Lake Iliamna. The trucking operation would supplement this by permitting freight one off loaded from the barges to be delivered to its final location destination. In addition the community of Nondalton, Alaska, would be served from Iliamna by truck as it is inaccessible by barge. Both intrastate and interstate authority sought. HEARING: Date, time, and place unknown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Alaska Transportation Commission, State of Alaska, Department of Commerce, 750 Mackay Building, 338 Denali Street, Anchorage, AK 99501, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73–529 Filed 1–9–73;8:45 am]

[Notice 178]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 4, 1973.

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 56640 (Sub-No. 28 TA), filed December 21, 1972. Applicant: DELTA LINES, INC., Mail: Post Office Box 2081, 96204, 8201 Edgewater Drive, Oakland, CA 94621. Applicant's representative: Marshall G. Berol, 100 Bush Street, San Francisco, CA 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General Commodities* except those of unusual value, household goods as defined by the Commission, and commodities in bulk, and commodities requiring special equipment, between Colton, Calif., and Calexico, Calif., serving all intermediate points; from Colton via Interstate Highway 10 to junction California Highway 111 (near Indio) thence via California Highway 111 to Calexico and return over the same route; between Riverside and Beaumont, Calif., serving all intermediate points; from Riverside over California Highway 60 to Beaumont and return over the same route; between junction California Highway 111 and Interstate Highway 10 (near Whitewater) and junction Interstate Highway 10 and California Highway 111 (near Indio), serving all intermediate points; from junction California Highway 111 and Interstate Highway 10 via California Highway 111 to junction California Highway 111 and Interstate Highway 10 and return over the same route; between junction California Highway 111 and California Highway 86 (near Coachella) to junction California Highway 111 and California Highway 86 (near Calexico), serving all intermediate points; from junction California Highway 111 and California Highway 86 via California Highway 86 to junction California Highway 111 and California Highway 86 and return over the same route; between junction California Highway 62 and Interstate Highway 10 and Twentynine Palms, Calif., serving all intermediate points and the off-route point of the Marine Corps Training Center near Twentynine Palms; from junction California Highway 62 and Interstate Highway 10 via California Highway 62 to Twentynine Palms, and return over the same route; between San Diego and Winterhaven, Calif., serving all intermediate points; from San Diego via Interstate Highway 8 (also U.S. Highway 80) to Winterhaven, and return over the same route; between San Diego, Calif., and junction Interstate Highway 8 and California Highway 94 near Live Oak Springs, Calif., serving all intermediate points; from San Diego via California Highway 94 to junction California Highway 94 and Interstate Highway 8, and return over the same route; between junction unnumbered road and Interstate Highway 8 west of Live Oak Springs, Calif., and junction unnumbered road and Interstate Highway 8, serving all intermediate points; from junction unnumbered road and Interstate Highway 10 via unnumbered road through Live Oak Springs, Boulevard and Jacumba to junction unnumbered road and Interstate Highway 8, and return over the same route; between junction Interstate Highway 8 and California Highway 98 (near Ocotillo) and junction Interstate Highway 8 and California Highway 98 via California Highway 98 to junction Interstate Highway 8 and California Highway 98 (near Gordon's Wells), serving all intermediate points; from junction Interstate Highway 8 and California Highway 98 via California Highway 98 to junction Interstate Highway 8 and California Highway 98, and return over the same route; between Calipatria, Calif., and junction California Highway 115 and California Highway 98, serving all intermediate points; from Calipatria via California Highway 115 to junction California Highway 115 and California Highway 98, and return over the same route; for 180 days. NOTE: Applicant states it does intend to tack with its own authority in MC 56640 and subs, and interline with other carriers at any common service point. Supported by: There are approximately 105 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

[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.

below. Send protests to: A. J. Rodriguez, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 450 Golden Gate Avenue, Box 36004, San Francisco, CA 94102.

No. MC 92168 (Sub-No. 2 TA), filed December 11, 1972. Applicant: BEATRICE M. RICHARDS, (HARRY F. RICHARDS, EXECUTOR), doing business as THEATRICAL FILM SERVICE, 61 Greenfield Street, Lawrence, MA 01843. Applicant's representative: Mary E. Kelley, 11 Riverside Avenue, Medford, MA 02155. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motion picture film and theatre supplies*, from Boston, Mass., to Salem and Plaistown, N.H., and return from Salem and Plaistown, N.H., to Boston, Mass., for 180 days. Supporting shippers: Riverview Theatres, Inc., 901 River Street, Haverhill, MA 01830; Cinema Four Corp., 1130 North Main Street, Brockton, MA 02401. Send protests to: Max Gorenstein, Interstate Commerce Commission, Bureau of Operations, 2211B–J.F.K. Federal Building, Government Center, Boston, Mass. 02203.

No. MC 94201 (Sub-No. 110 TA), filed December 11, 1972. Applicant: BOWMAN TRANSPORTATION, INC., Post Office Box 17744, 1500 Cedar Grove Road, Atlanta, GA 30316. Applicant's representative: E. A. Wickman (Same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Copper, brass, or bronze tube, rod, fittings, castings and related products, and by-products*, from the plantsite, warehouse, and storage facilities of Federal Pacific Electric Co. located at or near Fulton, Miss., to points in Alabama, Georgia, Florida, South Carolina, North Carolina, Tennessee, Indiana, Massachusetts, Rhode Island, points in New York, New Jersey, and Connecticut within a 35-mile radius of Columbus Circle, N.Y., points in Ohio on, west, and north of a line beginning at a point on the Ohio-Pennsylvania State line near Sharon, Pa., and extending along U.S. Highway 62 to Columbus, Ohio, thence along U.S. Highway 23 to Circleville, Ohio, and thence along U.S. Highway 22 to Cincinnati, Ohio, points in Illinois on and bounded by a line beginning at the Illinois-Indiana State line and extending along U.S. Highway 36 to Springfield, Ill., thence along Illinois Highway 29 to Peoria, Ill., thence along Illinois Highway 116 to Metamora, Ill., thence along Illinois Highway 89 to junction U.S. Highway 34, thence along U.S. Highway 34 to Chicago, Ill., thence along Lake Michigan to the Illinois-Indiana State line to point of beginning; between New York, N.Y., and Hartford, Conn., serving all intermediate points, and off-route points of Watertown, Litchfield, Torrington, Winsted, Wethersfield, Manchester, Newington, Guilford, Clinton, Westbrook, Groton, Deep River, New London, and Norwich, Conn., points in Fairfield County, Conn., points in Hudson, Bergen, Passaic, and Union Counties, N.J., points in Virginia, Maryland, and Philadelphia, Pa., and its commercial zone, for 180 days. Supporting shipper: Mueller Brass Co., Division of UV Industries, Highway No. 25, Fulton, Miss. Send protests to: William L. Scroggs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 309, 1252 West Peachtree Street NW., Atlanta, GA 30309.

No. MC 102401 (Sub-No. 16 TA), filed December 19, 1972. Applicant: TAYLOR HEAVY HAULING, INC., 20601 West Ireland Road, Post Office Box 2657 (Station A) 46612, South Bend, IN 46614. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prestressed concrete forms and materials and supplies* for the erection of such concrete forms when transported in the same vehicle with such concrete forms, from the plantsite of Hass Concrete Products Co., at or near South Bend, Ind., to points in the lower peninsula of Michigan except points in Berrien, Cass, Saint Joseph, Van Buren, Allegan, and Barry Counties, Mich., for 180 days. Supporting shipper: Hass Concrete Products Co., 24423 Liberty Highway, South Bend, Ind. 46614. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne Street, Room 204, Fort Wayne, IN 46802.

No. MC 107460 (Sub-No. 40 TA), filed December 21, 1972. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Road, Lancaster, PA 17601. Applicant's representative: Donald D. Shipley (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Aluminum doors and windows*, glazed and unglazed, and *aluminum extrusions*, from the plantsite of Capitol Products Corp. located at or near Kentland, Ind., to the plantsites of National Homes Corp. located at Horseheads, N.Y., Terryville, Conn., Collinsville, Va., and the plantsite of Knox Homes located at Thomson, Ga.; (2) *aluminum scrap*, from the plantsite of Capitol Products Corp., located at on near Kentland, Ind., to the plantsite of Bay Billets Corp. located at Sandusky, Ohio; and (3) *billets*, from the plantsite of Bay Billets Corp. located at or near Kentland, Ind., for 180 days. Supporting shipper: Capitol Products Corp., Kentland, Ind. 47951. Send protests to: Robert W. Ritenour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 508 Federal Building, Post Office Box 869, Harrisburg, PA 17108.

No. MC 117565 (Sub-No. 74 TA), filed December 20, 1972. Applicant: MOTOR SERVICE COMPANY, INC., Post Office Box 448, Route 3, Coshocton, OH 43612. Applicant's representative: John R. Hafner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel shot;* (2) *abrasive and abrasive products;* and (3) *cleaning machines, and replacement parts thereof*, from the plantsite and warehouse facilities of Alloy Metal Abrasives, Division of Ervin Industries, Inc., at or near Adrian, Mich., to points in the United States, excluding points in Ohio, Indiana, and the commercial zone of Chicago, Ill., for 180 days. Supporting shipper: Alloy Metal Abrasives, Division of Ervin Industries, Inc., 121 South Division Street, Ann Arbor, MI 48103. Send protests to: Frank L. Calvary, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 265 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 128124 (Sub-No. 20 TA), filed December 20, 1972. Applicant: ROCKO TRANSPORTATION, INC., Post Office Box 608, San Marcos, CA 92069. Applicant's representative: Ernest D. Salm, 8179 Havasu Circle, Buena Park, CA 90621. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Rock*, in bulk, from Gardner Ridge Quarry near Brookings, Oreg., to Crescent City Harbor, Crescent City, Oreg., for 180 days. Supporting shipper: Silberberger Constructors, Inc., Palomar Airport Road, Post Office Box 845, Carlsbad, CA 92008. Send protests to: John E. Nance, Officer-in-Charge, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 128273 TA, filed December 20, 1972. Applicant: REPUBLIC VAN & STORAGE OF ORANGE COUNTY, INC., 17821 Gillette Avenue, Irvine, CA 92705. Applicant's representative: Ernest D. Salm, 8179 Havasu Circle, Buena Park, CA 90621. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, subject to the "Kingpak" restrictions between points located in, and within 30 miles of Orange County, Calif., for 180 days. Supporting shipper: Purchasing and Contracting Office, U.S. Marine Corps., Post Office Box 1609, Oceanside, CA 92054. Send protests to: John E. Nance, Officer-in-Charge, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 128305 (Sub-No. 1 TA), filed December 22, 1972. Applicant: DELBERT E. ROBINSON, 337 East Center Street, Post Office Box 155, Fairview, UT 84629. Applicant's representative: Harry D. Pugsley, 315 East Second South, Salt Lake City, UT 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: *Ground paper insulation*, from Midvale, Utah, to Boise, Idaho, via U.S. Highway I–15 from Midvale, Utah, to junction of I–80N (30S) north of Tremonton, and thence to Boise, Idaho via I–80N (30S), for 180 days. Supporting shipper: Westby Manufacturing Co., 9440 Franklin Road, Boise, ID 83704 (Don Allumbaugh, owner). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5239

Federal Building, 125 South State Street, Salt Lake City, UT 84111.

No. MC 129600 (Sub-No. 11 TA), filed December 20, 1972. Applicant: POLAR TRANSPORT, INC., 27 York Avenue, Randolph, MA 02368; Office: 11 Holly Street, Hingham, MA 02043. Applicant's reprersentative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream, ice cream confections, ice confections, ice water confections and sherbet*, from Suffield, Conn., to Worcester, Chicopee, Brockton, Lowell, and Boston, Mass.; Farmingdale, Lynbrook, Mount Vernon, Holtsville, West Nyack, Corona, Syracuse, and Schenectady, N.Y.; East Paterson, Middlesex, Mt. Holly, Eatontown, and Lodi, N.J.; Gaithersberg and Baltimore, Md.; Pittsburgh and Turtle Creek, Pa.; Toledo and Cleveland, Ohio, and Tampa, Orlando, and North Miami, Fla. Restriction: Restricted to a transportation service to be performed under a contract or contracts with H. P. Hood, Inc., and its wholly owned subsidiary, American Mobiles Corp. for 180 days. Supporting shipper: American Mobiles Corp., 492 Rutherford Avenue (Rear) Charlestown, (Boston), Mass. 02129. Send protests to: District Supervisor John B. Thomas, Interstate Commerce Commission, Bureau of Operations, 150 Causeqay Street, Boston, MA 02114.

No. MC 135201 (Sub-No. 6 TA), filed December 19, 1972. Applicant: B & F TURGEON, INC., 15 North Edgelawn, Aurora, IL 60506. Applicant's representative: E. J. Lease (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Parts, accessories and merchandise* normally distributed by retail and wholesale automotive outlets from Chicago, Ill., to East Gary, Hebron, and Valparaiso, Ind., and (2) *damaged, defective and returned shipments and parts, accessories and merchandise* normally distributed by retail and wholesale outlets from East Gary, Hebron, and Valparaiso, Ind., to Chicago, Ill., for 180 days. Supporting shipper: Standard Unit Parts Corp., 505 West 35th Street, Chicago, IL 60616. Send protests to: William J. Gary, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 135234 (Sub-No. 12 TA), filed December 20, 1972. Applicant: COMMERCIAL CARTAGE, INC., 101 Hudson Street, St. Albans, WV 25177. Applicant's representative: Marvin L. Meadows (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electric wire and cable* on reels and *empty reels and materials* used in the manufacture of wire and cable, between plantsites and warehouses of the Okonite Corp., at Richmond, Ky., Paterson, N.J., and Phillipsdale, R.I., to points in the United States on and east of U.S. Interstate 25, for 180 days. Supporting shipper: The Okonite Co., Ramsey, N.J. Attention: J. W. Roderick, manager-traffic. Send protests to: H. R. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 3108 Federal Office Building, 500 Quarrier Street, Charleston, WV 25301.

No. MC 136408 (Sub-No. 6 TA), filed December 19, 1972. Applicant: CARGO CONTRACT CARRIER CORP., Post Office Box 206, U.S. Highway 20, Sioux City, IA 51102. Applicant's representative: Charles G. Peterson (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning, washing and polishing soaps and compounds, paints, varnishes and rust preventatives, oils and greases*, except in bulk, in tank vehicles, between Avenel, N.J.; Cleveland and Cincinnati, Ohio; Summit, Ill.; Detroit, Mich.; Des Moines, Iowa; Kansas City, Mo.; Omaha, Nebr.; Sioux Falls, S. Dak., and Roseville, Minn. Restriction: The operations authorized are limited to a transportation service to be performed under a continuing contract with Economics Laboratory, Inc., and further limited to service between the plant and warehouses of Economic Laboratory, for 180 days. Supporting shipper: Economics Laboratory, Inc., Avenel Plant, 255 Blair Road, Avenel, NJ 07001. Send protests to: Carroll Russell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 106 South 15th Street, 711 Federal Office Building, Omaha, NE 68102.

No. MC 138119 (Sub-No. 1 TA), filed December 20, 1972. Applicant: RAYMOND HARRISON, doing business as ASSOCIATED CASKET COMPANY, 7444 Washington Street, Pittsburgh, PA 15218. Applicant's representative: Louis Kwall, 2018 Monongahela Avenue, Pittsburgh, PA. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Burial caskets*, from Pittsburgh, Pa., to Morgantown and Wheeling, W. Va.; Cambridge, Ohio; Cumberland, Md., and other points in western Pennsylvania, west of U.S. Highway 15, for 180 days. Supporting shippers: Aurora Casket Co., Inc., Aurora, Ind. 47001, and Batesville Casket Co., Batesville, Ind. 47006. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 138243 (Sub-No. 1 TA), filed December 19, 1972. Applicant: RANDALL R. PATTERSON, doing business as COMPLETE AIR FREIGHT, 243 Rodrigues Avenue, Milpitas, CA 95035. Applicant's representative: Michael J. Stecher, 140 Montgomery Street, San Francisco, CA 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except household goods, commodities in bulk, and commodities requiring special equipment, between the San Francisco International Airport, Calif., on the one hand, and points in the counties of Sacramento, Yolo, Solano, and Placer, Calif., on the other, the above restricted to the transportation of traffic having immediate prior or immediate subsequent movement by air, for 180 days. Supporting shipper: Computer Hardware Inc., 2550 Fair Oaks Boulevard, Sacramento, CA 95825; Basic Vegetable Products, Inc., Box 599, Vacaville, Calif. 95688; Formica Corp., Formica Building, 120 East Fourth Street, Cincinnati, OH 45202; Wemco, 721 North B Street, Sacramento, CA. Mailing address: Post Office Box 15619, Sacramento, CA 95813; Shulman Air Freight Internat., 342 Allerton Avenue, Internation Airport Branch, San Francisco, CA 94080; Aero Special Air Freight, Inc., 1216 Rollins Road, Burlingame, CA 94010; Jet Air Freight, 380 Allerton Road, South San Francisco, CA 94080; Transcon Airfreight, 342 Allerton Avenue, South San Francisco, CA 94080; Wits Air Cargo, 216 Harris Court, South San Francisco, CA. Send protests to: Claud W. Reeves, District Supervisor, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, CA 94102.

No. MC 138274 TA, filed December 20, 1972. Applicant: SHIPPERS BEST EXPRESS, INC., 1656 West 14600 South, Riverton, UT 84065. Applicant's representative: Jerald Payne (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Items dealt in and distributed by wholesale and retail grocers* (1) from points in Illinois, Minnesota, Iowa, South Dakota, Nebraska, and Texas to points Utah and Wyoming; (2) between points in Colorado, Utah, and Wyoming; (3) between points in California, Utah, Idaho, and Wyoming; (4) between points in Oregon, Utah, and Wyoming and (5) between points in Washington, Utah, and Wyoming, for 180 days. NOTE: Applicant intends to tack its requested authority with its existing authority at Salt Lake City, Utah. Supporting shipper: Dean and Co., 1500 South Redwood Road, Salt Lake City, UT 84104 (Mr. E. D. Shelledy—president). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, 125 South State Street, Salt Lake City, UT 84111.

By the Commission.

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

[FR Doc.73-535 Filed 1-9-73;8:45 am]

[Notice 179]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 5, 1973.

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 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 53321 (Sub-No. 9 TA), filed December 21, 1972. Applicant: RAU CARTAGE, INC., 1107 East Noble Avenue, Monroe, MI 48161. Applicant's representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paperboard*, from Monroe, Mich., to Celina, Tenn., for 180 days. Supporting shipper: Time Container Corp., 1151 West Elm Street, Monroe MI 48161. Send protests to: District Supervisor Melvin F. Kirsch, Bureau of Operations, Interstate Commerce Commission, 1110 Broderick Tower, 10 Witherell, Detroit, Mich. 48226.

No. MC 115841 (Sub-No. 447 TA), filed December 21, 1972. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., Office: 1215 Bankhead Highway West, Birmingham, AL 35204, Post Office Box 168, Concord, TN 37720. Applicant's representative: Roger M. Shaner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses*, from the plant and warehouse facilities of Needham Packing Co., Sioux City, Iowa, and Omaha, Nebr., to points in Florida, Georgia, North Carolina, South Carolina, and Tennessee, for 180 days. Supporting shipper: Needham Packing Co., 220 Badgerow Building, Sioux City, Iowa 51101. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 814, 2121 Building, Birmingham, Ala. 35203.

No. MC 128575 (Sub-No. 9 TA), filed December 21, 1972. Applicant: GOLDEN WEST TRUCK CO., 12780 Southwest Prince Albert Street, Tigard, OR 97223. Applicant's representative: William F. Fox (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Laminated wooden beams, trusses, arches, plywood, groundwood sheets, lumber, timbers*, fabricated or not fabricated, and *necessary connecting hardware*, from (1) points in Lane County, Oreg., to points in Washington; and (2) Snohomish, King, Pierce, Pacific, Gray Harbor, Lewis, Cowlitz, Skamania and Clark Counties, Wash., to points in Oregon, for 180 days. Supporting shipper: Al Disdero Lumber Co., Post Office Box 42247, Portland, OR 97242. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, 319 Southwest Pine Street, Portland, OR 97204.

No. MC 138180 (Sub-No. 1 TA), filed December 21, 1972. Applicant: FRED O'BAKER AND FAY E. LEYDIG, doing business as VALLEY TRUCKING COMPANY, Post Office Box 176, Corriganville, MD 21524. Applicant's representative: D. L. Bennett, 129 Edgington Lane, Wheeling, WV 26003. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bulk rock salt*, from Corriganville, Md., to points in Mineral, Hampshire, Hardy, and Morgan Counties, W. Va., for 180 days. Supporting shipper: Morton Salt Co., Main Street, Wadsworth, OH 44281. Send protests to: Joseph A. Niggemyer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 416 Old Post Office Building, Wheeling, W. Va. 26003.

No. MC 138255 (Sub-No. 1 TA), filed December 14, 1972. Applicant: HERSCHEL A. WIMMER AND CHARLES T. HACKER, doing business as DAYTON AIR FREIGHT, 9000 Peters Pike, Vandalia, OH 45377. Applicant's representative: Herschel A. Wimmer (Same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except Classes A and B explosives, household goods, commodities in bulk and those requiring special equipment, between Cox Municipal Airport at Vadalia, Ohio and Detroit Metropolitan Airport at Romulus, Mich., restricted to the transportation of shipments having an immediately prior or subsequent movement by air, for 180 days. Supporting shipper: United Air Lines, Dayton Minicipal Airport, Vandalia, Ohio 54377. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

No. MC 138255 (Sub-No. 2 TA), filed December 14, 1972. Applicant: HERSCHEL A. WIMMER AND CHARLES T. HACKER, doing business as DAYTON AIR FREIGHT, 9000 Peters Pike, Vandalia, OH 45377. Applicant's representative: Herschel A. Wimmer (Same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except Classes A and B explosives, household goods, commodities in bulk and those requiring special equipment, between Cox Municipal Airport at Vandalia, Ohio, on the one hand, and, on the other, John F. Kennedy Airport and LaGuardia Airport, Jamaica, N.Y., and O'Hara Airport, Chicago, Ill., restricted to the transportation of shipments having an immediately prior or subsequent movement by air, for 180 days. Supporting shipper: Trans World Airlines, Inc., James M. Cox Municipal Airport, Vandalia, Ohio 45377. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

No. MC 138229 (Sub-No. 1 TA), filed December 21, 1972. Applicant: P & M TRANSPORT, INC., Box 518, Morrisville, VT 05661. Applicant's representative: John P. Monte, 61 Summer Street, Barre, VT 05641. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Talc, talc tailings and asphalt filler*, in bags and in bulk, from Johnson, Vt., to Burlington, and St. Johnsbury, Vt., for 90 days. Supporting shipper: Eastern Magnesia Talc Co., Subsidiary of: Engelhard Minerals & Chemical Corp., Menlo Park, N.J. 08817. Send protests to: District Supervisor Martin P. Monaghan, Jr., Bureau of Operations, Interstate Commerce Commission, 52 State Street, Room 5, Montpelier, VT 05602.

No. MC 138282 TA, filed December 22, 1972. Applicant: HENRY D. MAAS, Box 264, Arlee, MT 59821. Applicant's representative: Craig S. Sternberg, fourth Floor Hoge Building Seattle, Wash. 98104. Authority sought to operate a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Junk automotive and farm machinery bodies and parts and scrap iron*, from points in Montana and Idaho to Spokane, Wash., for 180 days. Supporting shipper: American Recycling Corp., P.O. Box 337, Parkwater Station, Spokane, WA 99211. Send protests to: Paul J. Labane, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 251 U.S. Post Office Building, Billings, Mont. 59101.

No. MC 138283 TA, filed December 22, 1972. Applicant: DANA CORPORATION, Round Lake, Minn. 56167. Applicant's representative: Earl H. Schdder, Jr.,

[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.

P.O. Box 82028, Lincoln NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Candy, confectionery products, nuts and cookies and related advertising material*, from the facilities used by Sather Cookie Co. at Round Lake, Minn., to points in the United States (except Alaska and Hawaii); and (2) the *commodities* in (1) above and *materials and supplies* used in the packaging, processing, storage and distribution of the commodities enumerated in (1) above from points in the United States (except Alaska and Hawaii) to the facilities used by Sather Cookie Co. at Round Lake, Minn., for 150 days. Supporting shipper: Sather Cookie Co., Round Lake, Minn. 56167. Send protests to: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building, 110 South Fourth Street, Minneapolis, MN 55401.

By the Commission.

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

[FR Doc.73-536 Filed 1-9-73;8:45 am]

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PART II

ENVIRONMENTAL PROTECTION AGENCY

■

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SUBCHAPTER C—AIR PROGRAMS

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

On February 23, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 3882), setting forth proposed regulations promulgating Federal standards for the use of lead and phosphorus additives in gasoline. Pursuant to the above notice, several public hearings were held. In addition, numerous written comments were received during an extended public comment period. After consideration of the hearings' testimony and other comments, and after further consideration of the available information on health effects of airborne lead and the adverse effect of leaded gasoline on emission control devices, the regulations have been divided into two separate pieces of regulatory action: proposed regulations based upon the health effects of airborne lead, which provide for the reduction of lead in all grades of leaded gasoline, and final regulations, which provide for the general availability of lead-free gasoline. The regulations on reduction of lead for health reasons are being reproposed because the Agency's basis for the reduction has been substantially revised. The proposed regulations are published in this issue of the FEDERAL REGISTER, accompanied by an explanation of the basis for the reproposal. The regulations providing for the availability of lead-free and phosphorus-free fuel, modified as determined to be appropriate by the Agency, are promulgated below. The basis for this promulgation is explained below.

When the proposed regulations were published, the Administrator had determined that emission products of lead and phosphorus additives would impair to a significant degree the performance of emission control systems which include catalytic converters that motor vehicle manufacturers are developing to meet the 1975–76 motor vehicle emission standards and that are likely to be in general use if lead and phosphorus additives are controlled or prohibited for use in certain motor vehicle gasolines. This determination was based upon consideration of the available scientific and economic data including a cost-benefit analysis comparing motor vehicle emission control devices or systems which are or will be in general use and require control or prohibition of lead additives in gasolines with emission control devices or systems which are or will be in general use and do not require such control or prohibition of those additives. After identifying the emission control systems or devices under consideration by automobile manufacturers for meeting the 1975–76 standards, the Administrator determined that one system, the catalytic converter, would be in general use in the 1975 model year. Accordingly, a comparison of systems or devices was not feasible. Since publication of the proposed rule making, additional information on this subject has been submitted to the Agency during public hearings on the suspension of 1975 model year light duty motor vehicle emission standards, and the lead regulations hearings and comment period. This information provides further support for the Administrator's determination.

Therefore, the proposed provision for the general availability by July 1, 1974, of essentially lead-free and phosphorus-free gasolines of an octane quality suitable for 1975 and subsequent model year light duty vehicles is included in the final regulations. Copies of the cost-benefit analysis referred to above, entitled Aerospace Report, PB–205–981, are available for $4.50 each from National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22151.

At the time of the proposed rule making, the Administrator concluded that the proposed control of the use of lead additives and phosphorus-containing additives in lead-free gasoline would not cause the use of any other fuel or fuel additive that will produce emissions which will endanger the public health or welfare to the same or greater degree. Since that time, additional information has been developed which further supports the Administrator's earlier conclusion. This additional information and the basis for the original finding are set forth in a paper entitled "Effects of Reduced Use of Lead in Gasoline on Vehicle Emissions and Photochemical Reactivity" (with addendum). Copies of this paper are available from the Publications Section, Environmental Protection Agency, 401 M Street SW., Room 238W, Washington, DC 20460.

In the preamble to the proposed regulations, the Administrator invited comments concerning the effect of various levels of sulfur concentrations in lead-free and phosphorus-free gasoline on catalytic emission control systems, the impact of a sulfur limitation on the petroleum industry, and the impact of a sulfur limitation on motor vehicle performance and the cost of gasoline to the consumer. In light of these comments, the Administrator has determined that the currently available information is not adequate to clearly determine the impact of gasoline sulfur levels on emission control devices. Accordingly, additional information on both the effects of sulfur on catalyst deterioration and the impact of a sulfur regulation on the oil industry is required before regulatory action can be proposed.

The regulations as proposed provided that the lead content of unleaded gasoline not exceed 0.05 gram of lead per gallon. This maximum trace lead level is based upon the determination that it would provide adequate protection for catalyst emission control devices and that delivery of unleaded gasoline meeting this specification is within the capability of the petroleum industry.

Most of the auto manufacturers initially asserted that the standard should be set at a maximum of 0.03 gram per gallon or less to prevent impairment of the effectiveness of the catalytic emission control devices. More recently, several manufacturers have stated that the proposed trace lead standard of 0.05 gram per gallon would be acceptable if such a standard assured that the average lead content of unleaded gasoline were 0.03 gram per gallon.

Spokesmen for the petroleum industry urged that the trace lead standard be set at 0.07 gram per gallon, the specification for unleaded gasoline established by the American Society for Testing and Materials. This specification was chosen on the basis of: (a) The capacity of the distribution system to deliver gasoline with low trace lead levels and (b) the reproducibility of the test methods. The experience of the petroleum industry as a whole in delivery of unleaded gasoline was conceded to be limited. The one company with substantial experience in the distribution of unleaded product is currently able to meet a 0.05 standard most of the time.

The regulations provide for the general availability of a lead-free and phosphorus-free gasoline with specified trace lead levels of 0.05 gram of lead per gallon. It is the Administrator's determination that without regulatory action requiring retail outlets to market at least one grade of such gasoline, availability of that product to the general public in all areas of the country would be uncertain, and may not be sufficient to assure the protection of catalytic control devices. This regulation will determine the range of trace lead in gasoline which will be available to the consuming public for use in motor vehicles with control devices (e.g., from 0 gram lead to 0.05 gram lead). Based on the available data on marketing of unleaded gasolines, the Agency projects that a 0.05 gram of lead per gallon maximum will result in a 0.03 gram per gallon average lead content. Since the Agency's motor vehicle certification regulations require that gasoline generally available at retail outlets be used in vehicle certification tests, 1975 model year vehicle certification testing will be required to be conducted using gasolines having a minimum lead content of 0.03 gram per gallon.

EPA has received numerous comments from the automobile industry requesting that the trace phosphorus level in the lead-free and phosphorus-free gasoline be lowered from the proposed level of 0.01 gram of phosphorus per gallon to 0.005 gram of phosphorus per gallon and below. After evaluating the catalyst deterioration data submitted in support of these requests, the Administrator has determined that the trace phosphorus level must be lowered to 0.005 gram of phosphorus per gallon in order to prevent

catalyst deterioration which would preclude compliance with the emission standards for the useful life of 1975 and later model year vehicles. Though some members of the oil industry contend that a lower phosphorus level would remove some of the existing flexibility in the use of phosphorus detergent additives, the Agency has determined that the need for any such flexibility is outweighed by the need to prevent catalyst deterioration. Moreover, nonphosphorus additives are fast becoming the predominant detergents in unleaded gasoline and are already in large scale use.

Representatives of the petroleum industry have sought clarification of the term "owner or operator" of a retail outlet used in paragraphs (c), (d), and (g) of § 80.22 of the regulations as proposed. These paragraphs have been modified to adopt the terms of the definition of "owner or operator" contained in section 111(a)(5) of title I of the Clean Air Act which defines an "owner or operator" as any person who "owns, leases, operates, controls, or supervises" a regulated facility.

The final regulations do not include the proposed prohibition of the dyeing of unleaded gasolines or the proposed requirement that leaded gasolines be conspicuously colored. Based on comments received on the control of transport of unleaded gasoline, the Agency has determined that a color-coding system is not necessary to the implementation of this regulation.

The Agency agrees with comments received that engine octane demand decreases with increase in altitude, and has added to the requirement that retail outlets market unleaded gasoline of at least 91 octane a provision allowing reduction in octane number in high altitude areas.

The proposed regulations set forth labeling requirements for retail outlets and motor vehicles and dimensions specifications for pump nozzles and automobile fuel filler inlets to prevent accidental use of leaded gasoline in vehicles equipped with emission control devices requiring the use of unleaded fuel. The regulations include slight changes in the required fuel filter inlet and pump nozzle dimensions proposed, in accordance with the recommendations of the Society of Automotive Engineers.

The country's independent gasoline marketers have expressed concern that the major refiners, who currently provide their supply of leaded gasoline, will not produce enough unleaded gasoline during the transition period following the regulation's effective date to supply both the majors' branded outlets and the independent outlets. Based on the results of the Agency's evaluation of the independent marketers' supply problems, the Administrator has determined that it would be premature to conclude that gasoline refiners will be unable or unwilling to provide adequate supplies of unleaded gasoline to retail outlets required by these regulations to offer it. If the shortage of unleaded gasoline feared by the independent marketers materializes, this Agency will consider whether additional measures are necessary to assure the general availability of unleaded gasoline.

Comments were received which objected to the imposition of liability upon major brand refiners for sales at their retail outlets of unleaded gasoline containing lead in violation of the standard. The regulation retains this provision, with slight wording changes, based upon the Agency's determination that the contamination of unleaded gasoline associated with transportation of the product can best be prevented by the major refiners who have control or the ability to control their distribution networks. However, in order to clearly indicate that there is a positive duty on the major brand refiner to prevent any violation of the unleaded gasoline standard at his retail outlets, the Agency is proposing in this issue of the FEDERAL REGISTER a regulation specifically imposing this duty.

The regulations promulgated below shall be effective on February 9, 1973.

Dated: January 4, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

A new Part 80 is added to Chapter I, Title 40 of the Code of Federal Regulations, as follows:

Subpart A—General Provisions

Subpart B—Controls and Prohibitions

AUTHORITY: Secs. 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 1857f-6c).

Subpart A—General Provisions

§ 80.1 Scope.

This part prescribes regulations for the control and/or prohibition of fuels and additives for use in motor vehicles and motor vehicle engines. These regulations are based upon a determination by the Administrator that the emission product of a fuel or additive will impair to a significant degree the performance of a motor vehicle emission control device in general use or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulations promulgated; and certain other findings specified by the Act.

§ 80.2 Definitions.

As used in this part:

(a) "Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(b) "Administrator" means the Administrator of the Environmental Protection Agency.

(c) "Gasoline" means any fuel sold in any State[1] for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

(d) "Research octane number" means a measurement of a gasoline's knock characteristics which is determined by American Society for Testing and Materials analytical method designated D-2699.

(e) "Lead additive" means any substance containing lead or lead compounds.

(f) "Leaded gasoline" means gasoline which is produced with the use of any lead additive or which contains more than 0.05 gram of lead per gallon or more than 0.005 gram of phosphorus per gallon.

(g) "Unleaded gasoline" means gasoline containing not more than 0.05 gram of lead per gallon and not more than 0.005 gram of phosphorus per gallon.

(h) "Refinery" means a plant at which gasoline is produced.

(i) "Refiner" means any person who owns, leases, operates, controls, or supervises a refinery.

(j) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the public.

(k) "Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

(l) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery and any retail outlet.

§ 80.3 Test methods.

The lead and phosphorus content of gasoline shall be determined in accordance with test methods to be prescribed by the Administrator.

§ 80.4 Right of entry; tests and inspections.

The Administrator or his authorized representative upon presentation of appropriate credentials shall have a right to enter upon or through any retail outlet or the premises or property of any distributor and shall have the right to make inspections, take samples, and conduct tests to determine compliance with this part and the Act.

§ 80.5 Penalties.

Any person who violates these regulations shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of

[1] "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or any district in which he does business. The Administrator may, upon application by the person against whom any such penalty has been assessed, remit or mitigate any such forfeiture. The Administrator shall have authority to determine the facts upon all such applications.

Subpart B—Controls and Prohibitions

§ 80.20 [Reserved]

§ 80.21 Controls applicable to gasoline distributors.

After July 1, 1974, no distributor shall sell to any distributor or retailer any gasoline which he represents is unleaded gasoline unless such gasoline does, in fact, meet the defined requirements for unleaded gasoline in § 80.2(g).

§ 80.22 Controls applicable to gasoline retailers.

(a) After July 1, 1974, no retailer or his employee or agent shall introduce, or cause or allow the introduction of leaded gasoline into any motor vehicle which is labeled "unleaded gasoline only," or which is equipped with a gasoline tank filler inlet which is designed for the introduction of unleaded gasoline.

(b) After July 1, 1974, every person who owns, leases, operates, controls, or supervises a retail outlet at which 200,000 or more gallons of gasoline was sold during any calendar year beginning with the year 1971 shall offer for sale at least one grade of unleaded gasoline of not less than 91 Research Octane Number at such retail outlet: *Provided, however,* That the octane number of unleaded gasoline offered for sale in areas where altitude is greater than 2,000 feet may be reduced one (1) octane number for each succeeding 1,000 feet but not more than three (3) octane numbers in total.

(c) After July 1, 1974, every person who owns, leases, operates, controls, or supervises six or more retail outlets shall offer for sale at least one grade of unleaded gasoline of not less than 91 Research Octane Number at no fewer than 60 percent of such outlets; *Provided, however,* That the octane number of unleaded gasoline offered for sale in areas where altitude is greater than 2,000 feet may be reduced one (1) octane number for each succeeding 1,000 feet but not more than three (3) octane numbers in total.

(d) After July 1, 1974, every retailer shall prominently and conspicuously display in the immediate area of each gasoline pump stand the following notice:

Federal law prohibits the introduction of any gasoline containing lead or phosphorus into any motor vehicle labeled "UNLEADED GASOLINE ONLY."

Such notice shall be no smaller than 36-point bold type and shall be located so as to be readily visible to the retailer's employees and customers.

(e) After July 1, 1974, every retailer shall affix to each gasoline pump stand a permanent legible label as follows:

(1) For gasoline pump stands containing pumps for introduction of unleaded gasoline into motor vehicles, the label shall state:

Unleaded gasoline.

(2) For gasoline pump stands containing pumps for introduction of leaded gasoline into motor vehicles, the label shall state:

Contains lead antiknock compounds.

Any label required under this paragraph shall be located so as to be readily visible to the retailer's employees and customers.

(f) After July 1, 1974, every retailer shall equip all gasoline pumps as follows:

(1) Each pump from which leaded gasoline is sold shall be equipped with a nozzle spout having a terminal end with an outside diameter of not less than 0.930 inch (2.362 centimeters).

(2) Each pump from which unleaded gasoline is sold shall be equipped with a nozzle spout which meets the following specifications:

(i) The outside diameter of the terminal end shall not be greater than 0.840 inch (2.134 centimeters);

(ii) The terminal end shall have a straight section of at least 2.5 inches (6.34 centimeters) in length;

(iii) The retaining spring shall terminate 3.0 inches (7.6 centimeters) from the terminal end.

(g) If more than one grade of gasoline is dispensed from a gasoline pump or pump stand, the Administrator may grant an exception to paragraph (e) or (f) of this section where it has been demonstrated to his satisfaction that an alternate system of labeling or equipment will comply with the objectives of paragraph (e) or (f) of this section.

§ 80.23 Liability for violations.

Liability for violations of paragraph (a) of § 80.22 shall be determined as follows:

(a) (1) Where the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries appears on the pump stand or is displayed at the retail outlet from which the gasoline was sold, the retailer and such gasoline refiner shall be deemed in violation. The refiner shall be deemed in violation irrespective or whether any refiner, distributor, or retailer, or the employee or agent of any refiner, distributor, or retailer may have caused or permitted the violation.

(2) Where the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries does not appear on the pump or pump stand or is not displayed at the retail outlet from which the gasoline was sold, the retailer and any distributor who sold the retailer gasoline contained in the retail outlet storage tank which supplied that pump at the time of the violation shall be deemed in violation.

(b) (1) In any case in which a retailer and any gasoline refiner or distributor would be in violation under paragraph (a) (1) or (2) of § 80.22 the retailer shall not be liable if the retailer can demonstrate that the violation was not caused by him or his employee or agent.

(2) In any case under paragraph (a) (2) of § 80.22 in which two or more distributors have sold the retailer gasoline contained in the retail outlet storage tank which supplied the pump from which the gasoline was sold, any of such distributors who can demonstrate that the violation was not caused by him or his employee or agent shall not be liable.

(c) In any case in which a retailer or his employee or agent introduced leaded gasoline from a pump from which leaded gasoline is sold into a motor vehicle which is equipped with a gasoline tank filler inlet designed for the introduction of unleaded gasoline, only the retailer shall be deemed in violation.

§ 80.24 Controls applicable to motor vehicle manufacturers.

The manufacturer of any motor vehicle equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline shall:

(a) Affix two permanent, legible labels reading "Unleaded Gasoline Only" to such vehicle at the time of its manufacture, as follows:

(1) One label shall be located on the instrument panel so as to be readily visible to the operator of the vehicle: *Provided, however,* That the required statement may be incorporated into the design of the instrument panel rather than provided on a separate label; and

(2) One label shall be located immediately adjacent to the gasoline filler tank inlet, outside of any filler inlet compartment, and shall be located so as to be readily visible to any person introducing gasoline to such filler inlet.

Such labels shall be in the English language in block letters which shall be of a color that contrasts with their background.

(b) Manufacture such vehicle with a gasoline tank filler inlet having a restriction with an inside diameter not greater than 0.910 inch (2.311 centimeters), which prevents the insertion of a nozzle with a spout larger than prescribed in § 80.22(f)(2)(i). Such filler inlet shall be designed so as to activate immediately any automatic shutoff device on any nozzle subject to § 80.22(f)(1) when the introduction of gasoline into such filler inlet from such a nozzle is attempted.

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■

REGULATION OF FUELS AND FUEL ADDITIVES

Notice of Proposed Rule Making

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 80]

REGULATION OF FUELS AND FUEL ADDITIVES

Notice of Proposed Rule Making

On February 23, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 3882), setting forth the proposed text of regulations promulgating Federal standards for the use of lead and phosphorus additives in gasoline. Pursuant to the above notice, several public hearings were held. In addition, numerous written comments were received from interested persons during an extended public comment period. After consideration of the hearings testimony and other comments, and after further consideration of the available information on the health effects of airborne lead and the adverse effect of leaded gasolines on emission control devices, the Administrator has determined that the originally proposed regulation should be divided into two parts. The sections which provide for the availability of lead-free gasoline to protect emission control devices are promulgated, with some modifications from the proposal, in this issue of the FEDERAL REGISTER. The sections providing for a reduction in the lead content of leaded gasolines for health protective reasons are reproposed below.

Based on the evidence available at the time of the proposed regulations' publication, the Administrator concluded that airborne lead levels exceeding 2 micrograms per cubic meter, averaged over a period of 3 months or longer, were associated with a sufficient risk of adverse physiologic effects to constitute endangerment of public health. Since airborne lead levels in many major urban areas currently range from 2 to over 5 micrograms and since motor vehicles are the predominant source of airborne lead in such areas, attainment of a 2-microgram level in many areas would require at least 60 to 65 percent reduction in lead emissions from motor vehicles. Accordingly, the Administrator proposed to regulate the lead content of "regular" and "premium" leaded gasolines by providing for the reduction of lead over a 4-year period, beginning January 1, 1974. It was the Agency's judgment that these reductions, together with the introduction of one grade of lead-free gasoline would provide for the protection of health in major urban areas within the shortest time reasonably possible.

In the preamble to the proposed regulations and in a subsequent publication (June 14, 1972; 37 FR 11786), the Administrator invited all interested parties to submit additional information on the health effects of airborne lead. Based upon additional information received as hearing testimony and written comments, reanalysis of the previously available data, and examination of recently developed information, the Agency's position on the health effects of airborne lead has been reevaluated.

Through EPA's reevaluation, the Administrator determined that it is difficult if not impossible to rely on the analysis presented in the earlier proposal to establish a precise level of airborne lead (2 μg. per m.^{3}) acceptable as the basis for a control strategy. Because earlier data lack such precision, and because new data have become available in the interim, the original health position can no long be considered sufficient.

EPA's new health position is based upon the following factors. Currently, considerable numbers of urban residents have abnormally elevated blood lead levels resulting from excessive exposure to environmental lead principally through food, water, paint, air, and dust. Emissions from motor vehicles using leaded gasoline account for over 90 percent of the lead emitted into the atmosphere. The resulting airborne lead can: (a) Be directly absorbed through the lungs as people breathe, or (b) settle out of the air to contaminate the dirt and dust which may be consumed by children. Strong evidence exists to support the view that through these routes airborne lead contributes to excessive lead exposure in urban adults and children.

Adults. Correlations between likelihood of exposure to airborne lead and high blood lead levels have been demonstrated in several selected adult groups. For example, Table I shows that urban male and female samples have significantly higher blood lead levels than their suburban counterparts. Women exposed to the higher air lead levels of the city are consistently found to have higher blood lead levels than women residing in suburban areas (see Table IIa). Although one cannot prove conclusively that airborne lead levels were solely responsible for this difference, the observation that women living in homes close to a highway have increased blood lead compared to women living greater distances from that highway further suggests that airborne lead and consequently lead in gasoline is contributing to these blood lead elevations (see Table IIb). Studies of urban women are especially significant since blood levels in newborn babies are known to be well correlated with lead levels in expectant mothers. Among urban exposed adults (see Table III) exposure by occupation (parking attendants vs. post office employees) and time of exposure (commuters vs. downtown residents) demonstrates that urban dwellers are more likely to have abnormal blood lead levels, and those most directly exposed to airborne lead typically have the highest blood lead levels.

TABLE I.—URBAN-SUBURBAN BLOOD LEAD COMPARISONS IN ADULTS

Group studied	Number studied	Percent blood leads equal to or greater than 40 ug./100 g.
Urban females [2]	423	0.7
Surburban females	556	0
Philadelphia males: [3]		
Urban	66	4.5
Surburban	23	0
Composite: [4]		
Urban	833	12.7
Surburban	162	0

[1] "Survey of Lead in the Atmosphere of Three Urban Communities," PHS Pub. No. 999-AP-12.
[2] Tepper, Lloyd: "A Survey of Air and Population Lead Levels in Selected American Communities," (7 city study), testimony presented at EPA public hearing in Los Angeles May 3, 1972, and report submitted to EPA, June 1972.
[3] Hofreuter, D. H., et al.: "The Public Health Significance of Atmospheric Lead," Arch. Env. Health 3:82-88, November 1961.
[4] Only those above 40.

TABLE II.—SUMMARY OF DATA RELATING BLOOD LEAD LEVELS IN WOMEN TO PLACE OF RESIDENCE

(a)

	Number studied	Average air lead exposure ug./m.^{3} (geometric mean)	Average blood lead ug./100 g. (geometric mean)	Percent blood leads above 29 ug./100 g.	Percent blood leads 40 and above	Percent blood leads above 50
From 7 city study: [1]						
New York urban	140	2.08	16.6	1.4	0	0
New York suburban	198	1.13	15.3	0.5	0	0
Chicago urban	147	1.76	17.6	3.4	0.7	0
Chicago suburban	208	1.18	13.9	0.5	0	0
Philadelphia urban	136	1.67	20.5	11.0	1.5	0
Philadelphia suburban	150	1.15	18.0	4.7	0	0

(b)

Population	Number studied	Average air lead exposure (ug./m.^{3})		Average blood lead ug./100 g.	Percent blood leads above 29 ug./100 g.	Percent blood leads 40 and above	Percent blood leads above 50
		Front porch	In Home				
From roadway study: [2]							
Living near roadway (12 feet away)	55	4.60	2.30	23.1	25.4	1.8	1.8
Living away from roadway:							
(a) 125 feet away	34	2.41	1.50	17.4	0	0	0
(b) 400 feet away	61	2.24	1.57	17.6	6.6	1.6	0

[1] Tepper, Lloyd, and Levin, Linda, "A Survey of Air and Population Lead Levels in Selected American Communities," Report submitted to EPA, June 1972.
[2] Daines, R. H., Smith, D. W., Feliciano, A. F., and Trout, J. R., "Air Levels of Lead Inside and Outside Homes," Ind. Med. Journal, 41:26-28, October 1972.

TABLE III.—EXTENT OF ABNORMALLY ELEVATED BLOOD LEADS AMONG URBAN ADULTS

City	Exposure category	Number studied	Percent of blood leads equal to or greater than 40 ug./100 g.
Cincinnati	Post Office employees [1]	140	2.9
	Firemen [1]	191	3.0
	Service station attendants [1]	130	12.3
	Police [1]	40	12.5
	Drivers of cars [1]	59	15.0
	Parking attendants [1]	48	44.0
	Garage mechanics [1]	152	67.0
Los Angeles area	Los Angeles Police [1]	155	0.6
	Pasadena male city employees [1]	88	3.3
	Los Angeles female aircraft employees [1]	87	3.3
	General Los Angeles clinic population [2]	45	4.4
	Los Angeles male aircraft employees [1]	291	5.2
Oakland	Female clinic patients [3]	53	1.9
	Male clinic patients [3]	36	5.5
Philadelphia	Male commuters [1]	43	2.3
	Police [1]	113	3.5
	Downtown male residents [1]	66	4.5
Camden, N.J.	Women living near freeways [4]	55	1.8
Composite urban samples	Females from New York, Philadelphia, and Chicago. [5]	423	0.7
	Males and females from 6 cities [5]	833	[6] 2.7

[1] "Survey of Lead in the Atmosphere of Three Urban Communities," PHS Pub. No. 999-AP-12.
[2] Tepper, L.: "A Survey of Air and Population Lead Levels in Selected American Communities" (7 city study), testimony presented at EPA public hearing in Los Angeles May 3, 1972, and report submitted to EPA, June 1972.
[3] Hofreuter, D. H., et al.: "The Public Health Significance of Atmospheric Lead," Arch. Env. Health 3:82-88, November 1961.
[4] Daines, R. H. et al.: "Air Levels of Lead Inside and Outside Homes," Ind. Med. Journal, 41: pp. 26-28, October 1972.
[5] Goldsmith, J., California Department of Public Health, testimony submitted to EPA July 11, 1972.
[6] Only those above 40.

Children. Though airborne lead also contributes to total lead exposure in children, a possibly more important route of exposure may be ingestion of leaded nonfood items such as leaded paint and dirt. Exposure of children to lead-based peeling paint commonly found in deteriorating housing has been traditionally recognized as a hazard for young children. However, recent studies indicate that the presence of lead contaminated dirt and dust in urban areas represents another potentially significant source of lead exposure for children. Levels of lead in dust and dirt are known to decrease with increased distance from roadways and hence are directly related to the use of lead in gasoline. Continued ingestion of only fractions of a teaspoon per day of the lead contaminated dirt and dust presently found in urban areas would easily exceed the daily permissible intake of lead for children (300 μg. per day). A report by the National Academy of Sciences concludes that "the swallowing of lead contaminated dust may well account in large part for higher mean blood lead content in urban children."

Though none of the above findings viewed individually and in the context of possible experimental error can be taken as conclusive evidence that airborne lead by itself is a current public health problem, considered together, they do suggest that airborne lead is contributing to excessive total lead exposures among the general urban population. In light of this evidence, the Administrator has concluded that it would be prudent to reduce preventable lead exposures from automobile emitted airborne lead to the fullest extent possible.

In setting forth this conclusion, the Administrator recognizes that uncertainties exist concerning the relative significance of various sources of lead exposure and the most cost-effective approach to prevent excessive exposure. Currently, the contribution of any one source such as lead in gasoline to the general problem of excessive lead exposure has not been quantified and requires additional investigation. Due in part to this situation, the most cost-effective approach to the aggregate prevention of excessive lead exposure has not been defined. Several questions remain unanswered concerning the emphasis which should be placed on preventative measures such as the removal of lead-based paint from existing structures, the complete versus partial or gradual elimination of lead from gasoline, and stricter controls on the lead content of food and water. The lead in gasoline issue presents particular difficulties regarding the cost-effectiveness of reducing lead contents below the level of 0.5 gram per gallon.

The proposal set forth in this notice, is limited to reducing the lead content in leaded gasoline to 1.25 grams per gallon. It is the Administrator's intention that lead in gasoline should be reduced as much as possible. In determining if further reductions will be required the Administrator will consider: (a) The degree of lead reduction that will occur as a result of the use of unleaded gasoline. If it appears that the choice of emission control systems eventually will require the universal use of unleaded gasoline, this would influence the type of reduction schedule considered by the Administrator for the period following January 1, 1978. On the other hand, if lead sensitive emission control systems are not employed universally, the Administrator will take appropriate actions to reduce lead content in leaded grades as much as possible; (b) evidence on the feasibility of reducing lead from other environmental sources.

The lead reduction specified in this proposal will augment the final lead additive regulations which provide for the general availability of lead-free gasoline. EPA recognizes that if lead-free gasoline is required in all 1975 and later model vehicles, lead-free gasolines would eventually replace leaded gasolines. However, the removal of lead from gasoline according to this approach would be dependent upon the fuel requirements of future emission control devices and consequently would not assure the reduction or elimination of motor vehicle lead emissions. Even if unleaded fuel ultimately displaces all leaded gasolines, the action to reduce lead content in leaded gasoline to 1.25 grams per gallon significantly accelerates the total lead reduction during the next 5 years. Though the benefits associated with the accelerated lead reductions have not been quantified, the Administrator has concluded that this approach is not unreasonably costly and will prudently prevent unnecessary exposure to airborne lead.

Because of the need for public comment on the foregoing issues and since the restated health position is based upon a health effects document which has not been reviewed and commented upon by the public or the scientific community, the Administrator has determined that the previously proposed lead reductions for leaded grades of gasoline should be reproposed for public comment and discussion in a somewhat revised form. The scientific community particularly is encouraged to comprehensively study and comment upon the relative significance of various lead exposure routes in the environment, the cost effectiveness of various approaches to controlling these exposure routes, and the benefits gained by reducing the lead content of leaded gasolines as well as providing for the general availability of lead-free fuel. Such efforts could complement additional investigation of this subject by EPA and other Federal agencies. A detailed examination of the health effects information which forms the basis for EPA's position is included in a paper entitled "EPA's Position on the Health Effects of Airborne Lead." Copies of this paper are available from the Publications Section, Environmental Protection Agency, 401 M Street SW., Room W238, Washington, DC 20460.

The Administrator is required to assure that substitute fuel formulations or additives will not produce emissions that would endanger the public health or welfare to the same or greater degree than lead emissions. The lead reductions required by these regulations and the lead reductions resulting from the general availability of lead-free gasoline will not cause an increase in other harmful emissions. The basis for this finding is set forth in a paper entitled "Effects of Reduced Use of Lead in Gasoline on Vehicle Emissions and Photochemical Reactivity." Copies of this paper are available from the Publications Section, Environmental Protection Agency, 401 M Street SW., Room 238W, Washington, DC 20460.

The Administrator has considered whether it would be more economically and technologically feasible to provide for the protection of public health by

means of a new vehicle emission standard for lead particles than by means of the proposed reduction of gasoline lead content. It is considered unlikely that new motor vehicles could be equipped with lead emission control devices prior to the 1975 model year. Beginning in that model year, vehicles will be equipped with catalytic emission control systems which are rendered ineffective by lead emissions, and all evidence available to the Administrator indicates that lead trap devices adequate to protect the catalysts will not be available by 1975. Furthermore, the Administrator does not have authority to prescribe a lead emission standard applicable to other-than-new vehicles so that even a zero lead emission standard could be applied to new motor vehicles only. Older vehicles would continue to use leaded gasolines. Accordingly, the Administrator has determined that providing for the protection of public health by means of a new motor vehicle emission standard for lead is not feasible.

The February proposal provided for control of lead additives in leaded grades of gasoline by specifying a maximum lead content for each gallon of leaded gasoline sold during a given year. The regulations provided for a maximum of 2 grams per gallon effective January 1, 1974; 1.7 grams per gallon effective January 1, 1975; 1.5 grams per gallon effective January 1, 1976; and 1.25 grams per gallon effective January 1, 1977.

The regulations proposed below provide for the lead reductions set forth in the February proposal with certain modifications. Due to the lead time needed by the petroleum industry to prepare for the proposed lead reductions, the regulations proposed below defer the reduction schedule by 1 year. Furthermore, the regulations provide for an average lead level per gallon of leaded gasoline produced by an individual refinery during any quarter rather than a maximum lead content per gallon of gasoline sold. Accordingly, the regulations proposed below provide for a quarterly average lead content in the leaded grades of gasoline produced by any refinery of 2 grams per gallon effective January 1, 1975; 1.7 grams per gallon effective January 1, 1976; 1.5 grams per gallon effective January 1, 1977; and 1.25 grams per gallon effective January 1, 1978.

The proposal's specified average lead levels in the leaded grades of gasoline rather than the maximum lead level per gallon sold responds to comments received on the February proposal. Gasoline refiners emphasized that establishing a maximum lead level for each grade or batch of gasoline restricts flexibility in production of gasoline. The optimum quantity of lead to be added to a particular blend of gasoline varies with the octane quality of the blending stocks and their susceptibility to octane boost from lead additives. These factors result in different lead levels to maximize the utility of lead additives in refining gasoline.

In addition, the ability to add amounts of lead exceeding the standard to particular batches is useful in correcting blending errors or to cover cases where refining units are shutdown for repairs. The alternative would be to store as insurance against shutdowns and to reblend stocks not meeting the octane blending stocks specifications unless additional lead is added. The elimination of flexibility in the use of lead would increase costs and also increase the use of crude oil to some extent.

For these reasons, the refiners urged that each refinery be permitted to allocate lead over gasoline production to make optimal use of lead additives so long as the average lead content of gasoline produced by each refinery did not exceed the maximum levels necessary to achieve the reduction in lead additive usage and lead emissions determined by EPA to be necessary each year.

Several types of averaging have been proposed. Under one system proposed, each refinery (not company) would be permitted to allocate lead over all leaded grades produced so long as the average lead content per gallon of leaded gasoline produced did not exceed EPA's standard for the particular year over a given period. Various companies have proposed quarterly, semiannual, or annual averaging and reporting periods.

The second system recommended would permit a refinery to average its lead usage over all grades of gasoline produced, including the unleaded grade. The unleaded grade will be produced without the use of lead additives. This approach would require that the lead reduction schedule be recomputed to take account of production of unleaded gasoline in establishing the permissible average lead level. The effect would be to reduce the average lead levels allowable for all gasoline produced.

The Administrator finds that optimum refining flexibility consistent with attainment of the necessary reductions in lead usage can be best attained by providing for averaging of lead usage over each refinery's quarterly production of leaded gasoline. Analysis of industry comments and a study commissioned by EPA suggests that leaded pool averaging affords maximum flexibility to the refining industry as a whole, provides for the most efficient use of natural resources, accomplishes the necessary reduction in lead usage and lead emissions throughout the country, and will not cause a variation in the lead content of gasoline sold in different geographic regions. Accordingly, a system of leaded pool averaging is proposed for comment.

Monitoring of lead usage by refineries in production of leaded gasoline requires that quarterly reports be submitted by each refinery showing lead inventories on the first and last days of the reporting period, total gallons of leaded gasoline produced during the period, and the average lead content in each gallon of leaded gasoline produced during the period. Information on quarterly lead shipments to each refinery by lead additive manufacturers is also required for verification of lead usage reported by refineries. Regulations requiring these reports and providing for confidentiality of information reported as appropriate are proposed below.

This issue of the FEDERAL REGISTER sets forth regulations providing for the liability of major brand refiners for sales at their retail outlets of unleaded gasoline containing lead in violation of the standard presented in those regulations. In order to clearly indicate that there is a positive duty on the major brand refiner to prevent any violation of the unleaded gasoline standard at his retail outlets, the Agency is proposing below a regulation specifically defining this duty.

Interested persons may participate in the proposed rule making by submitting written comments in triplicate. Comments on the proposed regulations' lead reduction schedule and the health rationale for this action should be submitted to the Assistant Administrator for Air and Water Programs, Environmental Protection Agency, Waterside Mall, 401 M Street SW., Washington, DC 20460. All relevant comments postmarked not later than 60 days after publication of this notice will be considered. Comments received will be available for public inspection during normal working hours (8 a.m. to 4:30 p.m.) at the Office of Public Affairs, Waterside Mall, 401 M Street SW., Room 329C, Washington, DC 20460.

This notice of proposed rule making is issued under the authority of sections 211 and 301 of the Clean Air Act as amended (42 U.S.C. 1857f–6c, 1857g(a)).

Dated: January 4, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

It is proposed to amend Part 80 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

1. In § 80.1, the second sentence is revised to read as follows:

§ 80.1 Scope.

* * * These regulations are based upon a determination by the Administrator that the emission product of a fuel or additive will endanger the public health, or will impair to a significant degree the performance of a motor vehicle emission control device in general use or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulations promulgated; and certain other findings specified by the Act.

2. In § 80.2, a new paragraph (m) is added as follows:

§ 80.2 Definitions.

* * * * *

(m) "Lead additive manufacturer" means any person who produces a lead additive or sells a lead additive under his own name.

3. A new § 80.20 is added as follows:

§ 80.20 Controls applicable to gasoline refiners.

(a) (1) In the manufacture of leaded gasoline at any refinery, no gasoline refiner shall exceed the average lead content per gallon specified below for each 3-month period (January through March, April through June, July through September, October through December):

(i) 2.0 grams of lead per gallon, after January 1, 1975;

(ii) 1.7 grams of lead per gallon, after January 1, 1976;

(iii) 1.5 grams of lead per gallon, after January 1, 1977;

(iv) 1.25 grams of lead per gallon, after January 1, 1978.

(2) For each 3-month period (January through March, April through June, July through September, October through December) the average lead content per gallon shall be computed by dividing total grams of lead used at a refinery in the manufacture of gasoline by total gallons of leaded gasoline manufactured at such refinery.

(3) For each 3-month period (January through March, April through June, July through September, October through December) commencing with the period January 1, 1975, through March 31, 1975, each refiner shall submit to the Administrator a report showing for each refinery: (i) The total grams of lead in lead additive inventory on the first day of the period, (ii) the total grams of lead received during the period, (iii) the total grams of lead in lead additive inventory on the last day of the period, (iv) the total gallons of leaded gasoline produced by such refinery during the period, and (v) the average lead content in the total gallonage of leaded gasoline produced during the period. Reports shall be submitted within 15 days after the close of the reporting period, on forms supplied by the Administrator upon request.

(b) The provisions of paragraph (a) (1) (i) of this section shall not apply to any refiner which does not have more than 30,000 barrels per day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such refiner under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a throughput or other form of processing agreement, with the same effects as though such facilities had been leased.

(c) After July 1, 1974, no refiner shall cause or permit any violation of § 80.22 (a) by any retailer at whose retail outlet or on whose gasoline pumps or pumpstands the corporate, trade, or brand name of the refiner or any of the refiner's marketing subsidiaries appears or is displayed.

4. A new § 80.25 is added as follows:

§ 80.25 Controls applicable to lead additive manufacturers.

For each 3-month period (January through March, April through June, July through September, October through December) commencing with the period January 1, 1975, through March 31, 1975, each lead additive manufacturer shall submit to the Administrator a report showing the total grams of lead shipped to each refinery by such lead additive manufacturer during the period. Reports shall be submitted within 15 days after the close of the reporting period, on forms supplied by the Administrator upon request.

5. A new § 80.26 is added as follows:

§ 80.26 Confidentiality of information.

(a) All information reported to the Administrator or his representatives pursuant to this part, which information contains or relates to a trade secret or other matter referred to in 18 U.S.C. 1905, shall be considered confidential for the purpose of such 18 U.S.C. 1905, except that such information may be disclosed to other officers or employees of the United States concerned with carrying out this Act or when relevant in any proceeding under the Act. Nothing in this part shall authorize the withholding of information by the Administrator or any officer or employee under his control from the duly authorized committees of the Congress. Any such confidential information forwarded to a committee of the Congress will be identified as confidential information.

(b) Manufacturers submitting information to the Administrator pursuant to this part shall identify that information which they believe contains or relates to a trade secret or other matter referred to in 18 U.S.C. 1905. Where public disclosure of any information so identified is contemplated by the Administrator, the manufacturer will be notified and allowed a reasonable time in which to satisfy the burden of showing the applicability of 18 U.S.C. 1905 to such information. If the Administrator determines that the manufacturer has sustained this burden of proof, the information in question will not be disclosed. If the Administrator determines that the manufacturer has not sustained this burden of proof, the Administrator may disclose such information.

[FR Doc.73-393 Filed 1-9-73;8:45 am]

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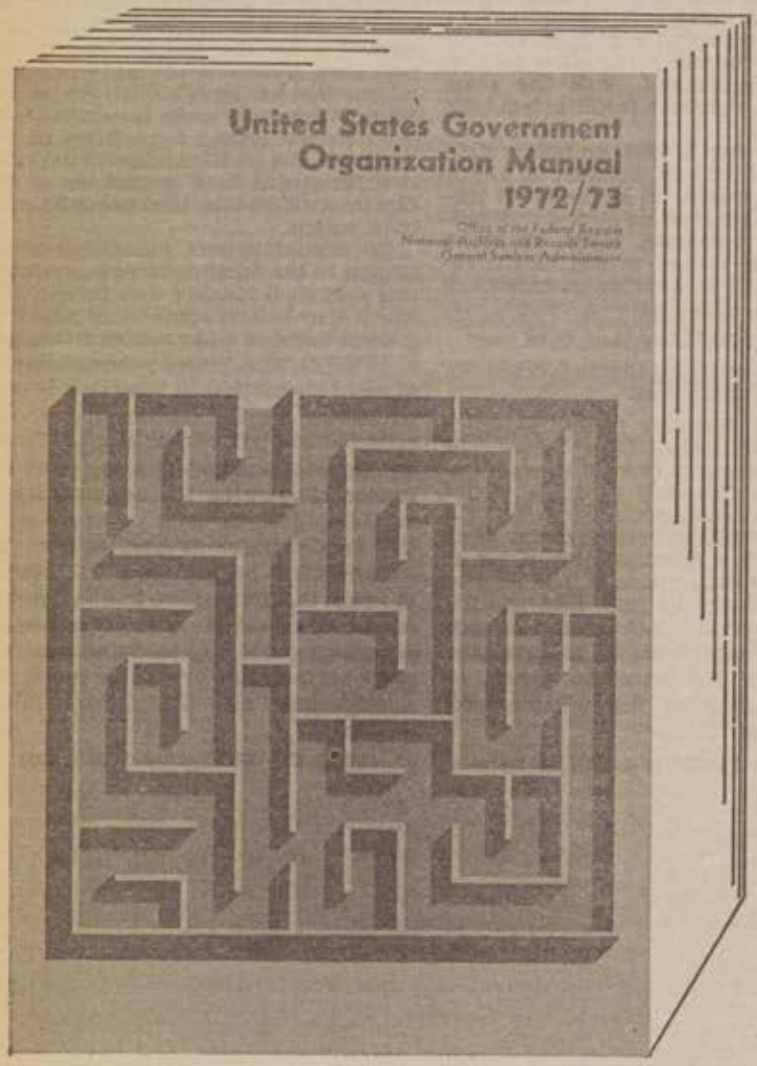

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